

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3	THE BURLINGTON NORTHERN AND	)	
4	SANTA FE RAILWAY COMPANY,	)	Docket No. TR-010684
		)	
5	Petitioner,	)	Volume III
		)	Pages 35 to 280
6	vs.	)	
		)	
7	CITY OF SPRAGUE,	)	
		)	
8	Respondent.	)	
	_____	)	

9  
10                   A hearing in the above matter was held on  
11                   September 18, 2002, from 9:30 a.m. to 5:10 p.m., at 213  
12                   South C Street, Sprague, Washington, before  
13                   Administrative Law Judge THEODORA M. MACE.

14                   The parties were present as follows:  
15                   THE COMMISSION, by JONATHAN THOMPSON,  
16                   Assistant Attorney General, 1400 South Evergreen Park  
17                   Drive Southwest, Olympia, Washington 98504-0128,  
18                   Telephone (360) 664-1225, Fax (360) 586-5522, E-mail  
19                   jthomps@wutc.wa.gov.

20                   BURLINGTON NORTHERN AND SANTA FE RAILWAY  
21                   COMPANY, by DANIEL L. KINERK, Attorney at Law, Koschel  
22                   Gibson Kinerk Reeve, L.L.P., 110 - 110th Avenue  
23                   Northeast, Suite 607, Bellevue, Washington 98004, (425)  
24                   462-9584, Fax (206) 625-6517, E-mail dkinerk@kgkr.com.

25                   CITY OF SPRAGUE, by SYLVIA FOX, Mayor, 312  
                  East First Street, Sprague, Washington 99032, Telephone  
                  (509) 257-2662, Fax (509) 257-2691, E-mail  
                  foxsylvia@aol.com.

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0040

1 PROCEEDINGS

2 JUDGE MACE: All right, let's be on the  
3 record in Docket Number TR-010684, Burlington Northern  
4 and Santa Fe Railroad against the City of Sprague.  
5 We're here today for an evidentiary proceeding. There  
6 will be a public hearing later on in the day at 6:30  
7 this evening in this same place, but right now we're  
8 here for the evidentiary proceeding, and I will explain  
9 a little bit more about that as we go along.

10 This case involves Burlington Northern's  
11 petition to close the D Street crossing in the City of  
12 Sprague. Since this case began, Burlington Northern has  
13 amended its petition to include as an alternative  
14 closure the F Street crossing, and I'm sure the parties  
15 are going to flesh out exactly what this means as we go  
16 through the evidence.

17 My name is Theodora Mace, and I'm the  
18 Administrative Law Judge who has been assigned to hold  
19 the hearings in this case. Today's date is September  
20 18, 2002, and we're convened in a room at the office of  
21 the Sprague Chamber of Commerce I believe at 213 South C  
22 Street in the City of Sprague. Have I got that correct?

23 As I mentioned, later on today there will be  
24 a public hearing, and the purpose of the public hearing  
25 is to give members of the public, the citizens of the

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1 City of Sprague and surroundings, an opportunity to  
2 comment and address the Commission directly about their  
3 position on the issues. It is not -- it's formal but  
4 not formal in the evidentiary sense of the case as the  
5 evidentiary proceeding is that we're going to have this  
6 morning, and that is a formal quasijudicial proceeding.  
7 The public hearing is only for taking public comment.

8           The parties to this proceeding are Burlington  
9 Northern, and we have Mr., I will take appearances  
10 later, but Mr. Kinerk, and we have several staff members  
11 from Burlington Northern here today at the evidentiary  
12 proceeding, and I'm hoping they will also be here  
13 tonight for the public hearing. We also have  
14 Mr. Thompson from the Commission Staff, an Assistant  
15 Attorney General representing the Commission, and a  
16 staff member who will be a witness, and we also have  
17 Penny Hansen in the back of the room who can answer any  
18 questions as the proceeding goes along. If you have any  
19 procedurally or anything about the process, I think she  
20 can easily answer questions.

21           And then we have City of Sprague, and,  
22 Ms. Fox, you're representing the City of Sprague today;  
23 is that correct?

24           MS. FOX: Yes.

25           JUDGE MACE: And then when I take

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1 appearances, I will ask you to give your appearance for  
2 the record, and I will ask all the people who are  
3 entering their appearances to state their names, their  
4 addresses, and the capacity in which they're present  
5 here at the hearing today.

6           Just to give you a little -- we talked a  
7 little bit about procedures at the pre-hearing  
8 conference when we were on the phone the other day, but  
9 I'm going to go over a couple things here this morning  
10 so that we are all clear about exactly how things are  
11 going to go.

12           As you know, I have asked the parties to give  
13 me their exhibits, so we have pre-marked the exhibits,  
14 and you probably have already seen Burlington Northern's  
15 exhibits; it's a booklet that has pre-marked Exhibits 1  
16 through 16. There are four Staff exhibits, Numbers 17  
17 through 20, and I'm sure Staff will explain to us those  
18 exhibits. And then we have four marked Exhibits 21  
19 through 24 for the City of Sprague. And during the  
20 proceeding at the beginning of the witnesses'  
21 presentations or whatever is the appropriate time,  
22 counsel will probably offer those exhibits into  
23 evidence, and at that time I will take objections, if  
24 there are any, to the exhibits, and make a ruling on the  
25 objections or just admit the exhibits if there are no



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1 objections.

2           The testimony that's given by the witnesses  
3 plus the exhibits constitute the record, the evidentiary  
4 record upon which the Commission will make a decision.  
5 The Commission will also be taking a look at the public  
6 comments in making its decision. In fact, I will be  
7 writing an initial decision in this case, and then the  
8 parties will have an opportunity to respond to that, and  
9 then ultimately the Commission will be able to make a  
10 final decision.

11           So that sets a little bit of the groundwork  
12 in terms of the practicalities. The first party that  
13 will make its presentation today is Burlington Northern,  
14 because it's the petitioner in this case. And  
15 Burlington Northern, as we understand, has three  
16 witnesses, and Mr. Kinerk, the attorney, will present  
17 those witnesses and go through the exhibits, and there  
18 will be testimony and exhibits. After each witness  
19 concludes the direct portion of its presentation, giving  
20 its testimony, the counsel for the Staff and The Mayor  
21 will have a chance to cross-examine that witness, and  
22 that applies to each of the three witnesses the company  
23 presents.

24           And then after the company has finished  
25 presenting its case, we will turn to the Staff, and

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1 Staff will present its witness, and then the parties  
2 will have an opportunity to cross-examine that Staff  
3 witness. And then we'll turn to the City, and the City  
4 will have an opportunity to present its testimony and  
5 its exhibits.

6 Now I have offered this as the proceeding  
7 today or the process we're going to follow. Are there  
8 any parties who have any comments about this process or  
9 any questions?

10 MR. KINERK: Good morning, Your Honor, I'm  
11 Daniel Kinerk on behalf of the Petitioner, Burlington  
12 Northern Santa Fe Railway Company. I would indicate  
13 with regard to the exhibits, I have spoken with  
14 Mr. Thompson and Mayor Fox, and the parties have agreed  
15 to stipulate to the admissibility of all three parties'  
16 exhibits.

17 JUDGE MACE: Very well, if there is no  
18 objection, the parties have stipulated, I can admit all  
19 the exhibits at this point. Does anyone have any  
20 problem with that?

21 MR. KINERK: No.

22 JUDGE MACE: Very well, I will admit all the  
23 exhibits that have been marked, that's Exhibits 1  
24 through 24.

25 Any other questions or comments about the

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1 process I have described?

2           If not, then let's begin. I'm going to ask  
3 for the official appearances of counsel, and since we  
4 have Mayor Fox here who probably doesn't appear in  
5 proceedings like this on a daily basis, I just want you  
6 to relax. If you have any questions about the process  
7 as it's ongoing, feel free to ask. And if you have  
8 questions that you would prefer not to ask me about, you  
9 can talk to Ms. Hansen at the back of the room. She's  
10 very expert about these proceedings. She has seen a  
11 number of them, she can probably give you some answers  
12 to your questions. But I just want you to be as  
13 comfortable as possible. The main purpose today is just  
14 to have the evidence come in and to try to get a fair  
15 picture of everybody's position on the issues.

16           All right, if there's nothing further, then  
17 why don't you begin, state your name, and give your  
18 appearance for the record.

19           MR. KINERK: Good morning, Your Honor. For  
20 the record, my name is Daniel Kinerk. I'm counsel for  
21 Petitioner Burlington Northern and Santa Fe Railway  
22 Company. To my right is Michael Cowles, who is the  
23 Manager of Public Projects on behalf of the Burlington  
24 Northern Santa Fe Railway Company.

25           JUDGE MACE: Okay. Just state your name and

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1 who you --

2 MS. FOX: My name is Sylvia Fox with the City  
3 of Sprague. I'm the mayor.

4 JUDGE MACE: And you're representing the City  
5 of Sprague in these proceedings?

6 MS. FOX: Yes.

7 JUDGE MACE: All right, thank you very much.

8 MR. THOMPSON: I'm Jonathan Thompson,  
9 Assistant Attorney General representing the Staff of the  
10 Commission. Would you like me to -- Mr. Nizam is also  
11 here with me.

12 JUDGE MACE: Right, and he'll be a witness  
13 later on; is that correct?

14 MR. THOMPSON: Yes.

15 JUDGE MACE: Very good. I think then we're  
16 ready to begin with the presentation of the evidence.

17 Mr. Kinerk, would you present your first  
18 witness?

19 MR. KINERK: Thank you, Your Honor. Just as  
20 a preliminary matter, I have indicated to the Court that  
21 in terms of the three witnesses that will be called on  
22 by BNSF, we will initially call Mr. Cowles, and  
23 Mr. Cowles will be able to explain Exhibits 1 through 4,  
24 which are basically Exhibit 1 being an aerial photograph  
25 taken of the City of Sprague, perhaps to outline for all

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1 of the parties at this evidentiary hearing the landmarks  
2 that are involved in this particular petition. Exhibits  
3 2, 3, and 4 and their subsections are photographs that  
4 were taken recently of the B Street, D Street, and F  
5 Street crossings from various positions. Again, they  
6 will be offered in essence as illustrative exhibits to  
7 assist all the parties in understanding what we're  
8 talking about with regard to the request by BNSF to  
9 consolidate the D Street crossing.

10           Once I complete the preliminary questions of  
11 Mr. Cowles with regards to those exhibits, I will then  
12 be calling Curtis Froscheiser, who is the BNSF internal  
13 superintendent of operations. He will be testifying  
14 briefly with regards to rail operations through the City  
15 of Sprague. And when he is through, I anticipate  
16 calling Mr. Gary Larsen, who is a BNSF engineer. He is  
17 also affiliated with Washington Operation Lifesaver, and  
18 he will testify briefly with regards to his  
19 participation in that program in this general area  
20 including Sprague.

21           Lastly, I then will ask Mr. Cowles to return  
22 to the stand, and we will discuss in greater detail the  
23 analysis that Mr. Cowles undertook on behalf of BNSF  
24 with regards to the petition for closure of the D Street  
25 crossing. I mention that just for purposes of

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1 cross-examination of Mr. Cowles. It might be more  
2 appropriate, unless there are questions with regard to  
3 the Exhibits 1 through 4, to withhold cross-examining  
4 him until he resumes the witness stand. Thank you.

5 JUDGE MACE: Very well.

6 This is our witness chair over here, if you  
7 would please approach it. And, Mr. Cowles, I would like  
8 you to when you're ready to raise your right hand.

9

10 Whereupon,

11 JOHN MICHAEL COWLES,  
12 having been first duly sworn, was called as a witness  
13 herein and was examined and testified as follows:

14

15 JUDGE MACE: All right, please be seated.

16 Now I want to caution all the witnesses who  
17 are here that it's helpful if you speak as loudly and as  
18 clearly and as slowly as you can, particularly if  
19 there's something you need to read, because we don't  
20 have a PA system, and the reporter is making a  
21 transcript of the proceeding. Thank you.

22

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

24 BY MR. KINERK:

25 Q. Good morning, could you state your name for

0049

1 the record, please.

2 A. My name is John Michael Cowles. Last name is  
3 spelled C-O-W-L-E-S.

4 Q. Mr. Cowles, by whom are you employed?

5 A. I'm employed by the Burlington Northern and  
6 Santa Fe Railway Company.

7 Q. What is your job title with the Burlington  
8 Northern and Santa Fe Railway Company?

9 A. I am Manager of Public Projects.

10 Q. How long have you held that job position with  
11 the railway?

12 A. I have held that position since 1991, which  
13 makes it 11 years.

14 Q. And what does the manager of public projects  
15 do on behalf of the railroad?

16 A. The manager of public projects works with  
17 local agencies, state highway departments on public  
18 highways which encumber the railroad right of way, and  
19 this includes railroad crossings, bridges, and the like.  
20 And I cover a three state area, Montana, Idaho,  
21 Washington, and the province of British Columbia in  
22 Canada.

23 Q. Mr. Cowles, before I go into your employment  
24 background in greater detail, I would like you to take a  
25 couple of moments and get up from the witness stand,

0050

1 with the permission of the Court, and approach the  
2 Exhibit Number 1, and take your, to the extent that you  
3 need, take your exhibit notebook.

4 A. (Complies.)

5 Q. If you would, Mr. Cowles, would you please  
6 identify for the record what Exhibit Number 1 is.

7 A. Exhibit Number 1 is an aerial that we had  
8 produced off of the Internet actually. It's a USGS map,  
9 a USGS photograph that was taken in approximately 1996.

10 Q. What is it a map of, sir?

11 A. I'm sorry, it's an aerial of the city of  
12 Sprague, and it encompasses the city limits of Sprague.

13 Q. Mr. Cowles, do you know when that USGA map  
14 was produced originally?

15 A. It was produced -- we put it together just  
16 recently, but the photograph was taken in 1996.

17 Q. Have you had a chance recently to drive the  
18 streets and routes of the city of Sprague?

19 A. Yes, I have.

20 Q. And having done so, comparing that to the  
21 aerial photograph taken in Exhibit Number 1, does that  
22 appear to be a fair and accurate depiction of the  
23 layout?

24 A. Yes, it is.

25 Q. It appears on Exhibit Number 1 at least on



0051

1 the large copy, though we don't have it on the exhibits  
2 in the notebooks, that you have labeled some of the  
3 landmarks and designations within the city limits of  
4 Sprague; is that right?

5 A. Yes.

6 Q. Would you be kind enough to go through how  
7 you have designated those landmarks for everyone,  
8 please.

9 A. As this area forms the consolidation of D  
10 Street, I labeled the three crossings in the city of  
11 Sprague from -- this is by the way the north aerial that  
12 was taken at an angle from east to west. We have B  
13 Street, and we have the highway here, State Route 23,  
14 which goes over the railroad tracks. This is the  
15 Burlington Northern Santa Fe Railroad tracks right here.  
16 State Route 23, which is an at grade separation across  
17 the tracks, we have the D Street at grade crossing, the  
18 D Street at grade crossing and the F Street at grade  
19 crossing. I have also labeled some of the adjoining  
20 streets, east-west streets from First through Fifth.  
21 The school, which is on F Street at Fifth and F, which  
22 is right here, which is a --

23

24

25

0052

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

2    BY JUDGE MACE:

3            Q.     When you say right here, it's the southwest  
4    corner?

5            A.     The southwest corner of the City.

6            Q.     And the railway runs through the north of the  
7    City?

8            A.     And the railway runs from east to west  
9    through the city of -- this is right here on the north  
10   end of the city limits, northern end of the city.

11           Q.     And these crossings run from --

12           A.     They run north to south.    Each crossing is  
13   approximately 600 feet apart.

14           Q.     And the B Street crossing is the furthest  
15   east; is that correct?

16           A.     That is correct.

17           Q.     And then F is the furthest west?

18           A.     That's correct, and D Street is in the  
19   middle, right smack in the middle.

20

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

22    BY MR. KINERK:

23            Q.     Mr. Cowles, I think you have identified a few  
24   other landmarks within the city limits of Sprague.

25            A.     Yes, I have.

0053

1 Q. Could you identify those, please.

2 A. We have the fire station, which is on C  
3 Street, C and Third, between Second and Third and C  
4 right next -- towards us.

5 JUDGE MACE: And that is south of the tracks?

6 A. And that is south of the tracks. We have the  
7 -- just north of the tracks we have the ball field off  
8 of B Street, and we have the grange, which is one of the  
9 city of Sprague's main businesses. And the grange is on  
10 the corner of D Street and Railroad Avenue, which is  
11 north of the tracks. And then I put the Reardon grain  
12 elevator, which is on F and -- between F and E Street  
13 just south of the tracks. And I have labeled a couple  
14 other streets north of the tracks. There's Alder  
15 Street, which is on the northeast corner of the town.  
16 And then I have Hopper Street, which is north of the  
17 tracks, which is an intersection off of State Route 23.  
18 And I have also labeled the Chevron station, which is in  
19 the southeast corner of the City along Highway 23 and  
20 Fourth Street.

21 Q. Mr. Cowles, could you identify for us on  
22 Exhibit Number 1 where Interstate 90 is, also where  
23 State Route or State Highway 23 is, and the major exits  
24 off of State Route 23 in and out of the city of Sprague.

25 A. Okay. Interstate 90 is on the north corner

0054

1 of this exhibit, which runs kind of a  
2 northeast-southwest direction, and Interstate Route 23,  
3 which has a major interchange right up here off the map,  
4 off the drawing. And as you get off on 23 off of I-90,  
5 which is Exit 245, I believe, you come south, and the  
6 first intersection is Hopper Street, first exit into the  
7 town. So you can come in from the north and enter into  
8 the city off of D Street going south. The next exit  
9 coming off of Highway 23 is Fourth Street, which you can  
10 either turn left at the Chevron station or right into  
11 the city proper. And those are the two entrances off of  
12 Highway 23.

13 Q. Mr. Cowles, does that cover most of the  
14 landmarks that you have made on Exhibit Number 1?

15 A. Yes.

16 Q. I would like you, if you would, sir, to put  
17 up Exhibit Number 2.

18 A. (Complies.)

19 Q. And again, for those who have the exhibit  
20 list, there should be laser photographs of all of these  
21 exhibit numbers followed by their subsection, 2-A  
22 through 2-L for your review.

23 Mr. Cowles, looking at Exhibit Number 2,  
24 could you for purposes of the record please identify  
25 what that exhibit is.

0055

1           A.     Exhibit 2 is an exhibit of pictures of the D  
2 Street at grade crossing.

3                   JUDGE MACE:  These are all photos of the D  
4 Street?

5           A.     These are all photos of the D Street grade  
6 crossing.

7                   JUDGE MACE:  Thank you.

8           Q.     Mr. Cowles, you had mentioned a moment ago  
9 that you had the opportunity to travel the streets of  
10 Sprague recently.  Have you had the opportunity to  
11 inspect the D Street crossing in Sprague recently?

12          A.     Yes, I have.

13          Q.     In looking at Exhibits 2-A through 2-L, do  
14 those photographs accurately and fairly depict the D  
15 Street crossing in Sprague?

16          A.     Yes, it does.

17          Q.     What I would like to do with you, sir, is to  
18 go through each one of those exhibits A through L and  
19 ask you to identify where those particular photographs  
20 appear to have been taken, in what direction they are  
21 facing, and what significant information or landmarks  
22 are incorporated in each of those photographs.  And if  
23 we could start off initially with 2-A, could you tell us  
24 what direction that photograph is pointed?

25          A.     Okay.  2-A is a picture of D Street standing

0056

1 south of the tracks looking north. To the north  
2 tracking to the east side of the roadway, you see the --  
3 this is a grain, it's kind of in the shadow, but this is  
4 kind of the start of the grain elevator. And looking  
5 straight ahead to the north side of the railroad tracks  
6 to the right is the grange, and that was taken probably  
7 at a distance of about 1,000 feet from the crossing, I  
8 believe.

9 Q. Is the road that intersects the D Street at  
10 grade crossing, is that a two-lane road, sir?

11 A. That is a two-lane road, yes.

12 Q. Let me take you next to photograph 2-B, what  
13 direction was that photograph pointed towards, sir?

14 A. 2-B is the same direction as 2-A except  
15 you're a lot closer to the crossing. What you see in  
16 this picture is the active warning devices, the flashing  
17 lights and gates at the crossing. And as you can see,  
18 the grange is still in the picture.

19 Q. With regards to the protective measures that  
20 are at the D Street crossing currently, can you identify  
21 all of the protective measures that are found there.

22 A. Yes, we have the flashing lights and gates,  
23 which are the active warning devices. We have the  
24 activation equipment on the right. And I see on the  
25 other side of the crossing I do see an advanced warning

0057

1 sign.

2 Q. Mr. Cowles, are there any type of cross buck  
3 signs or identification of the number of tracks that are  
4 at the D Street crossing?

5 A. Yes, there's three tracks, there's a three  
6 track sign on the post.

7 Q. If you could next go to Exhibit Number 2-C,  
8 what direction was that photograph taken, and what is  
9 shown in that photograph, sir?

10 A. This picture was taken more directly to the  
11 north, that's north and east of the crossing in the  
12 picture of the grange. This is slightly askew of 2-B.

13 Q. Mr. Cowles, on the left side of photograph  
14 Exhibit 2-C, is that D Street proceeding in a northerly  
15 direction?

16 A. That is D Street in the northerly direction.

17 Q. And just for purposes of comparison, perhaps  
18 you can move Exhibit Number 1 out and lean it against  
19 the table from the ground so that we can compare where  
20 we're talking about between Exhibits 1 and 2.

21 A. Move this up?

22 Q. Yeah, pull that up. Put that on the ground  
23 in front of Exhibit 2. Mr. Cowles, let me assist you.

24 A. Okay.

25 Q. And just so we have some bearing, we're

0058

1 talking about D Street proceeding in a northerly  
2 direction, can you show that to the Court relative to  
3 Exhibit 1.

4 A. This is D Street, northerly direction, this  
5 way. There's the grange, and there's the grain elevator  
6 right here.

7 Q. Mr. Cowles, let me turn your attention to  
8 Exhibit 2-D at this point, and can you identify that  
9 record for us, please.

10 A. 2-D is that much closest -- 2-D is D Street  
11 going north, northerly direction, you're basically at  
12 the crossing. What you see here is the actual crossing  
13 surfaces of the crossing.

14 Q. Could you describe for us the different  
15 crossing surfaces that are found in D Street crossing?

16 A. There's a three track crossing. We have the  
17 two siding tracks are plank, they're a wood material,  
18 and the main line is a concrete surface.

19 Q. With regard to photograph 2-D, is the main  
20 line concrete --

21 A. Yes.

22 Q. -- crossing the most northerly track of the  
23 three tracks shown in that photograph?

24 A. Yes, it is, it is the most northerly track.

25 Q. Mr. Cowles, if you would go to Exhibit 2-E,



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1 please.

2 A. (Complies.)

3 Q. And what is shown in that exhibit, sir?

4 A. Basically 2-E is similar to D. It does show  
5 the concrete surface on the most northerly track of D  
6 Street, facing D Street looking north.

7 Q. In looking at Exhibit 2-F, what is shown in  
8 that photograph, sir?

9 A. That is a picture of -- it's D Street, but  
10 we're looking to the east of D Street showing the  
11 elevator, the grain elevator to the east.

12 Q. Is there a entrance to the grain elevator  
13 facility shown on Exhibit 2-F?

14 A. Yes, there is.

15 Q. And on what side of the tracks is that; is  
16 that on the north or the south side?

17 A. It is on the south side of the tracks.

18 Q. Could you now turn to Exhibit 2-G, please,  
19 and tell us what is shown in Exhibit 2-G.

20 A. 2-G is the D Street looking south on the  
21 north side of the tracks.

22 Q. In looking south, can you identify for us,  
23 sir, what landmarks are shown in that photograph?

24 A. This photograph you can see the active  
25 warning devices, the railroad devices, as well as the

0060

1 crossing surface, concrete on the north track, as well  
2 as a business just south of the grain elevator on the  
3 left.

4 Q. Mr. Cowles, can you for a moment return back  
5 to Exhibit Number 1 and show the court when you are  
6 comparing Exhibit 2-G looking in a southerly direction  
7 where you are on Exhibit 1.

8 A. Can you --

9 Q. What I'm asking you to do is go back to  
10 Exhibit Number 1 and identify the direction in which you  
11 are looking when one is standing --

12 A. Standing north of the track looking south,  
13 and the business you see looking south is the business  
14 here on the corner of First and D to the south of the  
15 tracks.

16 Q. Next looking at Exhibit 2-H, what is shown  
17 there, sir?

18 A. I'm looking south on D Street, slightly  
19 closer to the crossing, and basically it's the same as  
20 2-G except you're a little bit closer to the crossing.

21 Q. What is the first road that is found south of  
22 the D Street crossing?

23 A. First road is basically First Street.

24 Q. Okay.

25 A. You're talking about the --

0061

1 Q. Running in an east-west direction.

2 A. -- intersection?

3 Q. Correct. Next can you take us to Exhibit 2-I  
4 and identify what that is, sir?

5 A. It is the D Street crossing looking south,  
6 and you're basically standing just off the edge of the  
7 crossing.

8 Q. Again looking at Exhibit 2-I, the set of  
9 tracks that are shown nearest in that photograph to the  
10 viewer, what set of tracks are those?

11 A. Those are the main line tracks with the  
12 concrete surface first one you see.

13 Q. And the next photograph, Mr. Cowles, is  
14 identified as 2-J, could you indicate what is shown in  
15 that photograph.

16 A. This photograph I believe is the photograph  
17 of Railroad Avenue. Railroad Avenue is a, show you on  
18 Exhibit 1, has a railroad roadway through the railroad  
19 tracks going to D Street, F Street, going in a westerly  
20 direction.

21 JUDGE MACE: Is it south or north of the  
22 actual tracks?

23 A. It's north of the tracks.

24 Q. Mr. Cowles, next going to Exhibit 2-K, what  
25 is shown in that photograph?

0062

1           A.     This is a photograph looking -- I'm basically  
2 standing on the crossing itself looking west. On  
3 Exhibit 1, standing at D looking west down the track.

4           Q.     And when you say looking west, from a  
5 landmark, although you obviously can't see it, you're  
6 talking about the direction of Pasco, Washington?

7           A.     That is correct.

8           Q.     In looking at Exhibit 2-K, does that show the  
9 three separate tracks that intersect D Street?

10          A.     Yes, it does.

11          Q.     On the far left and side of Exhibit 2-K, what  
12 facility is shown?

13          A.     That is the Reardon grange elevator, Reardon  
14 Growers I guess, to the left, which is the south of the  
15 tracks, between D and F Street, actually between E and F  
16 Street is where it is. E does not -- E Street does not  
17 cross the tracks, but it does have tracks.

18          Q.     Mr. Cowles, can you next look at Exhibit 2-L  
19 and tell the Court what is shown in that photograph.

20          A.     2-L is a picture looking east from the D  
21 Street crossing down the tracks. There are three sets  
22 of tracks. There's the main line and two sidings. And  
23 on the south side of the tracks is the grain elevator.

24          Q.     When you are looking in the easterly  
25 direction shown in Exhibit 2-L, will the landmark,

0063

1 although obviously not shown there, be Spokane?

2 A. That is correct.

3 Q. Looking back for a moment on Exhibit Number  
4 1, can you show the Court what we're talking about  
5 relative to direction on Exhibit 1.

6 A. Standing on D Street looking west, you will  
7 see the elevator on the right here and then going that  
8 direction.

9 Q. Mr. Cowles, what I would like you to do next,  
10 if you would, sir, is put up Exhibit Number 3, and I  
11 would like to go through the same scenario with you in  
12 regard to those photographs. And for purposes of the  
13 record, can you tell us what is shown in Exhibit 3 with  
14 subsections A through I.

15 A. This is nine pictures of the F Street grade  
16 crossing.

17 Q. Looking at those nine photographs,  
18 Mr. Cowles, do they accurately and fairly depict the F  
19 Street crossing in Sprague, Washington taken from  
20 various angles?

21 A. Yes, they do.

22 Q. Looking first at Exhibit 3-A, can you  
23 identify for us what is shown in that photograph and  
24 what direction one is looking.

25 A. This is F Street. The picture was taken

0064

1 south of the railroad tracks looking north on 3-A. And  
2 there's a two-lane roadway with shoulders. There's no  
3 curbs. It was taken at a -- quite a distance, so it's  
4 -- you can barely see -- you can see the actual warning  
5 devices at the crossing, but -- yeah.

6 Q. Mr. Cowles, looking for a moment at Exhibit  
7 Number 1, can you show the Court where F Street lies in  
8 relation to D Street.

9 A. D Street is in the middle crossing, and F  
10 Street is to the west approximately 600 feet and runs in  
11 a north-south direction. The picture 3-A is taken from  
12 the south looking north right there.

13 Q. Mr. Cowles, next looking at Exhibit 3-B, can  
14 you identify that photograph for us, please.

15 A. This is a picture of F Street looking north  
16 probably about 100 feet, 200 feet from the crossing in a  
17 northerly direction. The picture shows the active  
18 warning devices and the -- and a driveway that goes to  
19 the right here at the Reardon Grain Growers elevator.

20 Q. Can you identify for us what the active  
21 warning devices are that are found at the F Street  
22 crossing?

23 A. The active warning devices are flashing  
24 lights and gates.

25 Q. In addition, are there any cross buck signs

0065

1 at the F Street crossing?

2 A. Yes, there are, and there are cross bucks on  
3 the maps.

4 Q. Looking at Exhibit 3-C, what does that  
5 photograph show, sir?

6 A. Photograph 3-C is a picture of the F Street  
7 crossing standing just off of the crossing surface.  
8 There are a total of three sets of tracks through the  
9 crossing, one made of concrete and two made of wood  
10 plank.

11 Q. Mr. Cowles, can you tell from looking at  
12 Exhibit Number 3-C as to whether the road approaching in  
13 a northerly direction to the F Street crossing is an  
14 asphalt crossing, or an asphalt road?

15 A. It is an asphalt road, yes.

16 Q. Can you next turn to Exhibit 3-D and describe  
17 what is shown in that photograph.

18 A. 3-D is a picture from the north of -- at the  
19 F Street crossing looking south and a picture of the  
20 active warning devices.

21 Q. Looking for a moment, Mr. Cowles, at Exhibit  
22 1, can you -- if one was to follow in a southerly  
23 direction from the F Street crossing, can you show the  
24 Court where you would ultimately end up if you crossed  
25 to the furthest south end of town, just followed F

0066

1 Street all the way down.

2 A. You follow F Street going south, you  
3 basically end up in the parking lot of the school, which  
4 is just south of Fifth Street, and it dead ends right  
5 there.

6 Q. For purposes of vehicle or pedestrian traffic  
7 located north of the F Street crossing, in terms of the  
8 most direct path, would that be over the F Street  
9 crossing heading south towards the school?

10 A. Yes.

11 Q. Okay. Can you next identify for us what is  
12 shown in Exhibit 3-E, sir.

13 A. 3-E is the F Street crossing looking south  
14 standing probably about 10, 15 feet from the crossing  
15 surface. F Street at this point is a paved roadway.

16 Q. Can you next take us to 3-F, please.

17 A. Here is a -- it's basically the same picture  
18 as 3-E except more directly looking at the crossing  
19 surface itself.

20 Q. Looking next at 3-G, can you tell us what is  
21 shown in that photograph, sir?

22 A. This picture is looking at -- standing on the  
23 crossing looking west, sorry, looking east towards  
24 Spokane. These are the tracks. On the right side you  
25 see, partially see the Reardon Grain Growers Association



0067

1 as well as the E Street crossing.

2 Q. Mr. Cowles, are you aware that you can enter  
3 the Reardon facility off of F Street and exit it going  
4 down E Street?

5 A. That is correct.

6 Q. There is both ingress and egress of that  
7 facility without the necessity of crossing on the D  
8 Street crossing; is that correct?

9 A. Yes.

10 Q. Could you identify what is shown in Exhibit  
11 3-H next.

12 A. 3-H is a picture off of F Street, south of F  
13 Street looking east towards the access point to the  
14 Reardon Grain Growers Association.

15 JUDGE MACE: Are you saying you're south of F  
16 Street?

17 THE WITNESS: We're south of F Street looking  
18 east. Look at Exhibit 1 here.

19 JUDGE MACE: I guess I'm just not sure how  
20 you can be south of F Street.

21 THE WITNESS: We're south of the railroad  
22 tracks. I'm sorry, south of the railroad tracks on F  
23 Street looking east.

24 BY MR. KINERK:

25 Q. Go ahead.

0068

1           A.     And it shows the access point to the Reardon  
2 Grain Growers Association.

3           Q.     Am I correct in assuming, Mr. Cowles, that  
4 the access point to the Reardon facility can be made  
5 without crossing over the F Street or D Street  
6 crossings?

7           A.     Yes.

8           Q.     Looking next at Exhibit Number 3-I, can you  
9 identify for us what is shown in that photograph, sir?

10          A.     3-I is standing on the F Street crossing  
11 looking west towards Pasco. There are three tracks.

12          Q.     The track to the furthest right in Exhibit  
13 3-I is which track, sir?

14          A.     The track to the furthest right is the main  
15 line. It is the northerly track.

16          Q.     The track in the center is which track, if  
17 you know it by name?

18          A.     That is the -- I think they call it the old  
19 -- I'm not sure of the correct name, but I think it's  
20 the old -- it's a siding track.

21                   JUDGE MACE: It's the old what?

22          A.     I think it's the -- Curtis could probably --  
23 someone else could probably tell you exactly what the  
24 name is, but it's the siding track that goes through the  
25 city of Sprague.

0069

1 Q. And the track that's shown on 3-I, the  
2 farthest left in the photograph, do you know what track  
3 that is?

4 A. That is a siding track going into the  
5 elevator.

6 Q. If you could next grab for us, Mr. Cowles,  
7 Exhibit Number 4.

8 A. (Complies.)

9 Q. For purposes of the record, could you  
10 identify what is shown in Exhibit 4, subsections A  
11 through J.

12 A. Exhibit 4 is the -- are a number of pictures  
13 of the B Street at grade crossing.

14 Q. In looking for a moment at Exhibit Number 1,  
15 could you show the Court when you are referencing B  
16 Street where that sits relative to the D Street and F  
17 Street crossings in Sprague?

18 A. B Street crossing is the most westerly --  
19 easterly at grade crossing in the city of Sprague. It  
20 is immediately to the east of D Street approximately 600  
21 feet.

22 Q. The photographs shown in Exhibit Number 4,  
23 4-A through 4-J, do those fairly and accurately depict  
24 the crossing at B Street, Mr. Cowles?

25 A. Yes.

0070

1 Q. Again starting with Exhibit 4-A through 4-J,  
2 let's go through those and identify what is shown in  
3 each of those photographs. What direction are you  
4 facing looking at Exhibit 4-A?

5 A. I'm looking in a southerly direction. I'm  
6 standing on the north side of B Street crossing looking  
7 south.

8 Q. Going next to Exhibit 4-B, what is shown, in  
9 what direction is one standing, and what is shown in  
10 that photograph?

11 A. 4-B is I'm standing on the north side of B  
12 Street at grade crossing looking south. I see a pair of  
13 active warning devices, flashing lights and gates. The  
14 roadway is asphalt, two-lane road, no shoulders and no  
15 curbs.

16 Q. What other protective measures are found at  
17 the B Street crossing, sir?

18 A. There are cross buck signs as well as a track  
19 number sign of two tracks.

20 Q. Now can you tell the court why it is that on  
21 the B Street crossing there is a two track sign, but on  
22 the D Street and F Street there are three?

23 A. The crossing at B Street only has two sets of  
24 tracks.

25 Q. Correct, and why is that the case?

0071

1           A.     That is because the third track, which is the  
2 siding going into the elevators, stops short of the B  
3 Street crossing.

4           Q.     If you could next go to Exhibit 4-C,  
5 identify, Mr. Cowles, what direction one is looking in  
6 that photograph and what is shown.

7           A.     Standing on the north side of the crossing  
8 looking south.  It's a two-lane roadway.  I see two sets  
9 of tracks.  The most northerly track is the -- is made  
10 of concrete, and the southerly track is a wood plank  
11 crossing.

12          Q.     The stop sign that is shown as one faces in a  
13 southerly direction, would that be First Avenue?

14          A.     Yes.

15          Q.     Next if you could go to Exhibit 4-D and  
16 identify for us, Mr. Cowles, what is shown in that  
17 photograph.

18          A.     This is a picture of looking north on B  
19 Street at grade crossing.  On this picture it shows an  
20 advanced warning sign and an approach to the crossing.  
21 I see the flashing light warning devices at the crossing  
22 in the approach.

23          Q.     Would you return for a moment to Exhibit  
24 Number 1 and show the Court if one is looking in a  
25 northerly direction on the B Street crossing toward the

0072

1 direction of the church where we want to be positioned.

2 A. Yes, this picture was taken from near this  
3 building here on First and B looking north, looking  
4 north from right here this way.

5 Q. Looking next at Exhibit 4-D, would you please  
6 identify what is shown in that photograph, sir.

7 A. That is a picture of B Street looking north.  
8 Picture was taken probably about 150 feet from the  
9 crossing. Active warning devices, flashing lights and  
10 gates. And to the east and north of this picture is the  
11 church, the church to the northeast and the crossing.

12 Q. Next is Exhibit 4-F, what is shown in that  
13 photograph, sir?

14 A. 4-F is a picture probably about 25 feet from  
15 the crossing surface looking north.

16 Q. Looking next at 4-G, tell us what's shown  
17 there. To give you some sort of bearing, if you look on  
18 the left-hand side, you can see the grain facility.

19 A. Okay, this is looking down Railroad Avenue,  
20 looking down Railroad Avenue on the north side of the  
21 track looking to the right to the -- facing to the west  
22 on Railroad Avenue and the -- yeah.

23 Q. Is that particular --

24 A. This --

25 Q. Go ahead.

0073

1 A. This is a gravel roadway.

2 Q. Is that the roadway in which the grange  
3 supply store is found?

4 A. Yes.

5 Q. And is the grange supply store found on the  
6 north or south side of Railroad Avenue?

7 A. It is on the north side of Railroad Avenue.

8 Q. And although it is not shown in this  
9 photograph, the railroad tracks would be where relative  
10 to the Railroad Avenue?

11 A. It would be on the south side of Railroad  
12 Avenue.

13 Q. Next looking at Exhibit 4-H, identify for us  
14 what is shown in that photograph, sir?

15 A. This is a picture taken on the south side of  
16 the railroad tracks off of B Street looking west.  
17 That's looking towards the grain elevator, and that's an  
18 access road to the grain elevator, and it's gravel, a  
19 gravel surface, south set of tracks.

20 Q. And looking next at Exhibit 4-I, can you  
21 identify what is shown there.

22 A. 4-I is standing at the crossing.

23 Q. Which crossing?

24 A. The B Street crossing looking west, and right  
25 to left is the old depot, and on the left on the south

0074

1 side is the grain elevator.

2 JUDGE MACE: Did you say the D Street  
3 crossing?

4 THE WITNESS: B Street.

5 JUDGE MACE: B Street, B as in boy.

6 THE WITNESS: And -- yeah.

7 BY MR. KINERK:

8 Q. Looking in a westerly direction on Exhibit  
9 4-I, does that show where the one industrial track  
10 rejoins the elevator track so that when you go over the  
11 B Street crossing there are only two tracks?

12 A. That is correct. Just to the north -- just  
13 to the west of the B Street crossing is the what we call  
14 a switch which goes off to the industrial track that  
15 goes into the grain elevator creating a third track  
16 which crosses D Street.

17 Q. The track that is shown furthest to the right  
18 on Exhibit 4-I would be the main line track?

19 A. It would be the main line track, yes.

20 Q. Do you know whether, looking at the old  
21 depot, whether that has been moved since these  
22 photographs?

23 A. Yes, it has.

24 Q. And where is that now located?

25 A. The old depot now is on the northeast



0075

1 quadrant of the crossing with D Street.

2 Q. Looking next at Exhibit 4-J, can you tell us  
3 what is shown in that photograph?

4 A. 4-J is standing on the B Street crossing  
5 looking east towards Spokane. In the distance you can  
6 see the highway bridge of State Route 23.

7 Q. The track that is shown on the left side of  
8 Exhibit 4-J is which track, sir?

9 A. That is the main line track.

10 Q. In looking at the wood planked crossing on B  
11 Street and the tracks shown on the right side, can you  
12 identify what tracks those are?

13 A. That is the siding.

14 Q. With regard to the siding tracks shown in  
15 Exhibit 4-J, Mr. Cowles, if you could go back for a  
16 moment to Exhibit Number 1 and show where those siding  
17 tracks are relative to the crossings that have just been  
18 identified.

19 A. The siding track off B Street is looking --  
20 we're B Street right here looking east, three-way siding  
21 track on the south side right here.

22 Q. None of those particular crossings with the  
23 exception of any of those siding tracks are involved  
24 with D Street, correct, any of the siding tracks?  
25 Talking about the siding tracks --

0076

1 A. The siding track right here?

2 Q. Yes.

3 A. This track right here does cross D Street.

4 Q. Right, the other side of the tracks.

5 A. Oh.

6 Q. Are all west of --

7 A. Yes.

8 Q. -- of the D Street crossing, correct?

9 A. Yes.

10 Q. Mr. Cowles, why don't you put the D Street  
11 crossing photographs back up on the front, please.

12 A. This one here?

13 MR. KINERK: Those are all the questions I  
14 have for you relative to the photographs at this point,  
15 sir.

16 JUDGE MACE: Mr. Cowles, before you leave  
17 this area right here, I would like to ask The Mayor or  
18 Mr. Thompson if you have any questions.

19 MS. FOX: I do.

20 JUDGE MACE: You do?

21 MS. FOX: Mm-hm.

22 JUDGE MACE: Go ahead.

23

24

25

0077

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

2 BY MS. FOX:

3 Q. Now both elevators, the only way that they  
4 have access to those elevators is if they go over top of  
5 Railroad property.

6 JUDGE MACE: Okay, now this is a little bit  
7 of how this kind of procedure takes place. The idea  
8 right now is that you can ask Mr. Cowles questions about  
9 his testimony. It's not a time for you to make a  
10 statement.

11 MS. FOX: No, I'm asking him.

12 JUDGE MACE: You address your questions to  
13 him.

14 MS. FOX: Okay.

15 BY MS. FOX:

16 Q. If the Railroad were to sell the properties  
17 going down both sides of the tracks, how would those  
18 elevators get a truck to them?

19 JUDGE MACE: If you don't understand, you say  
20 you don't understand.

21 A. I don't understand the question.

22 Q. Okay. If you were to close Railroad Avenue  
23 and you were to close Boxcar Avenue, how would you get a  
24 truck across those tracks if you close D or F?

25 A. I would assume you could probably go down

0078

1 First Street, couldn't you?

2 Q. Well, you would still have to go across the  
3 tracks at D and F. There's no access if you close  
4 Boxcar --

5 JUDGE MACE: Okay, again, let's remember this  
6 is about questions.

7 MS. FOX: Okay.

8 A. Well, I did the -- the grange, I was able to  
9 drive right around -- I was able to drive through  
10 Reardon Grange and then around down E Street from the  
11 back out here onto First. Isn't there a way of getting  
12 down the street --

13 JUDGE MACE: We also have to remember that  
14 the reporter is trying to take down what you say, and  
15 when you turn towards that sign and your voice goes low,  
16 she can't hear you and I can't hear you. You have to  
17 speak up. And it's also helpful if when you're pointing  
18 at the sign if you would be as descriptive as you could  
19 about what you're pointing at.

20 THE WITNESS: Okay, I will do better next  
21 time.

22 A. When I am approaching from F Street at the  
23 crossing --

24 JUDGE MACE: South of the crossing.

25 A. South of the crossing.

0079

1 JUDGE MACE: Okay.

2 A. Going easterly towards E Street, which is a  
3 non-grade crossing, but it does -- it's just to the east  
4 of the Reardon Grange, the access into the grange  
5 accesses E Street, which can go south off of E Street  
6 down to First Street. I assume there's a way of going  
7 north on F Street into the Reardon Grange and then down  
8 E Street and then on back onto First Avenue without  
9 crossing the tracks. I'm just -- that's just my  
10 assumption by what I see out there.

11 JUDGE MACE: Does that answer your question,  
12 Ms. Fox?

13 MS. FOX: Well, I'm just wondering how we're  
14 going to route traffic if they -- because at some point,  
15 they could have the option to close down Boxcar and  
16 Railroad Avenue. They have that option.

17 JUDGE MACE: Which Avenue is Boxcar?

18 MS. FOX: It's the north side of the tracks.

19 THE WITNESS: Boxcar is what they call south  
20 of B Street, B Street going north of the grain elevator,  
21 which is right in here. This is called Boxcar, south of  
22 the tracks.

23 JUDGE MACE: That's south of the tracks, and  
24 then there's Railroad Avenue north of the tracks?

25 THE WITNESS: Railroad Avenue is north of the

0080

1 tracks.

2 JUDGE MACE: And your question is?

3 BY MS. FOX:

4 Q. How would we get trucks if we were to have  
5 trucks -- I mean how would -- like delivery trucks, if  
6 they come across 23, they come down into the main part  
7 of the town, and if they close D and F --

8 JUDGE MACE: Okay, you have to be real  
9 specific here.

10 Q. If they come down 23 and make a right by the  
11 Chevron, I don't know the names of the streets.

12 MR. KINERK: It's Fourth.

13 Q. Okay, on Fourth, and they make a right and go  
14 down to First, they make a left, and to make a delivery  
15 to the grange they would regularly make a right across D  
16 Street and they would go across that crossing over to  
17 make their deliveries.

18 A. Can I ask her a question?

19 MR. KINERK: No, let her ask you the  
20 question.

21 JUDGE MACE: Well, he can ask a clarifying  
22 question if he doesn't understand the question.

23 A. I guess what I -- why would we want to close  
24 the streets?

25 Q. But it's your option, because you can sell

0081

1 that property.

2 JUDGE MACE: Well, see, now we're getting  
3 into a situation -- I know this is really hard, but the  
4 way these proceedings work is mainly you try to get  
5 information out of the witness. You're not testifying  
6 right now. When you do, you can say, well, you know,  
7 they might do this and then we won't be able to do that  
8 and that kind of thing. You could ask him, for example,  
9 does the Railroad own those two pieces of property, does  
10 the Railroad have any plans to close those pieces of  
11 property, things like that so that you get information  
12 on the record that the Commission can use to make a  
13 decision. See what I mean?

14 MS. FOX: Yeah.

15 JUDGE MACE: So go ahead, I don't mean to  
16 stifle your questions.

17 THE WITNESS: Could you repeat your question,  
18 please.

19 BY MS. FOX:

20 Q. I just wanted to know how we -- if those two  
21 pieces of property, if either one of those pieces of  
22 property -- say if those two pieces of property were  
23 sold, how would be -- how would we route our trucks if  
24 we didn't have those two crossings?

25 A. Never thought of it before, so I guess I

0082

1 don't have an answer right now.

2 Q. Okay.

3 JUDGE MACE: And does the Railroad have any  
4 plans that you know of to sell those two pieces of  
5 property?

6 THE WITNESS: No, I don't.

7 JUDGE MACE: You can consult with Mayor Fox.  
8 I can't have more than one person asking questions  
9 though.

10 BY MS. FOX:

11 Q. If you were to close D Street or F Street,  
12 would there be a guarantee that 24 hours a day that  
13 there would be an access across that for emergency  
14 vehicles to go across?

15 A. At this point in the hearing, I couldn't  
16 guarantee that.

17 Q. Do you at any time block all three of those  
18 crossings?

19 A. We could give testimony probably -- someone  
20 else could probably give that answer.

21 JUDGE MACE: Yeah, let's remember that  
22 Mr. Cowles right now is just testifying sort of to lay  
23 the groundwork of what we're talking about here. He's  
24 going to be back on the stand, and there will be other  
25 witnesses who will talk more specifically about the



0083

1 project or proposed project, so you will still have a  
2 chance to ask that question, and maybe it would be  
3 better for us to defer that until a little bit later on.

4 Do you have any other questions that relate  
5 just to sort of laying the groundwork for getting the  
6 Commission to know what the directions are here and what  
7 the streets are, that kind of thing?

8 BY MS. FOX:

9 Q. Okay, Exhibit 2-A, the building clear to the  
10 right of the picture, the shadow, that's actually a  
11 building, that's not the grain elevator. It's the  
12 building in front of the property that the grain  
13 elevator is on.

14 A. I believe it's probably this building right  
15 here on the corner.

16 Q. On the right corner, yes.

17 JUDGE MACE: And you would agree, that's not  
18 the grain elevator?

19 THE WITNESS: As I went through these  
20 pictures, later on I realized that it was not the grain  
21 elevator.

22 JUDGE MACE: Very well.

23 THE WITNESS: I should have made that clear.

24 JUDGE MACE: Okay. Anything else before we  
25 go to the next witness, keeping in mind that Mr. Cowles

0084

1 is going to return to the witness stand and describe  
2 other things more fully, and you will have more time to  
3 cross-examine him? Anything else?

4 Okay, Mr. Cowles, why don't you take a seat.  
5 Remember you're sworn so that when you come back we will  
6 resume your testimony.

7 THE WITNESS: Yes, Your Honor.

8 MR. KINERK: Your honor, the Petitioner BNSF  
9 will call Curtis Froscheiser to the stand.

10 JUDGE MACE: Mr. Froscheiser, I would ask you  
11 to raise your right hand.

12

13 Whereupon,

14 CURTIS FROSCHSEISER,  
15 having been first duly sworn, was called as a witness  
16 herein and was examined and testified as follows:

17

18 JUDGE MACE: All right, please be seated, and  
19 I'm sure the reporter is going to need to have you spell  
20 your last name.

21

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

23 BY MR. KINERK:

24 Q. Good morning. Can you please state your name  
25 for the record.

0085

1           A.     Good morning, I'm Curtis Froscheiser,  
2 Superintendent of Operations.

3           Q.     Mr. Froscheiser, I know you handed the court  
4 reporter your card, but just as a courtesy, would you be  
5 kind enough to spell your last name for us.

6           A.     Sure, F-R-O-S-C-H-E-I-S-E-R.

7           Q.     Mr. Froscheiser, by whom are you employed?

8           A.     Burlington Northern Santa Fe Railroad.

9           Q.     How long have you been employed by the  
10 Burlington Northern or one of its predecessors?

11          A.     For the past 29 years.

12          Q.     I think you just identified what your job  
13 title is with the Burlington Northern, but again, could  
14 you let us know what that is?

15          A.     Sure, it's Superintendent of Operations, what  
16 is now known as the Northwest Division. I'm responsible  
17 for all of the train operations between White Fish,  
18 Montana; Pasco, Washington; Wenatchee, Washington; and  
19 Kettle Falls, Washington.

20          Q.     Does the city of Sprague fall within your  
21 area of responsibility from an operational standpoint  
22 for the Railroad?

23          A.     Yes, it does.

24          Q.     Before I ask you a little bit about that,  
25 would you just be kind enough to briefly outline for us

0086

1 your significant achievements with regard to your 29  
2 year career with the BNSF.

3 A. I have been an officer of the Railroad. For  
4 the past 23 years I have been a locomotive engineer and  
5 spent a considerable amount of time from different  
6 places, Chicago, Kansas City, and the past nine years  
7 here in Spokane, in Spokane, Washington.

8 Q. Since we're not all railroaders, when you say  
9 that you are the superintendent of operations, can you  
10 in layman's terms explain to us a little bit about what  
11 your job responsibilities and duties include.

12 A. I'm responsible for the on time performance  
13 of all of the trains that we run over this territory.  
14 Responsible for the safe operation of those trains, the  
15 employees employed on those trains, and I'm responsible  
16 for making sure that they comply with all our operating  
17 rules, and I'm responsible again for their safety and et  
18 cetera.

19 Q. Mr. Froscheiser, I want to -- where are you  
20 -- where do you office out of?

21 A. Spokane, Washington.

22 Q. What I would like to do is ask you some  
23 questions specifically relative to rail operations  
24 within the city of Sprague, okay?

25 A. All right.

0087

1 Q. And can you tell us, and to the extent that  
2 it is necessary to refer to any of the exhibits please  
3 do, can you tell us the average number of trains that  
4 come through the city of Sprague in a 24 hour day?

5 A. It would vary depending on the day of the  
6 week, but you could average between 27 and 30 trains in  
7 a 24 hour period through here.

8 Q. Mr. Froscheiser, when you refer to the 27 to  
9 30 trains in a 24 hour cycle, what on the average are  
10 the number of freight trains versus Amtrak/passenger  
11 trains?

12 A. There's 2 Amtrak trains on a daily basis, one  
13 east, one west, and then the rest of those are  
14 merchandise freight type trains.

15 Q. And when you say that the Amtrak train, one  
16 is east and one is west, tell us the originating point  
17 and the destination points for those trains.

18 A. The eastbound train originates in Portland  
19 and terminates in Spokane, and then there's a east or  
20 westbound segment that originates at Spokane and  
21 terminates in Portland.

22 Q. Are there set times within which the  
23 eastbound or westbound passenger trains will proceed  
24 through a particular location, i.e., Sprague?

25 A. Yes, there is normally the westbound train

0088

1 departs Pasco I believe at approximately 2130 hours, and  
2 the eastbound or the westbound departs Spokane somewhere  
3 around 0200 I believe it is.

4 Q. In front of you, you have BNSF's exhibit  
5 list, and I want for a moment if you would, sir, to look  
6 at Exhibit Number 11. Do you have that in front of you?

7 A. Yes.

8 Q. Can you for purposes of the parties here  
9 identify what Exhibit Number 11, which is a six page  
10 exhibit, identify what that is.

11 A. Sure, this is a portion of what we call our  
12 special instructions and timetable for our Railroad.

13 Q. Now when you -- go ahead.

14 A. I was going to say what I'm looking at here  
15 is the Lakeside subdivision and which Sprague is part  
16 of.

17 Q. And when you say a special instructions time  
18 table, what does that mean?

19 A. What this tells the operating people, those  
20 people who are employed on the trains, it gives them the  
21 speed restrictions for the territory which they are  
22 operating over. Those are permanent speed restrictions.  
23 It gives them all types of information in regards to,  
24 well, as you read through this, speeds at switches,  
25 turnouts, it includes maximum weights of cars that can

0089

1 operate over certain bridges, all types of information  
2 which pertains to the operation of the train over that  
3 segment of railroad.

4 Q. Now when you talk about the city of Sprague,  
5 what mileposts are we talking about that would be  
6 encompassed by the city limits of that town?

7 A. On the timetable the mile post is, yeah, I  
8 don't have my reading glasses on, but I believe it's  
9 42.4.

10 Q. And what is the maximum speed for freight  
11 trains through the town of Sprague?

12 A. It would be 45 miles per hour.

13 Q. What is the maximum train speed for Amtrak  
14 trains through the town of Sprague?

15 A. 45 miles an hour.

16 Q. So if we are talking about a westbound or  
17 eastbound Burlington Northern Santa Fe freight train  
18 crossing B, D, and F Street crossings in the heart of  
19 Sprague, the track speed for both freight trains and  
20 passenger trains would be 45 miles an hour; is that  
21 right?

22 A. That's correct.

23 Q. You had told us a moment ago what the  
24 anticipated departure times for the Amtrak trains are.  
25 What are -- you have up to 27 freight trains operating a

0090

1 day. Tell us what is expected from the standpoint of  
2 departure and arrival of that many trains.

3 A. They can be expected at any time.

4 Q. Now Mr. Cowles had referenced to us in some  
5 of the photographs specifically that intersect D Street,  
6 B Street, and F Street that there are one -- there is  
7 one concrete crossing and two planked crossings. Did  
8 you hear that testimony?

9 A. Yes.

10 Q. In looking at that information, can you tell  
11 us which of those three tracks would be used by the  
12 Amtrak trains and the BNSF freight trains?

13 A. The one with the concrete, the Amtrak and the  
14 merchandise trains would be using the ones with the  
15 concrete crossings.

16 Q. Looking for a moment, Mr. Froscheiser, at  
17 Exhibit 3-G, which is looking in a direction towards  
18 Spokane, does that show, and you can look at the exhibit  
19 list if you need to on 3-G, does that show the three  
20 tracks that intersect D Street and F Street?

21 A. Yes, I see three tracks.

22 Q. In looking at the track on the furthest left  
23 of Exhibit 3-G what track does that refer to?

24 A. That is our main line track.

25 Q. The track that's shown in the center, what



0091

1 track is that?

2 A. We refer to that as the Old Sprague Siding.

3 Q. And what use, if any, is made of the Old  
4 Sprague Siding track?

5 A. Generally what that is used for is to set out  
6 hopper cars that may be used at this elevator,  
7 maintenance away equipment. We will use that -- we have  
8 one local way freight which operates on this segment.

9 JUDGE MACE: What is it you said, a way  
10 freight?

11 THE WITNESS: Yes.

12 JUDGE MACE: What is that?

13 THE WITNESS: That's just a term for a local  
14 merchandise train that stops at several stations and  
15 does industry type work.

16 JUDGE MACE: And the way part of that, is  
17 that spelled --

18 THE WITNESS: W-A-Y.

19 JUDGE MACE: W-A-Y, okay.

20 A. He may use that track to -- if he has to come  
21 to Sprague and set out cars, he may use that track to  
22 run around his train and then head back towards Spokane.  
23 It's not used that often.

24 BY MR. KINERK:

25 Q. And what about with regard to the track that

0092

1 is shown on the farthest right which is closest to the  
2 grange facilities?

3 A. I believe generally that's where hopper cars  
4 are spotted to load grain.

5 Q. Okay. And when you say that hopper cars are  
6 spotted to load the grain, what does that mean in  
7 layman's terms?

8 A. In other words, they're put in the location  
9 where the grain elevator can reach it and load it from  
10 the top with a spout and load grain into it.

11 JUDGE MACE: And when you use the term hopper  
12 car, is that car a special kind of car?

13 THE WITNESS: We refer to -- that's a type  
14 that's an enclosed car with three separate compartments.  
15 It has openings on the top where product is loaded in  
16 there, and then it has openings on the bottom where it's  
17 unloaded at a later destination.

18 BY MR. KINERK:

19 Q. Mr. Froscheiser, in looking at the three  
20 tracks that intersect D Street and F Street, can you  
21 tell us which of those three tracks gets the greatest  
22 majority of use?

23 A. The track that I referred to as the main  
24 line.

25 Q. The main line track that has the concrete

0093

1 crossings at D and F Street and B Street?

2 A. Yes.

3 Q. And when you reference the 27 to 30 trains a  
4 day, BNSF freight trains or Amtrak passenger trains,  
5 they all operate off the main line track; is that  
6 correct?

7 A. That's correct.

8 Q. There is an old adage I guess that you can,  
9 in railroading, that you can expect a train at any time  
10 in any direction on any track. Is that an adage that  
11 would apply relative to the main line track as it runs  
12 through Sprague?

13 A. Yes, it would.

14 Q. What is the average length of the freight  
15 trains that are making either a run from Spokane to  
16 Pasco or Pasco to Spokane?

17 A. We probably average anywhere between 6,000  
18 and 7,000 feet, sometimes longer, but normally that's  
19 probably the area that we're operating most of our  
20 trains.

21 Q. And when you are operating 6,000 to 7,000  
22 foot trains, can you tell us how many units of power are  
23 generally being used, by that I mean locomotives?

24 A. Again, it's going to vary depending on the  
25 type of locomotive power we have on there anywhere from

0094

1 two to four units.

2 Q. And on the average, what are the number of  
3 crew members that will make up a crew on a Spokane to  
4 Pasco or Pasco to Spokane run?

5 A. Normally two, an engineer and a conductor.

6 Q. With regard to the trackage, the main line  
7 track that intersects B Street, D Street, and F Street  
8 in Sprague, is that a track that has any type of an  
9 incline or decline for purposes of rail operations?

10 A. East of town, east of here there is a grade  
11 that is ascending towards the east. It's up to about  
12 almost 1%. So as you come westbound, you're going  
13 downhill, and it bottoms out right about in through  
14 here, and actually it's pretty much starts to be level  
15 down as you go west towards the lake.

16 Q. Mr. Froscheiser, give us your best estimate  
17 of the weight of a standard freight train, 6,000 to  
18 7,000 feet, with multiple units of locomotives.

19 A. Again, because we operate 27 different -- 27  
20 trains to 30 trains a day, it's going to vary. We run  
21 some very heavy trains, anywheres from 7,500 tons up to  
22 some of our loaded grain trains are 16,000 tons, so  
23 there could be a wide variation of tonnage.

24 JUDGE MACE: I just wanted to ask while we're  
25 on this topic, I'm wondering if you can translate the

0095

1 6,000 to 7,000 foot length into say number of cars.

2 THE WITNESS: It varies depending on the type  
3 of train. Some cars are obviously longer than others.  
4 An intermodal train that you see running through here  
5 with containers or trailers on it have a longer car than  
6 -- and there might be 50 of those trailers on there, and  
7 yet the train could be -- or 50 of those type of cars on  
8 there, and that train could be upwards of 6,000 feet. A  
9 grain train, for instance, where the cars are all pretty  
10 much the same size, 60 foot we'll say, will run up to  
11 110 car lengths, and they may -- that train may be  
12 upwards of 6,700 feet.

13 JUDGE MACE: Thank you, that helps to put it  
14 in perspective.

15 BY MR. KINERK:

16 Q. Mr. Froscheiser, again, I know that there  
17 will be some variation depending on the length of the  
18 train and the weight of the train, but hypothetically,  
19 if you have a 7,000 foot train, freight train, that has  
20 multiple units of power proceeding on a one degree grade  
21 such as what you have in Sprague, operating at a speed  
22 of -- track speed of 45 miles an hour, what are we  
23 talking about in the range of stopping distance if that  
24 train encounters a vehicle afoul of D Street crossing?

25 A. It could take upwards -- up to a mile,

0096

1 perhaps longer, to stop.

2 Q. What concerns, and you have the background as  
3 a locomotive engineer as you indicated, what concerns do  
4 you have from a rail operating standpoint of multiple  
5 crossings that are redundant, i.e., crossings such as  
6 are found in Sprague that lie within 600 feet of one  
7 another from an operating standpoint?

8 A. Obviously the first concern with several  
9 crossings, or with any crossing I should say, but with  
10 several crossings it increases the potential of an  
11 automobile being struck by that train, and obviously  
12 that leads to injuries, fatalities. It also, to that  
13 person operating the train, leads to long -- sometimes  
14 long-term trauma. If you have ever been involved in a  
15 grade crossing incident, it's not a pretty sight, and  
16 it's not very pleasant to the person who is on the  
17 train. That's the significant thing is the danger of  
18 injury or death. Then from there it lessens out to the  
19 possibility of damaged property to our equipment, to  
20 surrounding citizens' property and such. It can lead to  
21 derailment in extreme cases.

22 Q. Now with regard to operations for the BNSF,  
23 what steps do they have in place to deal with situations  
24 where there are not -- may not be a vehicle that is high  
25 centered over a crossing or stuck around a gate but one

0097

1 that would fall in the category of near misses; how is  
2 that handled from the Railroad's standpoint?

3 A. If we have a near miss at a crossing?

4 Q. Yes.

5 A. What we would like to do is have, if possible  
6 and the train crew is able to recognize the car or get a  
7 license number, we will give that to our assets  
8 protection people, and they will try and track down that  
9 individual and approach that individual or company whose  
10 driver it may be if it's a truck or something on that  
11 order and let them know what has taken place.

12 Q. Now obviously in the town of Sprague with  
13 three crossings that are within 600 feet of one another,  
14 Mr. Froscheiser, there's concern about if the D Street  
15 crossing is closed that the need for emergency vehicles,  
16 police, aid cars, and so forth's ability to get to the  
17 north part of town would be somehow affected. And I  
18 guess the question that was -- that The Mayor had of  
19 Mr. Cowles a few minutes ago dealt with what assurances  
20 can the Railroad make to ensure that the two remaining  
21 crossings are not blocked so that the traveling public  
22 can get from the north to the south end of town or from  
23 the south to the north end of town?

24 A. Blocked by -- are you asking by a standing  
25 train?

0098

1 Q. Well, either a standing train -- let's start  
2 there, yeah, with a standing train.

3 A. Okay, yeah, I won't ever say it won't happen,  
4 because anything can happen. A train can be disabled  
5 for some reason or another and would be blocking that  
6 town. If that would happen on those crossing gates,  
7 especially the ones with the lights, there's a number,  
8 there's a telephone number on there, it's a 1-800  
9 number, and any citizen can call that number. That  
10 number goes right to Fort Worth, and they can contact  
11 people in the field immediately or very shortly  
12 thereafter and let them know the situation that needs to  
13 be corrected.

14 Q. And when you say they will contact Fort  
15 Worth, what does that mean --

16 A. That's our --

17 Q. -- to the average person?

18 A. Sure, that's our -- it goes to our assets  
19 protection or police force in our control operations  
20 center in Fort Worth where all dispatching is handled of  
21 trains on the system from a central location. So when  
22 that phone call is received, the right person can be  
23 contacted in the field within a matter of minutes.

24 Q. Now, Mr. Froscheiser, from your understanding  
25 of rail operations that occur within the city limits of



0099

1 Sprague, when, if ever, should there be blocking of  
2 multiple crossings other than when a train is proceeding  
3 through traffic?

4 A. Seldom, because we do not do that much  
5 industry work here at Sprague except during the grain  
6 season when cars are being spotted here for loading.  
7 Generally trains don't stop here.

8 Q. And if there is any trains that are or cars  
9 that are being spotted at any of the industries within  
10 the town of Sprague, what steps can be taken from an  
11 operational standpoint to assure that if the D Street  
12 crossing is closed that either B Street or F Street is  
13 open for the traveling public?

14 A. Well, one thing, if we have a train that's  
15 specifically setting out cars here for let's say this  
16 elevator or for whatever, they will stop their train at  
17 a location where the crossing is not blocked, and they  
18 will come down here and do their work as quickly as  
19 possible and not block the crossing.

20 Q. And is that a directive under you were  
21 talking about one of the things that you're responsible  
22 for is ensuring that crew members abide by operating  
23 rules?

24 A. That's correct.

25 Q. Does the Burlington Northern Santa Fe Railway

0100

1 Company have actual operating rules that limit the  
2 amount of time that their crews can or should be  
3 blocking any public crossing?

4 A. Yes, we do.

5 Q. And what is the expected maximum amount of  
6 time of blocking any one crossing?

7 A. I believe it's ten minutes.

8 Q. Are you aware in your capacity as the  
9 superintendent of operations for the BNSF out of Spokane  
10 including the Sprague area of any repeated incidents  
11 where the F Street or B Street crossings have been  
12 blocked for extended periods of time?

13 A. No, I'm not aware of that.

14 Q. With a through freight train of 6,000 to  
15 7,000 feet traveling through Sprague at the track speed  
16 of 45 miles an hour, generally how long would the B  
17 Street and F Street crossings be blocked?

18 A. Off the top of my head, I would say maybe a  
19 minute to a minute, well, less -- more than that, a  
20 minute 15, 20 seconds approximately.

21 Q. Have you in other communities been enlisted  
22 to assist in making sure that emergency vehicles can  
23 access all areas of municipalities or cities relative to  
24 train operations?

25 A. Myself personally, no, but other officers

0101

1 have been, yes.

2 Q. And what officers working for you fall within  
3 that category, be it train masters, road masters,  
4 whomever?

5 A. Generally train masters and road masters.

6 Q. Is there out of Spokane train masters or road  
7 masters assigned to the area with regards to the  
8 responsibility of the city of Sprague?

9 A. Yes.

10 MR. KINERK: Thank you, Mr. Froscheiser.

11 JUDGE MACE: Does Staff have any questions?

12 MR. THOMPSON: I don't believe we do, no.

13 JUDGE MACE: Okay, Mayor Fox, do you have any  
14 questions of this witness?

15

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

17 BY MS. FOX:

18 Q. Are you familiar with the Doerschlag crossing  
19 at the other end of town, at the west end of town just  
20 past F Street?

21 A. I'm not familiar with that name, but I'm  
22 pretty familiar with the crossings.

23 JUDGE MACE: Can you spell that, Doerschlag  
24 did you say?

25 (Discussion off the record.)

0102

1 JUDGE MACE: For the record, Doerschlag is  
2 spelled D-O-E-R-S-C-H-L-A-G.

3 Okay, so are you familiar with that crossing?

4 A. I am not familiar with the name of that  
5 crossing. Is that the crossing with the lights at the  
6 very far west end, crossing lights?

7 BY MS. FOX:

8 Q. Past F.

9 A. Pardon me?

10 Q. West of F.

11 A. I would have to see it on the map.

12 MR. KINERK: You can see, if you would like,  
13 Mr. Froscheiser, on Exhibit Number 1, I believe. Here  
14 is the F Street crossing. I think we're talking about  
15 in this general area down here off of --

16 THE WITNESS: So it would be off the map?

17 MR. KINERK: It would be off the map.

18 THE WITNESS: Okay, yes, I think I know which  
19 one you're talking about.

20 BY MS. FOX:

21 Q. Do you think in the future that the trains  
22 are going to be longer, or are you pretty much at the  
23 length capacity that you can run through here at this  
24 point?

25 A. I don't see a significant increase in train

0103

1 length. We run longer trains, but we have backed off  
2 from that, so I think we're probably at what we would  
3 operate best at.

4 Q. Do you know of any accidents on any of the  
5 crossings in the town of Sprague?

6 A. I don't recall any.

7 Q. Has there been any in the last 50 years?

8 A. I don't recall any.

9 Q. Do the trains in Sprague, are they the same  
10 -- do they all go the same speed limit as in Cheney or  
11 Ritzville area; do they basically go through all the  
12 towns at the same speed limit?

13 A. No, no, there's different speed limits,  
14 different towns.

15 Q. Because of?

16 A. It can vary from a city ordinance to  
17 curvature of the track through the town. It just  
18 depends.

19 Q. Are you aware that more than once in one day  
20 that those tracks are -- all three crossings are closed  
21 at the same time?

22 A. Well, any train -- if -- any train that would  
23 pass through here would have all the crossings.

24 Q. No, I mean actually stopped, are you aware of  
25 that, that it does happen more than once in a day?

0104

1           A.     I guess I'm not aware of that happening more  
2 than once in a day.

3           Q.     Okay. Are you familiar with the curves down  
4 past F Street where the Doerschlag crossing is, there's  
5 a real curved area?

6           A.     Yes.

7           Q.     That's -- I guess that's where the Doerschlag  
8 crossing is.

9           A.     Okay, yes, I'm familiar with it.

10          Q.     Would the hazards of the Doerschlag crossing  
11 be more hazardous than the ones here in the town of  
12 Sprague?

13          A.     I couldn't say, because I don't know the  
14 volume of traffic on any of those. It would be  
15 potentially as dangerous as any of these crossings.

16          Q.     If you were to -- if you were to extend the  
17 siding track down at Doerschlag, would you have to put  
18 in another crossing, a second crossing?

19          A.     Extend the siding, do you mean extend it  
20 westward or eastward?

21          Q.     So it would be eastward.

22          A.     First of all, I will answer this. We have no  
23 plans to extend the siding. There's no reason for us to  
24 do that. This particular Lakeside subdivision that  
25 you're part of out here has sufficient capacity to run

0105

1 the number of trains that we run, operate out here. So  
2 there's -- for us to spend the money to extend that  
3 siding would be -- there's just no plan to do that.

4 Q. So there isn't a plan of putting in a second  
5 track either then basically?

6 A. No.

7 MS. FOX: Okay, thank you.

8 JUDGE MACE: Any other questions?

9 MR. KINERK: I just had one quick question.

10 JUDGE MACE: Yes.

11

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

13 BY MR. KINERK:

14 Q. Mr. Froscheiser, you were asked about the  
15 length and potential increase in train lengths for  
16 trains operating on the main line through Sprague. In  
17 the future, is it the goal of the BNSF to increase the,  
18 not the length of the trains, but the number of trains  
19 that might be using the main line connecting Seattle to  
20 -- or I mean Spokane to Pasco or Amtrak trains from  
21 Spokane to Portland?

22 A. Well, I certainly hope so. That's how we  
23 make our money is by more trains, so our goal is to run  
24 more trains and increase our business, yes.

25 MR. KINERK: Thank you, sir.

0106

1

2

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

3

BY MS. FOX:

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8

Q. Okay, I just asked you if you were going to put in a second line or anything like that, and you were saying no, at the capacity that goes through here right now you're not going to do that. If the capacity goes up, then you would run another line.

9

10

11

12

A. We're not running at the capacity we ran at in 1996. The business levels are down so --

Q. Okay, but you're hoping for progress, you're hoping for more trains to go through here, so --

13

14

15

16

17

18

19

A. That's correct.

Q. -- there's a possibility of a second track?

A. I don't believe so because -- the reason I say that is because several years ago we did a lot of construction out here in hopes of more business, and that business didn't come along. So we really have more railroad out here than we need for effective operation.

20

21

22

23

Q. So are you saying that you're not --

A. We're not at our potential.

Q. And you're not expecting a large increase then?

24

25

A. I'm hoping for a large increase, but the way business is, you never know.



0107

1                   JUDGE MACE: Thank you, you're excused, and I  
2 think we've been at this for a while and it's time for a  
3 break. So we'll take 15 minutes and then come back, and  
4 I'm hoping one of you will remind me when we resume on  
5 the record to talk about how we're going to do a lunch  
6 recess.

7                   (Recess taken.)

8

9 Whereupon,

10                                 GARY LARSEN,  
11 having been first duly sworn, was called as a witness  
12 herein and was examined and testified as follows:

13

14                   JUDGE MACE: Thank you, Mr. Larsen, please be  
15 seated.

16

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

18 BY MR. KINERK:

19           Q.     Good morning, could you please state your  
20 name for the record.

21           A.     Gary Larsen.

22           Q.     And, Mr. Larsen, what is your professional  
23 occupation?

24           A.     I'm a locomotive engineer with the Burlington  
25 Northern Santa Fe Railroad.

0108

1 Q. How long have you worked for the BNSF as a  
2 locomotive engineer?

3 A. 32 years.

4 Q. During your tenure with the railroad in the  
5 capacity as a locomotive engineer, have you ever made  
6 the Spokane to Pasco run?

7 A. Yeah, I actually worked this line for about  
8 ten years, but it's been several years since I have been  
9 in here.

10 Q. Where are you currently operating out of;  
11 where do you report to; generally what runs are you  
12 making?

13 A. Well, I work in Kettle Falls, Washington.

14 Q. Mr. Larsen, I note that you are wearing a  
15 shirt that says Washington Operation Lifesaver. Can you  
16 tell us a little bit about your participation in that  
17 program, the goals of that program, and educate us a  
18 little bit about what's involved.

19 A. Okay, well, I started with Washington  
20 Operation Lifesaver because I am a locomotive engineer,  
21 and I was involved in 16 car-train collisions. Out of  
22 those 16, 4 of them ran into the side of my train. So  
23 because of that, there again I became a member of  
24 Operation Lifesaver. And what we are is basically an  
25 education program to the public about highway-rail grade

0109

1 crossing safety and the big trespasser prevention  
2 problem that we have around the railroads.

3 Q. Now with regard to your participation in the  
4 Washington Operation Lifesaver program, is that a paid  
5 position, voluntary position, what is that?

6 A. No, I'm a volunteer. I'm the actual Eastern  
7 Washington coordinator for Operation Lifesaver, but I'm  
8 a volunteer. I work as an engineer.

9 Q. And with regard to the Washington Operation  
10 Lifesaver program, that operates independently of the  
11 Burlington Northern Santa Fe Railroad?

12 A. That's correct, it's a national organization,  
13 and each state runs their own program.

14 Q. Now when you say, Mr. Larsen, that you're the  
15 Eastern Washington representative, would that include  
16 the area of Sprague?

17 A. That's correct.

18 Q. And as the Eastern Washington representative,  
19 what do you do?

20 A. Basically I have about 20 presenters that we  
21 send out to schools, civic groups, fire stations, truck  
22 drivers, trainers, and we educate the public about all  
23 the inherent dangers of being around railroads.

24 Q. How do you go about determining what schools  
25 or what fire departments will be targeted for that type

0110

1 of education?

2 A. Well, basically if we have a problem area, we  
3 might go into that community and then, you know, contact  
4 those people, but basically they call us, they want this  
5 program done.

6 Q. As part of your participation in that  
7 program, are you provided statistical information that  
8 you can share as part of that educational process?

9 A. Yes, I am.

10 Q. And from whom do you receive that type of  
11 information?

12 A. Well, actually the National Transportation  
13 Department, but our statistics come from National  
14 Operation Lifesaver in Virginia.

15 Q. Right in front of you is BNSF's exhibit list,  
16 and, Mr. Larsen, if you could for a moment, I know I  
17 haven't had a chance to share this with you, could you  
18 look at Exhibit Number 15.

19 A. Okay.

20 Q. And just for purposes of the record, would  
21 you be kind enough to identify what that exhibit is. I  
22 know it's a copy and not an original, but.

23 A. Correct, this is it looks like a copy of an  
24 information safety tips about highway rail grade  
25 crossings, and it shows an advanced warning sign that

0111

1 you would see at every crossing in the United States.

2 Q. Is this the type of information or  
3 documentation that is dispensed by the Operation  
4 Lifesaver program?

5 A. That's correct, yes.

6 Q. In looking for just a moment on the first  
7 page of that Exhibit 15, there is a reference to a  
8 section where it says, trains can't stop quickly, you  
9 can, and then it lists the stopping distance for some  
10 trains below where it says stopping distances for the  
11 average freight train. Do you see that?

12 A. That's correct, yes.

13 Q. Based on your experience as a locomotive  
14 engineer, and obviously there's some variety with  
15 regards to length and weight and grade that you might be  
16 operating a train on, but is that information generally  
17 accurate?

18 A. This actually depicts -- they're showing here  
19 the average freight train, that's about right. At 55  
20 miles an hour, it would take over a mile for the train  
21 to stop, the average freight train.

22 Q. Looking at page 2 of Exhibit 15 where it says  
23 safety tips, do you see the section where it's entitled  
24 never drive around the gates?

25 A. Mm-hm.

0112

1 Q. On the right-hand side. Have you been  
2 provided in your capacity with Operation Lifesaver with  
3 any type of statistical information with regard to the  
4 frequency of train-vehicle collisions or incidents at  
5 fully protected crossings such as the crossing at D  
6 Street in Sprague?

7 A. Right, when you say fully protected, there is  
8 never a fully protected crossing. We have state of the  
9 art lights and gates. 50%, one half of all our  
10 car-train collisions, happen where we have state of the  
11 art lights and gates. It's pretty amazing.

12 Q. From whom have you --

13 JUDGE MACE: So how many would that be when  
14 you say 50%? Do you have some kind of statistics?

15 THE WITNESS: Yeah, I do, ma'am, yes, Your  
16 Honor. Last year in the United States there was just  
17 over 3,502 collisions in the United States, and one half  
18 of those happened where we have state of the art lights  
19 and gates.

20 JUDGE MACE: Do you have any statistics for  
21 the state of Washington?

22 THE WITNESS: Yes, I do. Last year in  
23 Washington state, grade crossing collisions totalled 38.  
24 Grade crossing injuries were 6. Grade crossing  
25 fatalities were 5. And then we had 5 trespass injuries

0113

1 and 16 trespass fatalities. Those are pretty high. So  
2 far in 2002, we've only had 1 car-train collision death,  
3 fatality, but we have had 11 trespass deaths,  
4 fatalities.

5 JUDGE MACE: And where are you getting your  
6 statistics from?

7 THE WITNESS: These are from the Washington  
8 Operation Lifesaver page off the Internet.

9 JUDGE MACE: Are these anything that we have  
10 in our exhibit list?

11 THE WITNESS: I don't know, ma'am, but I  
12 could give these to you if you would like them.

13 JUDGE MACE: I would like to get a copy of  
14 these exhibits, and I would like to have them, well, we  
15 don't have copies for everyone apparently, but I would  
16 like to have them marked as Exhibit 25.

17 THE WITNESS: These are also Washington  
18 Utilities and Transportation Commission, that's their  
19 home page also.

20 JUDGE MACE: And I would like to have you  
21 provide a copy of that to the mayor.

22 THE WITNESS: You can have this copy right  
23 here.

24 JUDGE MACE: Mayor, I'm assuming your staff  
25 would have --

0114

1 MS FOX: I can take a copy whenever we take a  
2 lunch break.

3 JUDGE MACE: Okay.

4 MR. KINERK: Thank you, Mr. Larsen, that's  
5 all the questions I have.

6

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

8 BY JUDGE MACE:

9 Q. Well, let me, I would just like to pursue  
10 this a little bit more if I could. I don't know how  
11 finely you break down your statistics, but do you have  
12 any idea, for example, for the year 2001 in the state of  
13 Washington in a locality like Sprague what the incidents  
14 of either collisions or fatalities would be?

15 A. It actually has that stated in those, in that  
16 information, where those happened. I believe last year  
17 most happened on the west side of the state.

18 Q. Okay, but that's shown in those exhibits?

19 A. It's shown, it actually shows that in those,  
20 in that information.

21 MR. KINERK: One thing I might indicate to  
22 the Court is that Mr. Cowles will be providing a  
23 statistical analysis that addresses those issues in his  
24 testimony.

25 JUDGE MACE: Thank you, I appreciate that.



0115

1 All right, do Mayor Fox or Mr. Thompson, do  
2 you have any questions for this witness?

3 Mr. Thompson.

4 MR. THOMPSON: I may have a couple of  
5 questions depending on the answer I get to the first  
6 one.

7 JUDGE MACE: Go ahead.

8 MR. THOMPSON: I don't know what this  
9 witness's area of expertise is.

10

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

12 BY MR. THOMPSON:

13 Q. Mr. Larsen, have you been involved with the  
14 or had an opportunity to sort of familiarize yourself  
15 with the way Sprague is laid out, the streets of Sprague  
16 and kind of how the traffic flow is and so forth?

17 A. Yes.

18 Q. You mentioned in your testimony that there  
19 are, well, train related fatalities that can either  
20 relate to a train and a car colliding and then there are  
21 also trespasser fatalities, and that's basically people  
22 walking on the tracks?

23 A. That's correct.

24 Q. And being struck by the train?

25 A. Right.

0116

1 Q. Would you, and you can say if you don't feel  
2 like you have the expertise to answer this question, but  
3 looking at Exhibit Number 1, if let's just say  
4 hypothetically that F, the F Street crossing were to be  
5 closed, would you have concerns that people may be  
6 accustomed to walking on that route and might continue  
7 to do so after the closure if such a closure occurred?

8 A. Speaking for myself, I couldn't really say.  
9 It could happen, sure.

10 Q. Okay. Would there be -- could you -- would  
11 you be able to give an opinion about what sorts of  
12 measures might be able to be put in place to prevent  
13 that kind of a possibility?

14 A. About the only thing that we have found so  
15 far that really works is to fence along that area, and  
16 that's happened in the past.

17 Q. All right. What about a gated crossing  
18 that's for pedestrians only, not for vehicles?

19 A. I have seen a few of those. They can work.

20 MR. THOMPSON: Okay, I think that's all the  
21 questions I have, thanks.

22 JUDGE MACE: Mayor Fox, do you have any  
23 questions of this witness?

24

25

0117

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

2 BY MS. FOX:

3 Q. Well, when he mentioned the pedestrian  
4 crossing, what would -- you would still have pedestrians  
5 crossing the crossing, so what kind of liability are you  
6 not having that you would have if you had vehicles  
7 crossing it?

8 A. I couldn't tell you about liability. I don't  
9 -- I'm not talking for the railroad, just --

10 Q. Okay, as far as, okay, if you still -- if you  
11 still have people crossing it.

12 A. Well, we always have that problem. We have  
13 people that crawl up on bridges every day and we have no  
14 trespass signs on the railroad, so there's --

15 JUDGE MACE: When you're -- I'm sorry.

16 THE WITNESS: Pardon.

17 JUDGE MACE: When you're talking about a  
18 pedestrian crossing, are you talking about having some  
19 special guard mechanism for the pedestrian part of the  
20 crossing that would somehow warn pedestrians in addition  
21 to just a sign?

22 THE WITNESS: Right, they do have those,  
23 ma'am.

24 JUDGE MACE: And is there a gate that goes  
25 down or --

0118

1                   THE WITNESS:  Yes, there is a gate that goes  
2 down, ma'am.

3                   JUDGE MACE:  I see.

4                   THE WITNESS:  They're -- you don't see them  
5 in too many places.  Most of the time they try and route  
6 pedestrians or automobiles again to another crossing  
7 where it's safe to cross or where there are lights and  
8 gates.

9 BY MS. FOX:

10            Q.     Are these crossings four foot wide, six foot  
11 wide, eight foot wide?

12            A.     I couldn't tell you.

13                   JUDGE MACE:  Maybe Mr. Cowles could address  
14 that question.

15            A.     I couldn't tell you.  I have seen them.  I  
16 know they're there, but I don't physically -- Operation  
17 Lifesaver doesn't physically go out and put those in.  
18 We can make recommendations to make changes, but we  
19 don't close crossings, and we don't do the actual  
20 engineering.  We let the railroads and the cities do  
21 that.

22            Q.     Are you familiar with the Doerschlag crossing  
23 down here?

24            A.     No, I'm not.

25                   MS. FOX:  Thank you.

0119

1 JUDGE MACE: Okay, thank you.

2 Any other questions?

3 Mr. Kinerk, anything else?

4 MR. KINERK: Nothing further, thank you, Your  
5 Honor.

6 JUDGE MACE: All right, thank you,  
7 Mr. Larsen, you're excused.

8 Well, we're at 20 to 12:00, why don't we go  
9 ahead with Mr. Cowles and see how far we can get.

10 And let's not forget that I have asked for  
11 the copies of statistics, and they will be Number 25,  
12 thank you.

13 MS. FOX: Do you want me to take them at  
14 lunch and make some copies?

15 JUDGE MACE: If you would be so kind.

16 MS. FOX: How many do you want?

17 JUDGE MACE: Well, let's say five. I think  
18 five would be enough.

19 Mr. Cowles, you have already been sworn, so  
20 I'm not going to repeat that process.

21 Go ahead, Mr. Kinerk.

22 MR. KINERK: Mr. Cowles, would you be sure  
23 and keep your voice up, because you and I tend to drop  
24 our voices, and the --

25 THE WITNESS: Yes, I will try to.

0120

1                   MR. KINERK:  -- acoustics of this room are  
2  not ideal.

3                   JUDGE MACE:  If you sense the reporter  
4  glaring at you, then you will know.

5                   THE WITNESS:  I will keep an eye over there.

6

7  Whereupon,

8                                 JOHN MICHAEL COWLES,

9  having been previously duly sworn, was called as a  
10 witness herein and was examined and testified as  
11 follows:

12

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

14  BY MR. KINERK:

15           Q.     Mr. Cowles, when we first introduced you this  
16 morning, you had mentioned that you are the manager of  
17 public projects for BNSF.  Do you have any type of  
18 engineering background?

19           A.     Just engineering experience.

20           Q.     And briefly just outline for us kind of your  
21 engineering experience relative to your current position  
22 as the manager of public projects for the railroad.

23           A.     My engineering experience is strictly in the  
24 field.  I have worked in public projects for 11 years.  
25 And in working with the various highway departments, I

0121

1 have learned certain, you know, highway terms about what  
2 to look for in a diagnostic review of a crossing, a  
3 crossing for a crossing improvements, just basically  
4 on-the-job experience. My education, I do have a  
5 Bachelor of Science Degree in Business Administration.  
6 I am not a professional engineer, but basically a --

7 Q. With what frequency are you involved in  
8 consultation with engineers with regards to railroad  
9 crossing improvements or changes?

10 A. On a daily, well, I should say a daily basis  
11 since it's part of my job.

12 Q. How does the Operation Lifesaver, separate  
13 and apart from the Washington Operation Lifesaver, how  
14 does the BNSF Operation Lifesaver program interact with  
15 your department in the public works projects?

16 A. We work hand in hand kind of together on  
17 various grade crossing issues. We have a department  
18 called the grade -- they're our grade crossing safety  
19 department and part of our safety division, and they're  
20 more involved in the private crossing end of our  
21 operations. And together we work mutually on  
22 identifying and locating crossings that we can pursue  
23 for closure.

24 Q. And when you say private versus public  
25 crossing, tell us what you mean by that.

0122

1           A.     A public crossing is a crossing that is  
2 maintained by a public agency, county, city, state  
3 highway, and versus a private crossing which is  
4 individually permitted to an individual or a  
5 corporation.

6           Q.     Now if you would for a minute, I would like  
7 you to look at Exhibit Number 7 of BNSF's exhibit list,  
8 and can you identify what that document is, please.

9           A.     This is our grade -- this is a brochure that  
10 identifies our grade crossing closure program that has  
11 been in circulation, or I shouldn't say not circulation,  
12 but it's been in effect for the past three years now.

13          Q.     When did you first become involved in the  
14 BNSF grade crossing closure program?

15          A.     It's a program that was implemented in the  
16 year 2000. It was something that the railroad has now  
17 taken a proactive approach to grade crossing closures or  
18 consolidations of private and public crossings. And  
19 back in 2000 we put together an individual department  
20 that dealt with nothing but grade crossing safety,  
21 closure and consolidation, and it's been in -- this is  
22 the third year in operation, and it has been quite  
23 successful.

24          Q.     In looking at Exhibit 7, the grade crossing  
25 closure program brochure, in the lower left-hand corner



0123

1 of the first page, what does that indicate, Mr. Cowles,  
2 with regard to the number of at grade crossings that  
3 were closed by BNSF in the year 2000?

4 A. We had -- it was our goal to close 600 grade  
5 crossings in the year 2000; we closed 635.

6 Q. What did you do in the year 2001?

7 A. We had closed 400 -- our goal was 470; I  
8 think we did a little over 500.

9 Q. And what about in the calendar year 2002?

10 A. Our goal is to close 420 crossings, and so  
11 far this year we have -- we're on track to close that  
12 many.

13 Q. In looking at page 2 of Exhibit 7, it's  
14 entitled overview of BNSF's approach to grade crossing  
15 safety, and there is a subsection entitled grade  
16 crossing closure programs, grade crossing closures. Do  
17 you see that?

18 A. Yes.

19 Q. And can you explain to the Court what type of  
20 public at grade crossings are deemed to be good  
21 candidates for consolidation; what factors does the  
22 railroad look at?

23 A. The factors that we look at are close  
24 proximity to other crossings. If you have a number of  
25 crossings within a certain area, like up to five

0124

1 crossings within a mile or, you know, something of close  
2 proximity where if the crossing were to be closed, is  
3 that -- would it become inconvenient. First we kind of  
4 look at it inconvenience versus necessity. And if it is  
5 an actual necessity that the crossings need to be there  
6 for emergency services and those type of issues, then we  
7 would try to mitigate those factors, or we would --  
8 crossings that we look at are the ones that are  
9 redundant, the ones that are in close proximity to each  
10 other, low volumes. If we were to close a crossing, we  
11 certainly wouldn't want to provide, you know, because  
12 once you close a crossing, you have other -- those  
13 vehicles must go someplace to other crossings, and we  
14 wouldn't want to have a problem at another crossing if  
15 we close one. And we also looked at some of the other  
16 issues. We looked at the history, you know, accident  
17 history, of course, is one thing that we look at for  
18 closing crossings. And those are the two things that we  
19 mainly look at. There might be others, but those are  
20 the two that I can think of right now.

21 Q. Mr. Cowles, in looking, and you referenced  
22 close proximity, does the fact that the D Street at  
23 grade crossing in Sprague is positioned approximately  
24 600 feet from the B Street crossing and the F Street  
25 crossing, does that meet one of the criteria with

0125

1 regards to the redundant crossing?

2 A. That is correct.

3 Q. Now a moment ago you had also mentioned one  
4 of the considerations for a candidate for a  
5 consolidation of a crossing is low volume. Tell us what  
6 you mean by that.

7 A. Low volume is low ADT, which is the average  
8 daily traffic over a particular crossing. And in  
9 looking at the -- one of the exhibits that you have here  
10 that --

11 Q. All right. Let me take you to, if we might,  
12 to are you referencing Exhibit 12? I guess in talking  
13 about I guess traffic volume, first of all can you  
14 identify for us what Exhibit 12 is?

15 A. Exhibit 12 is the US DOT has an inventory of  
16 all their -- of all public crossings and private  
17 crossings actually within the United States.

18 Q. What is this, is Exhibit 12 the -- what  
19 crossing is the information about in that exhibit?

20 A. Exhibit 12 is the inventory of information on  
21 the D Street crossing in Sprague.

22 Q. And with regard to the information that you  
23 gathered, when was it that this information was gathered  
24 from the ADR crossing inventory information sheet?

25 A. The date of the record?

0126

1 Q. Correct.

2 A. It was January 31, 2000.

3 Q. In looking at the section entitled part four,  
4 highway department, where it says estimated AADT; do you  
5 see that?

6 A. Yes, I do.

7 Q. And what does that stand for, Mr. Cowles?

8 A. It's the average daily traffic.

9 Q. And what is the number that is given off the  
10 DOT inventory information?

11 A. It's 130 vehicles per day.

12 Q. Now if we went for just a moment, look at  
13 Exhibit 13, and identify for the record what that is,  
14 sir.

15 A. That is an inventory form for the F Street  
16 crossing.

17 Q. And is that again taking the information  
18 gathered at the same time, as of January of 2000?

19 A. Yes.

20 Q. And what is the average daily traffic found  
21 at that crossing?

22 A. It is 120 vehicles per day.

23 Q. And then looking down at Exhibit Number 14,  
24 identify that for us, please.

25 A. That is the crossing inventory information

0127

1 for the B Street, that is B as in boy Street crossing.

2 Q. Again, these are all the three crossings here  
3 in Sprague we're talking about?

4 A. That is correct.

5 Q. And what is the, under part four highway  
6 department, what is the estimated average daily traffic?

7 A. 150 vehicles per day.

8 Q. Now assuming for a moment the accuracy of  
9 that information that's presented in these records, if  
10 the D Street crossing was consolidated, is it --  
11 wouldn't we be correct to assume that 130 vehicles  
12 average daily vehicle traffic, would then be accessed  
13 using either the D Street or F Street grade crossings?

14 A. That is correct.

15 Q. Based on your experience with regard to  
16 highway traffic volumes, does one -- does the D Street  
17 average daily traffic meet the criteria of low traffic  
18 volume?

19 A. It would be my definition of a low volume  
20 highway roadway would be the D Street crossing, yes.

21 Q. With regards to the traffic that would  
22 generally use D Street now using B Street or F Street,  
23 in your opinion would that have an adverse effect on the  
24 ability for the traveling public --

25 A. No, it would not.

0128

1 Q. And why do you say that?

2 A. Low volumes. If D Street was closed, let's  
3 assume that 130 vehicles were distributed evenly, it  
4 would be 65 vehicles per crossing of B and D, B and F,  
5 and it would be my opinion that that would not be a  
6 significant number.

7 Q. Now in looking for a moment back again at  
8 Exhibit --

9 JUDGE MACE: I would like to interrupt just  
10 one moment before we leave this set of exhibits. I'm  
11 noticing that this is inventory information gathered as  
12 of or dated as of September 5, 2002. We heard  
13 Mr. Froscheiser earlier talk about the fact that 27 to  
14 30 trains go back and forth on the tracks through  
15 Sprague daily. However, in part two of each of these  
16 exhibits that you referred to, I think it's 12, 13, and  
17 14, under part two it talks about the typical number of  
18 daily train movements as being 14, and I'm wondering if  
19 you can account for the difference in what  
20 Mr. Froscheiser said --

21 THE WITNESS: Yes.

22 JUDGE MACE: -- and this number here.

23 THE WITNESS: If you look to the right of  
24 that, if you read the entire line, it's 14 day through  
25 two switching, and if you look at the complete to the

0129

1 right it's 13 night through.

2 JUDGE MACE: Thank you.

3 THE WITNESS: You're welcome.

4 BY MR. KINERK:

5 Q. Is it your understanding with regards to  
6 train operations through the town of Sprague for freight  
7 train on a 24 hour cycle that you're going to have --  
8 you may have 14 during the daylight hours and then an  
9 additional 13 on the average through the night?

10 A. That is correct.

11 Q. If we might just for a minute go back to  
12 Exhibit Number 7, Mr. Cowles, that's dealing with BNSF's  
13 approach to grade crossing consolidation, I think the  
14 criteria that you had mentioned was redundant crossings,  
15 i.e., close proximity; secondly, low traffic volume; and  
16 third, that good candidates for crossings are ones in  
17 which according to this document they are not designated  
18 emergency routes.

19 A. Mm-hm.

20 Q. What is your understanding with regards to  
21 alternative emergency routes available to the  
22 townspeople in Sprague if D Street is consolidated?

23 A. If D Street is consolidated and it was  
24 closed, alternate access would either be off of B or F  
25 Street depending on the emergency situation. The fire

0130

1 station is on C, which is -- and two blocks south of the  
2 tracks on between Third and -- between Second and Third  
3 Street. Depending on where the emergency is, I think --  
4 it would be my assumption that they could use either B  
5 or F without too much inconvenience or time wasted, or I  
6 should say not time wasted, but time differential  
7 between using D Street if D Street was closed.

8 Q. From your review of the streets, and I take  
9 it that you have driven these streets in Sprague?

10 A. Yes.

11 Q. With regard to the alternative routes with  
12 the fire station using B Street or fire station using F  
13 Street, are you able -- are emergency vehicles able to  
14 access the furthest northeast and northwest sections of  
15 the town of Sprague if necessary for emergency calling?

16 A. Do you want to repeat that question again?

17 Q. Yeah. Can the emergency vehicles access the  
18 far corners of the town of Sprague in the north end?

19 A. Yes.

20 Q. With regard to your analysis of the D Street  
21 crossing in Sprague, does it meet the criteria for BNSF  
22 with regards to consolidation?

23 A. Yes.

24 Q. It appears from the documentation in this  
25 Exhibit 7 that with regards to the D Street crossing it



0131

1 meets all of the criteria that is looked at from BNSF's  
2 perspective in regards to consolidation of a public  
3 crossing; is that correct?

4 A. That's correct.

5 Q. In addition to the Burlington Northern Santa  
6 Fe's analysis with regards to grade crossing closure, is  
7 there a national outlook, by that I mean by agencies  
8 such as the Federal Railroad Administration?

9 A. Yes, there is.

10 Q. And if we could for a moment, I would like  
11 you to look at Exhibit Number 9, and would you identify  
12 that exhibit for us, please.

13 A. This is a document from the -- I believe it's  
14 from the Federal Highway Administration I believe on an  
15 initiative to close so many crossings per year in the  
16 year 2001.

17 Q. Now in looking at that document entitled the  
18 closed crossing initiative, there appears to be an entry  
19 at the bottom of that referencing a goal. What was your  
20 understanding of the goal on a national basis?

21 A. To close 25% by the year 2001 starting in the  
22 year 1991.

23 Q. And with regard to that initiative and  
24 looking in the year 1991 up through 2001, does it break  
25 down on a national basis the public and private

0132

1 crossings and total amount of consolidation of crossings  
2 that have been accomplished on a national basis?

3 A. Yes.

4 Q. With regard to the goal of a 25% reduction by  
5 calendar year 2001, was that goal reached? And if not,  
6 how short of that goal are they?

7 A. By October 2001, they had closed 13.8% of the  
8 total of 25%, which was their goal, so they fell short  
9 of their goal by about 12%, 11.2%.

10 Q. In looking at the section titled to go, it  
11 says a 25% reduction would close 73,210 crossings  
12 nationally; is that right?

13 A. That is correct.

14 Q. With regard to the area of your  
15 responsibility, Washington, Idaho, and Montana, what  
16 number of crossings have you been involved in in terms  
17 of consolidation during the calendar year 2002?

18 A. 2002?

19 Q. Yes.

20 A. I have -- so far this year I have closed  
21 five, and by the end of the year I plan to have an  
22 additional five or six closed.

23 Q. Now in this particular case, what are the  
24 steps that you take individually in examining whether a  
25 crossing, public crossing, is a viable candidate for

0133

1 consolidation?

2 A. What do I look for in a crossing?

3 Q. Yes.

4 A. I look for one that is in close proximity to  
5 others. I look at whether or not the crossing is used  
6 by -- I look for public safety as far as using emergency  
7 vehicles, access, make sure we are not landlocking any  
8 individual or business or agency. I look at accident  
9 history, I look for close calls. Near misses is a term  
10 that was used earlier, and I also -- and if I find -- if  
11 I identify one, then the next step would be to identify  
12 the local agency or others that are administering that  
13 crossing.

14 Q. Is it necessary to undergo a formal traffic  
15 study with regard to every crossing that you consider  
16 for consolidation?

17 A. Not necessarily.

18 Q. What was done in terms of your analysis with  
19 regards to D Street?

20 A. D Street, it's a policy, it's actually a  
21 requirement to prepare an EIS checklist.

22 JUDGE MACE: And what's an EIS checklist?

23 THE WITNESS: It's a ten page document. It's  
24 a determination of nonsignificance checklist.

25 JUDGE MACE: It's a determination of?

0134

1 THE WITNESS: Nonsignificant checklist.

2 JUDGE MACE: Nonsignificant.

3 THE WITNESS: It's kind of a precursor to an  
4 environmental review, and it's necessary along with a  
5 petition to close that that must be accompanied together  
6 and submitted to the WUTC.

7 BY MR. KINERK:

8 Q. Was that done in this case, sir?

9 A. Yes, sir.

10 Q. Now with regards to the traffic volume  
11 numbers, did you in essence rely to some extent on the  
12 information gathered from the United States Department  
13 of Transportation AR crossing inventory information?

14 A. Yes.

15 MR. KINERK: Your Honor, it's noon, I thought  
16 it might be an appropriate time to break, because I  
17 think he's got probably at least another half an hour or  
18 45 minutes of direct examination.

19 MS. FOX: A half hour is fine.

20 JUDGE MACE: Okay, so half an hour, if we  
21 went ahead and finished his direct examination, it would  
22 be okay.

23 Mr. Thompson, how about you, would you  
24 prefer --

25 MR. THOMPSON: I would expect that we would

0135

1 have some cross-examination questions. I'm not sure how  
2 many, and I don't know if the City would have questions.

3 MS. FOX: I've got a few.

4 MR. THOMPSON: So I don't know where that  
5 leaves us.

6 JUDGE MACE: I know based on what you said  
7 earlier, you would prefer to get through this witness's  
8 testimony, but I don't see any practical way of doing it  
9 without the process taking us to at least 1:00.

10 MR. THOMPSON: I don't have any objection.

11 JUDGE MACE: So I'm going to suggest that we  
12 now break for lunch, we'll take an hour, we'll come  
13 back, and then we will complete Mr. Cowles.

14 And, Staff, if you need some additional time  
15 after that's finished to confer, I'm happy to give you  
16 that.

17 The same with you, City of Sprague.

18 (Luncheon recess taken at 12:00 p.m.)

19

20 A F T E R N O O N S E S S I O N

21 (1:05 p.m.)

22 JUDGE MACE: Before we go ahead with  
23 Mr. Cowles, I had asked that the statistics that  
24 Mr. Larsen was referring to be marked as an exhibit, and  
25 I had it pre-marked as Exhibit 25. Is there any

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1 objection to the admission of that exhibit?

2 MR. THOMPSON: No.

3 MR. KINERK: No objection, Your Honor.

4 JUDGE MACE: Very well, I will admit that  
5 exhibit.

6 The City has had an opportunity over the  
7 lunch recess to prepare another couple of exhibits that  
8 they would like to have presented, and I have  
9 preliminarily marked them as Exhibits Number 26, which  
10 is a D Street picture, and 27, which is a map of the F  
11 Street situation. Have the parties had a chance to  
12 review those proposed exhibits?

13 MR. KINERK: Yes, Your Honor.

14 MR. THOMPSON: Yes.

15 JUDGE MACE: Is there any objection to the  
16 admission of those exhibits?

17 MR. KINERK: No objection from Petitioner  
18 BNSF.

19 MR. THOMPSON: None.

20 JUDGE MACE: If not, then I will admit those  
21 as well, and we will proceed and you can refer to them,  
22 your witnesses can refer to them if they wish to do so.

23 Is there anything else in the way of a  
24 preliminary matter before we go back to hearing from  
25 Mr. Cowles?

0137

1                   If not, then go ahead.

2                   MR. KINERK: Thank you, Your Honor.

3

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

5 BY MR. KINERK:

6           Q.     Mr. Cowles, can I have you look at Exhibit  
7 Number 10 of Petitioner BNSF's exhibits; would you  
8 identify that document, please.

9           A.     This is an annual report from the Federal  
10 Railroad Administration, a report 2000 that the  
11 statistics, bureau of statistics on Railroad crossing  
12 incidents.

13          Q.     And on the first page of Exhibit 10, it lists  
14 the annual report for what year is that?

15          A.     Annual report for 2000.

16          Q.     Can you tell from looking at the front page,  
17 lower left-hand corner, when that railroad safety  
18 statistic manual was actually published?

19          A.     It was published in July of 2001.

20          Q.     Is it your understanding that that is the  
21 most current FRA Railroad safety statistic annual  
22 report?

23          A.     Yes, it is.

24          Q.     With regard to this Railroad safety  
25 statistical annual report, is that something that you

0138

1 rely on in considering possible consolidation of  
2 crossings?

3 A. It is a tool that I use to review on crossing  
4 statistics, yes.

5 Q. Okay. Let me ask you to start off by looking  
6 at the first table, table 1.2; do you see that?

7 A. 1.2 or 1.12?

8 Q. 1.12, thank you.

9 A. Okay.

10 Q. And what is that chart or diagram?

11 A. The statistic shows that total highway rail  
12 crossing incidents by state, incidents meaning the  
13 crossing accidents when they talk about incidents.

14 Q. And in looking at that exhibit, does it  
15 identify the state of Washington?

16 A. Yes, it does.

17 Q. And what information does it provide with  
18 regard to the state of Washington?

19 A. It provides a number of crossing accidents by  
20 the public and private from the years 1995 to the years  
21 2000.

22 Q. Does it go through the year 2000 or through  
23 the year 2001?

24 A. I believe the years as tabulated is 2000 even  
25 though this book was published in 2001.



0139

1 Q. All right. Under the column entitled at  
2 public crossings in the state of Washington, what were  
3 the total number of highway-rail crossing incidents?

4 A. In the past -- in those five years?

5 Q. Yes, sir.

6 A. Or six years, 690 or 269 crossings.

7 Q. And that is in the column marked at public  
8 crossings CNT count.

9 A. Right.

10 Q. That corresponds with the state of  
11 Washington, correct?

12 A. That is correct.

13 JUDGE MACE: I would like to have you ask a  
14 little bit about what the other columns to the far right  
15 signify. You have at public crossing CNT, KLD, and  
16 NONF, and then you have at private crossing with the  
17 same designations for columns, and I'm wondering if you  
18 could give us some idea what that means.

19 THE WITNESS: Sure, KLD means the number of  
20 killed, and ON is non-fatality, the final column.

21 JUDGE MACE: And then why is it that the CNT  
22 column, for example, under at public crossings says 269,  
23 killed is 20, non-fatality is 65; what's the balance?

24 MR. KINERK: Maybe non-injury.

25 THE WITNESS: Probably the total of the three

0140

1 I would assume. That's a good question. I'm trying to  
2 think.

3 MR. KINERK: 269 is the total that  
4 incorporates 1995 through 2000.

5 JUDGE MACE: Right, 20 is the number killed,  
6 and 65 is the number of non-fatalities. I guess my  
7 logic would say the number killed and the number of  
8 non-fatalities should add up to 269 if that's, you know,  
9 if that's supposed to represent a breakdown between  
10 killed and non-fatalities. Do you see what I'm getting  
11 at?

12 MR. KINERK: I think so. I'm looking at the  
13 total of 269. This would be over the five or six year  
14 area of 1995 to 2000.

15 JUDGE MACE: Right, and if the total number  
16 killed over the five year period is 20, then why is not  
17 the total of non-fatalities 249?

18 MR. KINERK: I'm sorry, I don't have an  
19 immediate answer to that.

20 JUDGE MACE: Well, I'm going to make that a  
21 Bench Request.

22 MR. KINERK: Sure.

23 JUDGE MACE: And I would like to have you  
24 provide that information. It will be marked Number 28  
25 when it comes in.

0141

1 BY MR. KINERK:

2 Q. Mr. Cowles, let me ask you to look at a  
3 different table for a minute, which is table 9.2.

4 A. Okay.

5 Q. Do you have that in front of you?

6 A. Yes, I do.

7 JUDGE MACE: What was the number again,  
8 counsel?

9 MR. KINERK: Table 9.2.

10 BY MR. KINERK:

11 Q. What is that entitled, Mr. Cowles?

12 A. It's a list of grade crossing by state, the  
13 number of actual crossings by state broke down by  
14 pedestrian, private, and public.

15 Q. In looking under the state of Washington,  
16 what is the total number of at grade highway-rail  
17 crossing public crossings?

18 A. 2,774.

19 Q. Now if you took that previous number, the 269  
20 incidents in Washington at public crossings over the  
21 time period designated relative to the 2,774 public  
22 crossings, what percentage are we talking about?

23 A. I don't have a calculator in front of me  
24 right now. I can't remember.

25 Q. Okay.

0142

1 A. It's a considerable amount.

2 Q. If my math is right, it's going to be  
3 approximately 9% to 10%. Does that refresh your  
4 recollection in terms of your numbers or not?

5 A. Yeah, that's fine.

6 Q. All right.

7 A. 10%.

8 Q. Let me have you look for a moment at table  
9 8.4, and can you identify what that table is, please.

10 A. It's a table identifying motor incidents at  
11 public crossings by state and type of warning device.

12 Q. For the year 2000?

13 A. In the year 2000, that's correct.

14 Q. And what does it indicate with regard to the  
15 state of Washington?

16 A. In the state of Washington, there was ten  
17 incidents at road crossings that had gates, three with  
18 flashing lights, three with stop signs, and seven with  
19 cross bucks.

20 Q. So for the year 2000, most recent information  
21 we have statistically, what was your total number?

22 A. 23 crossing incidents.

23 Q. Now in looking at the total number of 23  
24 motor incidents at public crossings in Washington, of  
25 those various type of crossings, what were the type of

0143

1 crossings in which the majority of those incidents  
2 occurred?

3 A. Over 50% of them were at the gated crossings.

4 Q. And when you're talking about gated  
5 crossings, Mr. Cowles, are we talking about the type of  
6 crossing involved at D Street in Sprague?

7 A. Yes, that is correct.

8 Q. What is the significance of that statistical  
9 information for you in considering whether there is a  
10 risk to public safety in trying to consolidate D Street  
11 crossing?

12 A. With the installation of lights and gates,  
13 you would assume that it would improve public safety to  
14 a point -- to a higher degree than if there was just  
15 passive devices or cross bucks. But it tells me that  
16 even though a crossing is gated, there's always those  
17 cases where an individual might go around the gate,  
18 might, you know, disregard the warning so to speak and  
19 run out in front of a train. So irregardless of whether  
20 it's got passive or active devices, it seems like there  
21 are more accidents at crossings that have a higher  
22 degree of warning device.

23 Q. Let me ask you, Mr. Cowles, to look for a  
24 moment at table 7.9, which actually that's three charts  
25 on one page, it's at the bottom. Can you identify for

0144

1 us what that table breaks down.

2 A. It's the highway-rail incidents by warning  
3 device. This is on a national level.

4 Q. So previously we're looking at a couple that  
5 were within the state of Washington, and then this is an  
6 analysis on a national basis; is that right?

7 A. That's correct, year 2000.

8 Q. In looking at the year 2000, what was the  
9 total number of accidents? I'm looking at the left-hand  
10 column at the bottom.

11 A. 3,502 accidents for the year 2000.

12 Q. That information corresponds with the earlier  
13 testimony that Mr. Larsen provided from the Operation  
14 Lifesaver in terms of total accidents?

15 A. If that is on the record.

16 Q. Now of those total accidents, and I guess in  
17 the far left-hand column there is a list where it says  
18 warning, and underneath that it lists various warning  
19 devices at crossings; is that correct?

20 A. That is correct.

21 Q. In looking in the total incident column of  
22 3,502, can you identify for us what the total number of  
23 incidents that were involving gated crossings?

24 A. There were 905 incidents involving gated  
25 crossings.

0145

1 Q. What is the significance of that statistic in  
2 terms of your analysis with regards to public safety  
3 issues and consolidation of D Street crossing?

4 A. What it tells me is that approximately 26% of  
5 all incidents at public crossings happen where the  
6 crossing is gated.

7 Q. And where do you get that percentage; is that  
8 what column?

9 A. That's the second column under total  
10 incidents where it says percent next to the count.

11 Q. What is a specific percentage listed on that  
12 column, sir?

13 A. Pardon?

14 Q. What is a specific percentage listed in --

15 A. Oh, it's 25.4%.

16 Q. So in terms of on a national basis, the  
17 number of total incidents of highway rail crossing  
18 incidents, over 25% of those occur at gated crossings?

19 A. That is correct.

20 Q. Let me have you look for a moment at table  
21 8.2, Mr. Cowles, and can you provide some identification  
22 for us as to what that table represents?

23 A. 8.2 is the rates per motor vehicle incidents  
24 at public crossings by warning device.

25 Q. And again for the year 2000?

0146

1 A. For the year 2000.

2 Q. Is that on a national analysis?

3 A. On a national analysis.

4 Q. And explain to us the significance of this  
5 particular table.

6 A. Once again it shows that out of the number of  
7 crossings that a considerable number of accidents happen  
8 at gated crossings. There's a total of 804.

9 Q. What is, in terms of the accidents at public  
10 crossings by warning devices, and I'm looking now to the  
11 full count under accidents, what was the total that is  
12 added up at the bottom in the left-hand column?

13 A. 2,895.

14 Q. And of that 2,895 motor vehicle accidents at  
15 public crossings, what number involved gated crossings  
16 such as the one at D Street?

17 A. 804.

18 Q. Still looking at that particular column, does  
19 that break it down on a -- next column over, with  
20 regards to where it says per 100 crossings; do you see  
21 that?

22 A. Right.

23 Q. What's the significance of that, Mr. Cowles?

24 A. Per 100 crossing, that -- what that means is  
25 there's been 2.3 accidents for every 100 crossings that



0147

1 are gated.

2 Q. And likewise, when you move over one  
3 additional column where it says per 100,000, per 100 k  
4 ADT, what's your understanding of the significance --

5 A. Per 100,000 vehicles crossing a gated  
6 crossing, .57% of them or .57% chance of getting hit by  
7 a train.

8 Q. Let me take you for a moment back to table  
9 8.6, and can you identify for us the table there.

10 A. 8.6 is motor vehicle incidents at public  
11 crossings by type of warning, motorist action, and  
12 warning location.

13 Q. And what are we looking at in terms of total  
14 number of incidents again?

15 A. It's got 2,895 incidents for the year 2000.

16 Q. And what number of that 2,227 involved gates?

17 A. Talking about the total or are you talking  
18 about the one -- the first column?

19 Q. First column.

20 A. Oh. Let me go back. This is for rail  
21 equipment struck by highway user. 2,895 is the bottom  
22 column that I used, so it's --

23 Q. Are you looking at 8.5 or 8.6?

24 A. I'm looking at 8.6.

25 Q. Okay. Look at the top column on 8.6.

0148

1 A. Okay.

2 Q. Rail equipment struck highway user.

3 A. Okay.

4 Q. What number do you get for a total there?

5 A. 2,227.

6 Q. And of that involving rail equipment striking  
7 a highway user, what number of those incidents involved  
8 crossings that had gates such as what we've got at the D  
9 Street?

10 A. 663.

11 Q. And is that broken down in the next column as  
12 to what percentage the rail equipment striking highway  
13 users represents out of that total 2,227?

14 A. 22.9%.

15 Q. Again, what's the significance of that type  
16 of information in your analysis with regards to the  
17 appropriateness of consolidating a crossing such as D  
18 Street?

19 A. Regardless of the warning device, whether it  
20 be lights and gates or versus the passive device,  
21 there's still that potential of accident even at a  
22 higher warning device, a cross with a higher warning  
23 device capability and flashing lights.

24 Q. Now looking at that same chart then,

25 Mr. Cowles --

0149

1                   JUDGE MACE: Well, can I interrupt just one  
2 second.

3                   MR. KINERK: Sure.

4                   JUDGE MACE: I don't want to foreclose your  
5 cross-examination, but I do want to remind you that we  
6 have had these documents admitted as exhibits, and so  
7 you can refer to them. Even if Mr. Cowles doesn't  
8 testify specifically about them, they are in the record.

9                   MR. KINERK: Thank you, Your Honor, we're  
10 just about through with this.

11 BY MR. KINERK:

12           Q.     Mr. Cowles, I want you to look for a moment  
13 at a column entitled drove around through gate. Do you  
14 see that, still a part of 8.6?

15           A.     Yes.

16           Q.     And of the 663 incidents of rail equipment  
17 striking a highway user, what number involved vehicles  
18 that drove around or through gates?

19           A.     207.

20           Q.     I want you to drop just for a minute down to  
21 the next table, highway user struck rail equipment. Do  
22 you see that?

23           A.     Yes.

24           Q.     And what does that show?

25           A.     There's been 668 total crossing accidents

0150

1 where the highway user struck the rail equipment, and of  
2 those 668, 141 were at gated crossings.

3 Q. And specifically with regard to the column  
4 drove around through gate, of that 141 incidents out of  
5 the 668 total, what number involved individuals driving  
6 around or through the gates?

7 A. 87.

8 Q. Let me ask you to look at exhibit 8.5, which  
9 is entitled motor vehicle incidents at public crossings  
10 by type, consys, and consys speed 2000; do you see that?

11 A. Yes.

12 Q. And when you use the term consys, what does  
13 that mean?

14 A. Consys means the type of train crossing at  
15 the crossing, whether it be freight or passenger.

16 Q. Now with regard to the rail equipment  
17 striking highway user under consys beta, between 40 to  
18 49, what number did you get there?

19 A. It's 496.

20 Q. Out of a total --

21 JUDGE MACE: Counsel, again, this is all in  
22 the record.

23 MR. KINERK: Okay.

24 A. A total of 2,227.

25 JUDGE MACE: You know, we can read it too. I

0151

1 mean I don't mean to be --

2 MR. KINERK: That's fine.

3 BY MR. KINERK:

4 Q. With regard to that number, is that the  
5 speed, your understanding of the speed that's involved  
6 relative to the D Street trackage and crossing?

7 A. Yes.

8 Q. Let me ask you for a moment, Mr. Cowles,  
9 about your analysis of the D Street grade crossing  
10 closure versus the F Street. As you know, BNSF filed an  
11 amended petition requesting that in lieu of the D Street  
12 crossing that the Commission consider the F Street  
13 crossing, and I wanted you to go through your analysis  
14 for us as to that as a viable option, what conclusions  
15 you drew.

16 A. Okay.

17 Q. Do you want to use the chart or anything?

18 A. Sure, thank you. The reason we revised -- we  
19 amended the petition to include the F Street grade  
20 crossing alternative to D Street was because of  
21 information I received at a public meeting we had here  
22 in Sprague I think the end of May. And one of the  
23 concerns that the community had was for -- was versus D  
24 Street versus F, a lot of -- there had been some  
25 discussion on the closing of F Street. So in order to

0152

1 provide additional information to the City, I amended  
2 the petition to add F Street into the conversation for  
3 an alternative to the closure of D Street.

4           There's been some concerns about children  
5 walking to school. As you know, F Street is the route  
6 that leads you directly to the school, and one of the  
7 problems was if we considered closing F Street, you have  
8 the problems with the children walking to school and  
9 crossing the track illegally. So we looked at that as  
10 an alternative, something we can discuss, but I think in  
11 the light of public safety, I think it would be best to  
12 consider the closure of D Street for this particular  
13 reason.

14           B Street is the crossing. You have the  
15 emergency services right here on C Street and Second.  
16 If you were to close D Street, your alternatives to get  
17 to the northern parts of the City are either B or F  
18 Street. Now if you close F Street and provide access  
19 for children, then you have the City having to provide  
20 emergency services crossing D Street and more likely  
21 using Railroad Avenue up this way. But because of the  
22 load limit considerations on Railroad Avenue because of  
23 the bridge, it limits the fire emergency services that  
24 would be able to use this road with their water trucks,  
25 their water tanker vehicles, which would make them have

0153

1 to go up this way.

2 JUDGE MACE: Go up which way?

3 THE WITNESS: I'm sorry, up D Street and  
4 using a one lane roadway that accesses this area.

5 JUDGE MACE: So in other words, going up D  
6 Street well north of the City --

7 THE WITNESS: Well north of the city, yeah.

8 JUDGE MACE: -- and well north of Railroad  
9 Avenue?

10 THE WITNESS: That is correct.

11 A. And which isn't actually a very safe  
12 alternative I don't think. So by closing D Street, you  
13 have the B and F Street alternative. F Street in this  
14 area of town, B Street going north in this part of the  
15 community. So in closing F Street, I didn't think that  
16 was as good an option as the closure of D Street. I  
17 just wanted to make that perfectly clear.

18 BY MR. KINERK:

19 Q. You would agree with me, Mr. Cowles, that F  
20 Street represents a redundant crossing?

21 A. Yes.

22 Q. It is under the -- it fits the criteria that  
23 BNSF looks at, it is in close proximity to multiple  
24 other crossings, correct?

25 A. That is correct.

0154

1 Q. It is likewise a crossing where there is low  
2 traffic volume, correct?

3 A. That is correct.

4 Q. And there are, if that particular crossing  
5 were closed, alternative routes that could be used by  
6 the traveling public and emergency personnel to respond  
7 to the north end of town, correct?

8 A. Yes.

9 Q. That all being said, in terms of however  
10 weighing the full public safety issues, in your opinion,  
11 in terms of direct routes for vehicle and pedestrian, be  
12 it students, the direct route to the school, is your  
13 belief and opinion that the D Street would represent a  
14 better or more viable option in terms of consolidation  
15 of these three graded crossings?

16 A. That is correct.

17 Q. With regard to the D Street consolidation,  
18 tell us what is involved from a logistical standpoint in  
19 trying to accomplish that, everything from how long it  
20 would take to a cost analysis to what measures would be  
21 placed there to effectively alert the traveling public  
22 that that was no longer a route to be taken in the  
23 north-south direction?

24 A. In order to close a railroad crossing, the  
25 steps that are taken is to -- one is to remove the



0155

1 surfaces between the rails, remove the approaches to  
2 each crossing, and replacement of the class three  
3 barricades along with proper signage and signage that  
4 would --

5 JUDGE MACE: I'm not --

6 THE WITNESS: I'm sorry, proper signage that  
7 would identify the --

8 JUDGE MACE: What was the next thing you  
9 said?

10 THE WITNESS: That was placing the class  
11 three barricades at the crossing.

12 JUDGE MACE: Yes, there was something else  
13 after that.

14 THE WITNESS: Provide the signage.

15 JUDGE MACE: Okay.

16 THE WITNESS: That would alert the motoring  
17 public not to cross when it's closed.

18 BY MR. KINERK:

19 Q. What does that, in terms of the time line,  
20 how long does it take to accomplish that type of  
21 project?

22 A. It shouldn't take any more -- actual  
23 construction shouldn't take any more than a day or two.

24 Q. Now with regard to the current E Street and C  
25 Street roads that are already consolidated, do those

0156

1 have the barricades set up currently?

2 A. No, they do not.

3 Q. What could be done in an effort to bring  
4 those up to speed from the standpoint of the Railroad  
5 relative to public notice?

6 A. I would recommend that those -- end of the C  
7 and the E Street crossings have the class three  
8 barricades with possible signs that notifies the public  
9 that they are closed.

10 Q. There had been some exchange earlier this  
11 morning with regards to concerns about, example,  
12 students continuing to use or trespass over a crossing  
13 that has been consolidated. Now when you talk about  
14 class three barricades, tell us what they are.

15 A. Class three barricade is a barricade that is  
16 a series of three boards that are reflectorized on posts  
17 that are inserted in the ground. You might have seen  
18 them on the highways in several places where a road has  
19 been dead ended or closed.

20 JUDGE MACE: When you use the term,  
21 Mr. Kinerk, consolidated, does that mean closed?

22 MR. KINERK: Correct.

23 JUDGE MACE: Thank you.

24 BY MR. KINERK:

25 Q. And with regard to the consolidation of the D

0157

1 Street crossing, would that provide unfettered access  
2 for both pedestrian and vehicle traffic over the F  
3 Street crossing? There would be no restrictions on  
4 that, correct?

5 A. No.

6 Q. Okay. Likewise, if the D Street is  
7 consolidated, the traveling public, both pedestrian and  
8 vehicle, would have unfettered access over the B Street  
9 crossing, correct?

10 A. That's correct.

11 Q. Now there has been some concerns voiced with  
12 regard to the grange supply store. Can you look and on  
13 Exhibit Number 1 identify where that is in relation to  
14 the crossings.

15 A. The grange supply store is on the north end  
16 of Railroad Avenue between B and D Street on the north  
17 of the railroad tracks.

18 Q. Now, Mr. Cowles, is it your understanding  
19 that that particular grange supply facility is going to  
20 be moved?

21 A. That's my understanding, yes.

22 Q. In terms of the majority of that operation is  
23 going to be transferred to the location where the  
24 Chevron station is indicated on Exhibit 1; is that  
25 correct?

0158

1           A.     The Chevron station is right here on Fourth  
2 off Highway 23.

3           Q.     Now is it your understanding that there will  
4 still be some operation of the grange supply store at  
5 the current location?

6           A.     That's correct.

7           Q.     Now what will be done by BNSF with regards to  
8 the consolidation of the D Street crossing such that  
9 would make the ability of trucks to turn around and if  
10 they come in on B Street be able to turn around and exit  
11 on B Street safely?

12          A.     One of the things that will be changed at the  
13 D Street crossing will be the removal of that signal and  
14 provide a little more turning radius for the trucks  
15 coming out of the grange area.

16          Q.     Did any of the photographs looking at the D  
17 Street crossing show that signal bungalow just so  
18 everyone knows what we're talking about?

19          A.     Right here in Exhibit 2-C shows the signal  
20 bungalow right here on the front of the grange, and that  
21 would be moved.

22          Q.     When you say moved, will that be actually  
23 removed?

24          A.     Will be removed I mean.

25          Q.     What's the approximate size of that signal

0159

1 bungalow?

2 A. It's six by six.

3 Q. Where is that positioned relative to the  
4 actual main line track?

5 A. It's 25 feet off the center line track I  
6 think is where they're supposed to be placed.

7 Q. Assuming that's where it is positioned, what  
8 type of distance are we now increasing in terms of the  
9 purpose of turning radius of trucks that will be  
10 getting --

11 A. Probably an additional 15 feet.

12 Q. What type of ground surface do they have  
13 there to assist in vehicles, trucks turning around at  
14 that location?

15 A. It's all gravel.

16 Q. And in addition to that main line, size  
17 ballast?

18 A. Yes.

19 Q. What does that mean when you talk about that  
20 size ballast?

21 A. I'm not too sure of the question.

22 Q. You're not a road master?

23 A. There you go.

24 Q. You're an engineer?

25 A. Yeah.

0160

1                   MR. KINERK: All right, I think that's all  
2 the questions I have. Thank you, Mr. Cowles.

3                   THE WITNESS: Okay.

4                   JUDGE MACE: Well, I hesitate to ask you to  
5 go back to your seat. Maybe someone else will ask you  
6 to.

7                   Mr. Thompson.

8

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

10 BY MR. THOMPSON:

11            Q.     Mr. Cowles, I want to go back to the first  
12 part of your testimony before lunch.

13            JUDGE MACE: Maybe you should sit down.

14            A.     Sure.

15            Q.     And you were discussing the factors you look  
16 at to decide what kinds of crossings might be candidates  
17 for closure. Do you recall that?

18            A.     Yes.

19            Q.     And you talked about looking at crossings  
20 that were in close proximity to one another, and then  
21 the other thing was what is -- another consideration was  
22 accident history I think you said. When you talk about  
23 close proximity of crossings, I gather you're really  
24 looking at the public convenience and necessity side of  
25 the equation, right?

0161

1 A. That is correct.

2 Q. In other words, if crossings are close  
3 together, then the assumption would ordinarily be that  
4 it may be very easy to divert traffic just over to the  
5 next crossing, right?

6 A. Yes, sir.

7 Q. Okay. But I imagine that's just sort of the  
8 first -- you're talking about sort of a first cut,  
9 right? I mean you're trying to identify potential  
10 crossings for closure?

11 A. Initially when I do look at a community, I  
12 would look at, you know, the initial -- that would be  
13 the initial review, yeah.

14 Q. But that's not the end of your analysis,  
15 right?

16 A. No.

17 Q. Okay. Do you consider traffic flow in the  
18 community and what impact a closure might have on  
19 traffic flow?

20 A. Usually I get that information from the  
21 community. I will -- all they have to go by as far as  
22 traffic flow is the ADT which I get off the inventory as  
23 far as number of ADT crossing tracks and how many  
24 vehicles would be displaced if the crossing is closed.  
25 As far as traffic flow and where it goes, a lot of times

0162

1 the community comes in right in behind me, so that's  
2 further -- part of my further investigation as we go  
3 forward.

4 Q. But certainly you would look for I guess  
5 specific problems that might result from a closure?

6 A. Yes.

7 Q. And you talked about doing things that might  
8 mitigate those kinds of negative impacts of a closure on  
9 traffic.

10 A. Yes.

11 Q. What about, well, I think you also discussed  
12 impacts not only on just ordinary traffic flow but  
13 emergency responders like fire and other emergency  
14 response people.

15 A. I do take emergency services into  
16 consideration. That's one of the more important factors  
17 in a grade crossing consolidation program.

18 Q. Do you, in this specific case, did you do  
19 anything to quantify, you know, looking at Exhibit 1,  
20 you know, what impact there might be in terms of  
21 response time of a vehicle, emergency vehicle, getting  
22 out to say a residence on the north side of the tracks?

23 A. I never use a stop watch in seeing what the  
24 differences in time is to going around versus using the  
25 crossing that we're considering closing. But in just



0163

1 literally looking at the map, all I can do is I -- what  
2 I did was I assumed that it can't be significantly  
3 impacted considering that you're only 600 feet, you  
4 know, from each other, plus you just -- the amount of  
5 time to go around is considerably just -- it just wasn't  
6 there to really, you know -- what I'm trying to say is I  
7 didn't use a stop watch to figure out what the  
8 differences were.

9 Q. Okay, but what's your --

10 A. I just assumed.

11 Q. -- understanding of where the emergency  
12 vehicles come from basically if there's some sort of  
13 emergency north of the track?

14 A. As far as I know, and correct me if I'm  
15 wrong, Mayor, but all the emergency services comes from  
16 the fire station next door, which is right next door to  
17 us on between Second and Third and C Street.

18 Q. Do you have any idea of the number of, just  
19 roughly, the number of residences that are on the north  
20 side of the tracks?

21 A. No, I don't.

22 Q. Okay. Have you had discussions with the  
23 owners or operators of the grange operation that's on D  
24 Street there at the -- near the D Street?

25 A. I have had -- I have heard I don't know if

0164

1 you would call it testimony, but I have heard  
2 discussions at our meeting in May of grange operators  
3 express some concerns if D was closed where -- trucks  
4 use D Street once they leave the grange is the  
5 impression I got, and D Street closed, they would have a  
6 very difficult time accessing the grange is what they  
7 have told me.

8 Q. Well, your understanding, is that basically  
9 retail customers; is that what we're talking about?

10 A. I assume it's retail, I'm not really --

11 Q. Or just customers let's say.

12 A. Yeah.

13 Q. And that they approach the grange from some  
14 route, but then their route is to leave by way of the D  
15 Street crossing?

16 A. I'm not real sure exactly, never been out  
17 there to watch them operate as far as people coming in  
18 during the harvest or whatever or when they use that,  
19 but I would say that the City might have a better answer  
20 for that.

21 Q. Okay.

22 A. To that question.

23 Q. Well, on the same topic, you made some  
24 reference to the I think you called it bungalow.

25 A. Yes.

0165

1 Q. Where the equipment, some of the equipment is  
2 contained by the signal for the gates and so forth, and  
3 you said that's located 25 feet from the main line  
4 typically.

5 A. The standard plan is a bungalow is placed,  
6 installed, placed 25 feet from the center line of track  
7 and 35 feet from the edge of roadway is the normal  
8 placement.

9 Q. So the outermost track, whatever that happens  
10 to be, like the siding?

11 A. In this case it would be the main line.

12 Q. Oh, it would be the main line, because that's  
13 the most northern --

14 A. That's correct.

15 Q. -- right there.

16 A. That's correct.

17 Q. Okay. I mean do you have any -- is it just  
18 your surmise that this would be helpful, that the  
19 removal of that would be helpful for turning movements  
20 there, or is that something that you have verified with  
21 maybe a traffic engineer or maybe with the owners of the  
22 grange themselves?

23 A. No, that's my own opinion.

24 Q. Okay. Well, under the second consideration,  
25 accident history, are you aware of any accident history

0166

1 at the D Street crossing?

2 A. No, there isn't any.

3 Q. Okay. Do you know of any kind of statistical  
4 analysis where one could compare the relative hazard or  
5 safety of a particular grade crossing within the state  
6 or within the country? You know, if you look at a  
7 particular crossing and say, well, this is an especially  
8 hazardous one, this is not, you know, as grade crossings  
9 go, this is not a particularly bad one relative to  
10 others; is there any way of making that comparison?

11 A. Well, all grade crossings are relative -- are  
12 potentially hazardous. And saying that one crossing is  
13 more hazardous than the other, I really don't know that  
14 there's a statistic out there that really says one way,  
15 you know. I guess I need more clarification on the  
16 question I guess.

17 Q. Well, what about for say Section 130 money,  
18 are you -- that's, for clarification, isn't it correct  
19 that that's a federal program for --

20 A. That is correct.

21 Q. -- making improvements to safety at  
22 crossings? Do you know of any kind of method that's  
23 used in that grant process to determine the relative  
24 hazard of a crossing?

25 A. As part of the program, we perform a

0167

1 diagnostic review when Section 130 money is considered  
2 for improvements to a railroad crossing, and through  
3 that diagnostic review, it is determined whether or not  
4 a grade -- particular grade crossing needs to be  
5 upgraded or improved to the standards which they are  
6 currently.

7 Q. And that gives you a kind of array, doesn't  
8 it, of --

9 A. That is correct.

10 Q. So you can say, you know, this is the most,  
11 you know, a particular crossing might be in the top  
12 third of dangerous crossings in the state, where another  
13 might be in another third or quartile or something like  
14 that?

15 A. That's where we determine whether or not  
16 there's improvements necessary to be made. After those  
17 diagnostics, the State comes and compiles a list from  
18 their data base, and then we go out and look at those  
19 crossings for further consideration.

20 Q. Would you have any opinion about where D  
21 Street crossing might fall in that kind of a comparison?

22 A. As of today? I don't think redundancy is  
23 part of the state formula I mean on crossing. If we  
24 went out there today with the State Highway Department  
25 to look at that crossing, it has all the -- it has all

0168

1 the bells and whistles and the gates and everything, but  
2 I don't think as part of that formula it talks about  
3 redundancy.

4 Q. Well, doesn't -- I mean isn't this a process  
5 though of weighing the hazard presented by the crossing  
6 against the say the traveling motoring public's  
7 convenience or necessity; would you agree with that?

8 A. Yeah.

9 Q. But doesn't redundancy just go to the  
10 public's need for the crossing? I mean in other words,  
11 if there's another crossing close by that you would  
12 assume there wasn't a very great need for it, you know,  
13 barring some other circumstance?

14 A. Yes.

15 Q. But that doesn't really -- redundancy doesn't  
16 really address the hazard, right?

17 A. Well, it's my opinion that every railroad  
18 crossing presents a hazard.

19 JUDGE MACE: Well, what I would like to have  
20 you do, if you would, please, is listen to counsel's  
21 question, and I would like to have you try to answer as  
22 best you can.

23 THE WITNESS: I'm trying to.

24 JUDGE MACE: Do you remember your question?  
25 Could you -- redundancy doesn't necessarily --

0169

1 BY MR. THOMPSON:

2 Q. Well, I guess originally I'm asking -- I'm  
3 trying to get -- if you could just tell me, do you think  
4 this is a particularly dangerous grade crossing, given  
5 that all grade crossings are dangerous, is it, among  
6 grade crossings, is this particularly dangerous, D  
7 Street?

8 A. I would say it's -- I guess I'm just going to  
9 have to say no. I mean it's -- every grade crossing is  
10 potentially dangerous is all I can say. I mean I'm not  
11 sure what you're trying to --

12 Q. Well, okay, I mean certainly aren't there  
13 other considerations like sight distance, for example?

14 A. Right.

15 Q. How far motorists can see a train  
16 approaching?

17 A. That is correct.

18 Q. The fact that it has or doesn't have a gate?

19 A. Right.

20 Q. What else goes into that Section 103  
21 consideration?

22 A. Crossing angle, skew of the crossing,  
23 accident history, type of existing warning device. I'm  
24 not sure what else is in the form.

25 Q. Well, isn't it true that --

0170

1 A. ADT, number of trains.

2 Q. -- this particular crossing doesn't have a  
3 lot of the red flags that you would --

4 A. Right.

5 Q. -- ordinarily consider?

6 A. That is correct.

7 Q. Okay. So the real consideration is it seems  
8 to me is just low need really?

9 A. Yes.

10 Q. Okay. Just generally on your discussion of  
11 the railroad safety statistics in Exhibit 10, I gather  
12 your point was just to show that a, I'm not going to go  
13 to any specifics in that, but just that your point was  
14 that even though you have a gated crossing, it doesn't  
15 prevent accidents from occurring. Is that a good  
16 summary?

17 A. Yes.

18 Q. Okay. But certainly you would agree that a  
19 crossing, generally speaking, a crossing that has a gate  
20 is safer than one that doesn't, right?

21 A. Depending on who is -- that's -- let me think  
22 about that one. I -- for instance, it's basically, you  
23 know, so that there have been a number of accidents at  
24 gated crossings, there have been a number of accidents  
25 at crossings with passive devices. So just because a



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1 crossing doesn't have gates on it doesn't necessarily  
2 mean it's safer than one with crossings.

3 Q. Do gated crossings tend to be the busier  
4 crossings in terms of usual car travel?

5 A. Yes.

6 Q. So that might be one reason for the higher  
7 occur of there being a certain, you know, incidence of  
8 accidents continuing even after the installation of  
9 gates, would you say?

10 A. That could possibly be, yes.

11 Q. You talked about the assumption being that if  
12 you close D Street, basically you would just divert the  
13 existing traffic using D Street onto B and F Streets.

14 A. That's correct.

15 Q. Can you explain how it is that if you still  
16 have the same number of vehicles crossing the tracks,  
17 even though they're doing it now at two points instead  
18 of three, how that results in a gain in safety? Do you  
19 follow my meaning?

20 A. Yeah, what you're doing is right now you have  
21 three crossings, and three crossings, three crossings  
22 where traffic can do something across the tracks. By  
23 eliminating D Street, you eliminate one of the potential  
24 areas of a vehicle-train accident, and by putting those  
25 cars queued up on the other two streets, you're moving

0172

1 it from D Street, because the -- there's vehicle --  
2 there's traffic already at F and B Street, the  
3 additional traffic that is placed on those streets does  
4 not increase the dangers of B and F to that extent  
5 because of the number of vehicles that are being  
6 diverted.

7 Q. Well --

8 A. I hope I explained it.

9 Q. Let me ask you this. Does it come down to  
10 this, basically if you have, let's just look at D and F  
11 streets.

12 A. Okay.

13 Q. Let's just assume hypothetically, this is  
14 probably not correct, but that if you close D Street,  
15 everybody who used to use D Street would go to F Street.

16 A. Okay.

17 Q. I guess the risk of an accident occurring at  
18 F Street is going to increase somewhat statistically,  
19 right?

20 A. I don't know.

21 Q. Well, okay, but at least there's less chance  
22 of an accident occurring, I gather, because there's not  
23 -- there's no possibility that there would be two tracks  
24 -- two cars using those crossings at the same time. Is  
25 that basically a way of explaining it? I'm just trying

0173

1 to get an understanding of why that is.

2 A. Yeah, I guess that's a way to put it. You  
3 don't have -- instead of having just two cars -- two  
4 cars going across it, you only have one crossing it at a  
5 time on the other crossing.

6 Q. There was at one point you addressed the dead  
7 ends of C and E streets, and I think you were suggesting  
8 that they -- that there ought to be class three  
9 barricades at the ends of those streets.

10 A. Yes.

11 Q. Right? Would that be the Railroad's  
12 responsibility to install those?

13 A. It's normally the agency's but --

14 Q. The agency being the local government?

15 A. The City, but, you know, if we are able to  
16 get the D Street closed, we would be more than happy to  
17 provide those barricades for those two streets.

18 Q. Are you aware of that being a problem at  
19 present with people thinking that the road goes across?

20 A. I'm not aware of any problem, but I believe  
21 it would be just an additional warning device that there  
22 was an end to the street.

23 Q. All right, if you would just hold on for a  
24 moment.

25 Sorry to change subjects on you here again,

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1 but back to the issue of the grange and the improvement  
2 in the turning radius that you're suggesting would  
3 result from the removal of that bungalow, is there any  
4 other kind of roadway improvement that you could foresee  
5 improving that situation besides, in addition to or  
6 besides the removal of the bungalow?

7 A. Well, the Railroad Avenue between D and F  
8 Street has a load limit on the bridge which makes it  
9 difficult for trucks to use. Other than somehow backing  
10 up, maybe turning right on D Street, then backing up and  
11 making a turn to go back up B Street, I can't think of  
12 anything right off hand other than -- without going  
13 through further study on how to mitigate that.

14 MR. THOMPSON: Okay, I think that's all the  
15 questions I have for you, thank you.

16 JUDGE MACE: Thank you, Mr. Thompson.  
17 Mayor Fox.

18 MS. FOX: Okay, the exhibit, now is this the  
19 time to ask him about this?

20 JUDGE MACE: Well, actually, we have already  
21 admitted them, and if you want to have Mr. Cowles take a  
22 look at them, you're welcome to do that, and he can talk  
23 about them if you want to.

24

25

0175

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

2 BY MS. FOX:

3 Q. Exhibit 26, I know it doesn't -- maybe it's  
4 not in your near future or anything like that, but we  
5 have had some really large companies in the last year or  
6 so that's closed down, and if it was to happen and you  
7 guys closed or they closed or whoever closed Railroad  
8 Avenue and Boxcar Avenue, that would leave us with only  
9 whatever one you left open. This one, Number 26, is  
10 actually closing D Street. That would force the fire  
11 department to go up C to First and then up F Street, and  
12 if they were trying to get to these residents where  
13 these little boxes I've got up here on the top left  
14 corner, they would have to go up clear up to the very  
15 top, because a lot of these streets in here dead end, so  
16 they would have to go clear up to the top and then  
17 backtrack and then come back down. Or else they would  
18 have to do the same thing if they were to go up D  
19 Street, they would still have to go up to the higher  
20 roads and backtrack and come back down to get to the  
21 grange, because there's a lot of those streets -- if  
22 Boxcar was not there and Railroad Avenue was not there,  
23 how would -- I mean that -- would that -- do you think  
24 that that would affect our emergency response time if  
25 you were to close D Street?

0176

1 A. Now you're --

2 Q. And these two?

3 JUDGE MACE: Let me make sure I understand  
4 your question. You're asking him to assume that Boxcar  
5 Avenue is closed?

6 MS. FOX: Yes.

7 JUDGE MACE: And Railroad Avenue is closed?

8 MS. FOX: Yes.

9 JUDGE MACE: And D Street?

10 MS. FOX: Yes.

11 A. Well, for one thing, we're not going to close  
12 Railroad Avenue or Boxcar Avenue.

13 BY MS. FOX:

14 Q. But that's not a guarantee because we -- in  
15 the past we --

16 JUDGE MACE: Now again, you have to listen to  
17 his response. Later on you get to make your argument  
18 about that.

19 A. Okay, let's say hypothetically we did close,  
20 okay hypothetically. You could probably go up B Street  
21 up by the church and turn left, get onto D Street.  
22 Right before you get to the church is the road that --  
23 the gravel road that goes over to D Street, and then go  
24 back up. I believe there's access through there. It  
25 might be an alleyway, but there's an access.

0177

1                   JUDGE MACE: I guess I would like to ask a  
2 question, because I'm not clear. There have been a  
3 couple of references to Boxcar Avenue and Railroad  
4 Avenue, and it sounds like the City doesn't have much  
5 control over them.

6                   MS. FOX: No, we don't.

7                   JUDGE MACE: And it sounds like maybe the  
8 County doesn't. It sounds like these are Railroad  
9 either owned or operated streets. Can you clarify what  
10 the status of these streets is for us.

11                   THE WITNESS: I'll show you up on the map.  
12 It might be better up here to show you.

13                   JUDGE MACE: Go ahead.

14                   THE WITNESS: Boxcar is basically -- this is  
15 old Northern Pacific land grant right of way. We used  
16 to have 200 feet of track on both sides. So here is the  
17 main line. The right of way is basically right here.

18                   JUDGE MACE: And Mr. Cowles is showing by his  
19 hands a certain amount of space on either side of the  
20 track.

21                   THE WITNESS: Right. Our right of way is --  
22 well, it's basically the right of way is about right  
23 here.

24                   JUDGE MACE: And can you estimate how many  
25 feet on either side of the track that would be?

0178

1                   THE WITNESS:  What are we talking about here,  
2  Mayor?  I don't have your --

3                   JUDGE MACE:  You need to try to make a clear  
4  record.  The reporter can't report everybody's comments  
5  at once, and let's go off the record for a moment so  
6  that we can try to clarify this.

7                   (Discussion off the record.)

8                   JUDGE MACE:  So your response is?

9                   THE WITNESS:  My response is this is Railroad  
10 Avenue.

11                  JUDGE MACE:  And that's north of the tracks.

12                  THE WITNESS:  North of the tracks.  Boxcar is  
13 south of the tracks.  I'm not sure how far Boxcar goes,  
14 but I think it goes at least to D.

15                  JUDGE MACE:  And both of those are within the  
16 125 feet either side of the tracks that is your  
17 property?

18                  THE WITNESS:  That is correct.  And the City  
19 has been using them for eons.

20                  JUDGE MACE:  And the Burlington Northern  
21 maintains them?

22                  THE WITNESS:  That I don't know.  I don't  
23 know what the maintenance record is of those roads.

24                  JUDGE MACE:  And you're testifying here today  
25 that the Burlington Northern does not have plans to



0179

1 close either one of those?

2 THE WITNESS: No.

3 JUDGE MACE: Go ahead, Ms. Fox, you had a  
4 question.

5 BY MS. FOX:

6 Q. Whenever the two crossings that are marked in  
7 blue right there, now whenever you guys came out to  
8 close those two crossings --

9 JUDGE MACE: Those two crossings that are in  
10 blue, I believe those are closed crossings.

11 MS. FOX: Right.

12 JUDGE MACE: Those are C and --

13 THE WITNESS: B.

14 MS. FOX: B and E, oh, no, C and E, I'm  
15 sorry.

16 JUDGE MACE: C and E.

17 BY MS. FOX:

18 Q. Wasn't it not -- wasn't it not told to us, to  
19 the City that at that time that those would be the only  
20 two closures that you were closing and that you weren't  
21 going to be coming back and asking for more closures if  
22 we closed those two there?

23 A. I'm not aware of the conversation or there's  
24 been anything in writing. I'm not aware of that. That  
25 was before my time.

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1 Q. Were you aware that we've got people that  
2 were on the -- with the City at the time that were told  
3 that?

4 A. Well, from our public meeting, we had a  
5 native there has been some -- that was addressed, that  
6 we had told the City at one time I assume verbally that  
7 we wouldn't be wanting to close another crossing, but I  
8 don't have any record of that or anything, so I don't  
9 know.

10 Q. Okay. So do you feel -- do you feel that it  
11 would -- if those two were closed, do you feel that our  
12 response time to a medical emergency up on that north  
13 side would be just as quick as if we were to go across D  
14 Street?

15 JUDGE MACE: Now again, your question, does  
16 this refer again to the possible closing of Boxcar and  
17 Railroad?

18 Q. Yes, and with D Street closing, I mean D  
19 Street crossing closing, if you were to close it.

20 A. If Railroad Avenue, let me clarify this, if  
21 Railroad Avenue and Boxcar were closed and then we  
22 closed D Street, the response time would be -- as I had  
23 mentioned earlier, if you used B Street and went up and  
24 turned left by that church, it would be just -- it would  
25 be a lot faster than if you went down F Street and

0181

1 around the block.

2 Q. Have you driven up there and seen all the  
3 dead end streets that are up there where there is a lot  
4 of alleyways or streets that have been closed and seen  
5 how many there is, are closed?

6 A. I have driven up D Street up to the most  
7 northerly roadway, which is a dirt road that went --

8 Q. Okay.

9 A. Let me show you on here. For the record, I  
10 have been up B Street, turned left to the church. I've  
11 been up here.

12 JUDGE MACE: Up here is where?

13 A. I'm sorry, then on B Street north of the  
14 tracks, turned left through this alleyway, then to D  
15 Street, D Street north to a gravel roadway, dirt  
16 roadway.

17 JUDGE MACE: And you turned left at that?

18 A. Turned left at the dirt roadway and proceeds  
19 to the west and then down heading south to Alder and  
20 turning left, and then down this road I just mentioned.  
21 I haven't been into these alleyways. I would assume  
22 those are all private properties there. And I haven't  
23 been east of D Street north of the grange. I haven't  
24 driven up there.

25 Q. So you don't actually realize how many

0182

1 streets there are up there that are actually dead end  
2 streets because of the fact that we closed different  
3 alleyways and different streets up there?

4 A. I haven't been down all of them, no.

5 Q. Okay. On the other exhibit, Exhibit 27, if  
6 you were to close -- if you had Railroad Avenue closed,  
7 Boxcar Avenue closed, and you were needing to respond to  
8 something on the -- let's see up -- if you were to have  
9 somebody on the clear over to the northeast, or I'm  
10 sorry, the northwest of Exhibit 1, then if they were  
11 leaving the fire department, they would have to leave  
12 going up C, down First, and up D, they would go -- have  
13 to go clear up to the very upper part and back and go  
14 across and then back up and come all the way down to  
15 those residents. Because they could not get that fire  
16 truck across, well, you would have Railroad Avenue, at  
17 this example, you would have it closed anyway, but even  
18 if it was open, you have that bridge there that is not  
19 -- you can't take the water truck over the top of that  
20 bridge because it's too heavy. You would be leaving the  
21 fire department on C and Second, you would be going up C  
22 Street to First Street, make a left, go up D Street, you  
23 would have to go up to the upper part of D Street where  
24 the dump is, make a left, and go across and back down to  
25 the residents on your upper northwest corner of that

0183

1 picture of this Exhibit A.

2 A. And that is if Railroad Avenue --

3 Q. And Boxcar Avenue were closed, and you were  
4 using D Street, if you had closed F. There's a lot of  
5 residents up in that area right there.

6 A. Well, I would say it would be more  
7 inconvenient as you had mentioned if that was the case,  
8 if they closed Railroad, that would be the long way  
9 around if you closed F and this number, if Railroad  
10 Avenue and Alki were closed. But that's not the case,  
11 we're not closing Railroad Avenue, we're not closing  
12 Boxcar Road, so basically --

13 Q. Would you put in writing, well, actually  
14 would you, yeah, would you put in writing for the City  
15 that those roads would remain open on a lifetime use?

16 MR. KINERK: Object to the question  
17 because --

18 MS. FOX: Okay.

19 MR. KINERK: -- it goes more to -- one, it's  
20 not relevant to what is being discussed here; secondly,  
21 the nature of that is towards a settlement, which is  
22 inappropriate for purposes of the evidentiary hearing  
23 here, and we would object to it on those two bases.

24 JUDGE MACE: Well, Mayor Fox is in a  
25 situation where she maybe is not as familiar with the

0184

1 rules of evidence as you are, and I think she's trying  
2 to just solicit from the witness what his response would  
3 be about a possible problem of safety that the residents  
4 see if these two streets are closed. And I'm going to  
5 allow her to ask the question, and let's see if  
6 Mr. Cowles can give her an answer.

7 A. You want something in writing that both  
8 streets won't be closed?

9 BY MS. FOX:

10 Q. Would the -- is the Railroad in a position  
11 that if that property belonged to the Railroad, if it  
12 was sold to anybody else, that the City has a lifetime  
13 opening of both of those roads, and they would guarantee  
14 that they would be open and maintained?

15 JUDGE MACE: Can you clarify what you mean by  
16 lifetime, whose lifetime?

17 Q. Okay, let's not say a lifetime, let's say as  
18 long as the City of Sprague exists.

19 MR. KINERK: I will again object to the form  
20 of the question, again object for purposes of the  
21 record, it's an inappropriate question to ask, it deals  
22 directly with a settlement, not mitigation type of  
23 thing, and is in essence a request which Mr. Cowles  
24 position of indicating -- is the City now offering to  
25 agree with the petition made by the petitioner to close

0185

1 D Street with the understanding that, in fact, if that  
2 is done, that they receive something in writing that  
3 Railroad Avenue and Boxcar Avenue will not be closed or  
4 sold?

5 JUDGE MACE: Just a minute, let me think  
6 about this. You know, I didn't know anything about any  
7 settlement negotiation until you said anything about it,  
8 and The Mayor certainly didn't couch it in terms of it  
9 being any part of any settlement agreement or any  
10 negotiation, so I'm going to allow her to ask the  
11 question, and you can give an answer. And you can  
12 respond as you are able to respond. If you can't  
13 respond or if you need clarification of the question,  
14 please ask.

15 A. At this time, I really can't respond to that  
16 question, because I would have to talk to others within  
17 the Railroad that probably could give you that answer,  
18 but it's something we can discuss later. We can go  
19 forward and -- if you want to pursue that, I would be  
20 glad to work with the City.

21 BY MS. FOX:

22 Q. Are you aware that the grange will still be  
23 doing business in that building and that it's not  
24 necessarily going to be six months or a year, it may be  
25 four or five years?

0186

1           A.     Yes, I realize it's still going to be used  
2 for chemicals, some type of tanks.

3           Q.     And do you also realize that if they were to  
4 sell it, there's a possibility that those people may  
5 want to turn trucks around in that same area?

6           A.     That's correct.

7           Q.     Do you know what the distance is between the  
8 dock in your picture, Exhibit 2-A.

9                   JUDGE MACE:   How about 2-B.

10                  MS. FOX:    Yeah, 2-B.

11                  JUDGE MACE:   Or even 2-C.

12 BY MS. FOX:

13           Q.     Okay, Exhibit actually 2-E, do you know what  
14 the distance is from the dock?

15                   JUDGE MACE:   2-E?

16                  MS. FOX:    2-E.

17 MS. FOX:

18           Q.     The dock over to your sign, yeah, 2-D is  
19 fine, 2-D or 2-E.

20           A.     The distance from the dock which I see right  
21 here?

22           Q.     Right, do you know what the distance is?

23                   JUDGE MACE:   You need to describe this for  
24 the record, because there's no one --

25                   THE WITNESS:   Right, that's --



0187

1                   JUDGE MACE:  Let's just indicate that Exhibit  
2  2-D shows a building on the right-hand upper part of the  
3  picture, and it looks like the front part of that  
4  building is a porch, and there may be a place where  
5  trucks could back up to it and unload or load goods.  
6  Would that be a fair characterization of what that  
7  picture is of, Mr. Cowles?

8                   THE WITNESS:  Yes.

9  BY MS. FOX:

10            Q.     If you were in a truck, what would the  
11  distance be if you were to turn around, okay, say that  
12  post, that post is out further from the dock, the  
13  post --

14                   JUDGE MACE:  Again, the record doesn't know  
15  because --

16                   MS. FOX:  Okay, I'm sorry.

17                   JUDGE MACE:  -- it can't see you point.

18                   MS. FOX:  Okay.

19                   JUDGE MACE:  All we have is your words.

20  BY MS. FOX:

21            Q.     On Exhibit 2-D looking at the picture, if you  
22  were turning -- if you were going -- if you were heading  
23  west in front of the grange going to make a left-hand  
24  turn and go east, how much room would that truck have  
25  between the telephone pole and the stop sign at that

0188

1 corner?

2 A. I haven't literally measured it with a wheel  
3 and a measuring stick, but I assume it's probably pretty  
4 close to 125 feet. Does that sound right? I'm not  
5 sure.

6 JUDGE MACE: You know, Mr. Cowles, you just  
7 said a sentence and you dropped your voice at the end of  
8 it. You said it was 125 feet from that pole in front of  
9 the building --

10 THE WITNESS: I never --

11 JUDGE MACE: -- to the stop sign, and then  
12 you said something else, and I didn't --

13 THE WITNESS: I'm sorry, I never physically  
14 went out and measured it with a measuring tape.

15 JUDGE MACE: Okay.

16 THE WITNESS: But I assume it's pretty close  
17 to 125 feet. That's our right of way width.

18 BY MS. FOX:

19 Q. Do you know how many feet it takes to turn a  
20 52 foot trailer and truck in there?

21 A. No.

22 Q. Okay. Do you think they could do that in  
23 that area?

24 A. They probably could, yes.

25 Q. Okay. Do you realize that we've got proposed

0189

1 businesses and proposed residents on that hill up in  
2 that area?

3 JUDGE MACE: Which area are you talking  
4 about?

5 MS. FOX: I'm sorry.

6 JUDGE MACE: I don't mean to -- I hope you're  
7 taking my remarks to you --

8 MS. FOX: No, it's fine.

9 JUDGE MACE: I'm not trying to be hostile,  
10 but it really is important, because when I read the  
11 record or the Commissioners read the record, we're not  
12 going to know what this area is. They have to have some  
13 more specific reference.

14 MS. FOX: Okay.

15 BY MS. FOX:

16 Q. Are you aware that we have proposed  
17 businesses and growth on the northwest corner of Exhibit  
18 A, I mean Exhibit 1?

19 A. (Indicates.)

20 Q. Yes.

21 JUDGE MACE: And that would be north of the  
22 railroad tracks.

23 Q. North of the railroad tracks.

24 A. No, I was not aware of it.

25 Q. Are you aware that basically building inside

0190

1 the town is all flood zone and north of the tracks on  
2 Exhibit 1, the north south area is where our potential  
3 growth is at?

4 A. I did hear in community meetings that you did  
5 have the drainage problem in the community, but I was  
6 not aware of the proposed land uses in the north, in the  
7 northwest quadrant of the town, no.

8 Q. Okay. Is it possible that on the two  
9 crossings that are closed already that the City could  
10 just put signs at those points, not a through street,  
11 wouldn't that be sufficient enough for those two that  
12 you have there?

13 A. If the City thinks that is an acceptable  
14 alternative to barricades, that's fine. I mean that's  
15 -- the barricades themselves as well as the signage is a  
16 responsibility of the local town.

17 Q. When you originally brought the petition  
18 against the City, what was the -- what was the actual  
19 issue that you were bringing against the City? What was  
20 your basis that you wanted that closed? What was the  
21 basis for the closure of that railroad crossing?

22 A. The main purpose of the fact that it was a  
23 crossing with close proximity to two other crossings,  
24 and due to the low volume I thought it would be -- I  
25 petitioned for the closure of the crossing because it is

0191

1 basically a redundant crossing. It is one of three  
2 crossings within close proximity to each other.

3 Q. Wasn't your point at the meeting that we had  
4 at the end of May at the school, wasn't your point a  
5 safety issue?

6 A. Every crossing has a safety issue. Can I  
7 clarify what you mean by a safety issue?

8 Q. Wasn't basically the meeting on a safety and  
9 liability issue, wasn't that the point that you were  
10 pushing to us?

11 A. Right.

12 Q. Your original -- the reason for your closure  
13 of this crossing?

14 A. Right.

15 Q. Didn't you just state to the gentleman to my  
16 right that it is not a safety issue on this track, that  
17 it's just basically that you feel that the convenience  
18 of having a third track isn't necessary?

19 A. Well, safety is kind of a large term. Safety  
20 as far as reducing -- reducing the three crossings to  
21 two crossings, you're improving the safety of this  
22 particular area where the crossing is closed, because  
23 you do not have the opportunity to have a rail-highway  
24 accident. That's the reason why we petition to close a  
25 crossing, because it's redundant.

0192

1 Q. Redundant meaning?

2 A. Meaning you already have two crossings there  
3 besides the third one we are petitioning to close. By  
4 eliminating the middle one, you have improved the city  
5 here because you no longer have a crossing, and the  
6 industry could be utilized as the other access across  
7 the tracks.

8 Q. So do you feel that your railway safety is  
9 more important than our residents' safety?

10 A. I am thinking of the safety of the general  
11 public, not the railroad's safety, not railroad safety  
12 by themselves. The general public will benefit from the  
13 closure of this crossing by eliminating the future  
14 possibility of an accident at that crossing. It's not  
15 just -- not to the benefit of the Railroad per se. It's  
16 to the benefit of the general public.

17 Q. Why did you -- what made you -- what made you  
18 come to Sprague and decide that you were going to close  
19 one of our crossings? Beings that we haven't had any  
20 problems, what made you decide to come here?

21 A. There is a national initiative to identify  
22 and to work with the local agencies on consolidating  
23 crossings that are redundant crossings that have -- that  
24 are out there that can be consolidated with using fewer  
25 crossings than what they have, and it is also a Railroad

0193

1 initiative as well as a Federal Highway initiative to  
2 identify those and to close those places.

3 Q. Did you contact the grain growers in the  
4 Reardon grain growers facility and also the Ritzville  
5 grain growers facilities?

6 A. I have not contacted them on a personal basis  
7 and visited with them. If they were at those meetings  
8 that we had back in May, those were the only times that  
9 we have had some talks.

10 Q. And you spoke with somebody from the  
11 Ritzville grain growers?

12 A. No.

13 JUDGE MACE: Ms. Fox, how much more do you  
14 have of this witness? Just because we have been at this  
15 for an hour and a half, and it might be a good idea to  
16 take a break, but I don't want to interrupt your cross.

17 MS. FOX: Okay, just a little bit.

18 BY MS. FOX:

19 Q. Do you know what part of our population is  
20 either handicapped or elderly?

21 A. No, I don't.

22 Q. Do you realize how many people actually walk  
23 to and from the different businesses?

24 A. No, I don't.

25 Q. Do you know the -- do you -- or do you

0194

1 realize that there -- our grain growers and our grange  
2 are our two big -- our big -- three biggest income to  
3 the City and our -- I mean they are our main source of  
4 revenue; do you understand -- do you realize that?

5 A. I would assume that, but I don't know that  
6 for sure.

7 Q. Okay, just one more question. On the  
8 liability of these crossings, do you think by offering  
9 to put a pedestrian crossing across there, do you  
10 believe that your insurance is going to go down enough  
11 that it's going to make it worthwhile doing that?

12 MR. KINERK: I'm just going to object to this  
13 question to the extent that it, one, calls for a legal  
14 conclusion relative to liability and what that term  
15 means; secondly, insurance coverage for the Railroad is  
16 not something that's relevant to the petition for  
17 closure.

18 JUDGE MACE: We really haven't established --  
19 we haven't talked very much about insurance or liability  
20 so far. I'm going to -- I will allow the answer. Can  
21 you answer the question.

22 A. I can't answer that.

23 JUDGE MACE: Okay.

24 BY MS. FOX:

25 Q. Whenever do you -- in the past when you have



0195

1 closed -- gone into little towns and you have closed  
2 their crossings, has it helped the pedestrian  
3 trespassing on their tracks there?

4 A. I don't have any record or statistics that  
5 show that it increases, and without knowing a particular  
6 community, it's hard to even address that question.

7 Q. Does your chart show that?

8 A. No.

9 JUDGE MACE: Which chart are you talking  
10 about?

11 MS. FOX: The exhibits.

12 JUDGE MACE: The exhibits of?

13 MS. FOX: The exhibits of the --

14 JUDGE MACE: Do you know if there's anything  
15 like that in the statistics that you provided?

16 THE WITNESS: No, there is not.

17 MS. FOX: That's it for now.

18 JUDGE MACE: Okay, anything further,  
19 Mr. Kinerk?

20 MR. KINERK: I have a couple of questions.  
21 I'm happy to take a break if you want and then ask him  
22 some questions on redirect.

23 JUDGE MACE: Well, how much will you have?

24 MR. KINERK: (Shrugging.)

25 JUDGE MACE: We'll take ten minutes.

0196

1 (Recess taken.)

2 JUDGE MACE: Let's be back on the record in  
3 the Burlington Northern Santa Fe against the City of  
4 Sprague, Docket Number TR-010684, and I believe that,  
5 Mr. Kinerk, that you have some redirect.

6 MR. KINERK: I do, thank you, Your Honor.

7 JUDGE MACE: Go ahead.

8

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

10 BY MR. KINERK:

11 Q. Mr. Cowles, I wanted to clarify a few answers  
12 that you had provided during cross-examination to  
13 Mr. Thompson and Mayor Fox. One of the questions that  
14 Mr. Thompson had asked you is whether you had formed an  
15 opinion whether you believed the D Street crossing was a  
16 "particularly dangerous crossing". Do you remember that  
17 question, sir?

18 A. Yes.

19 Q. You are aware, are you not, that under the  
20 statutory basis for petition of closure of a at grade  
21 crossing, the standard is not where whether it is a  
22 particularly dangerous crossing, but in fact whether  
23 public safety requires that that particular crossing be  
24 closed. Is that your understanding?

25 A. That's correct.

0197

1 Q. Now the fact that there may not be an  
2 accident history at the D Street crossing, does that  
3 factor in and of itself allow you to conclude that it  
4 should not be considered for consolidation?

5 A. No, it does not.

6 Q. You have outlined I think for us repeatedly  
7 what factors are significant to you with regards to  
8 weighing whether a crossing is appropriate, and if I  
9 understood you, at least your testimony, in talking  
10 about redundancy, low traffic volume, and alternative  
11 routes with regards to the traveling public for  
12 locations that intersect the crossing in other places;  
13 is that right?

14 A. That is correct.

15 Q. From your understanding of both the  
16 Burlington Northern Santa Fe, the FRA, both the national  
17 and the --

18 JUDGE MACE: The FRA is the?

19 Q. Federal Railroad Administration, national  
20 goals, are those the factors relative to public safety  
21 that are taken into consideration in evaluating whether  
22 a crossing is appropriate for consolidation?

23 A. Yeah, that's true.

24 Q. Now with regard to Mr. Thompson's question of  
25 you that if you close the D Street crossing and traffic

0198

1 is then transferred to B Street and to F Street, one,  
2 that makes the assumption that they're just using those  
3 avenues of access, you would agree with me, would you  
4 not, in looking at Exhibit Number 1 that on the north  
5 part of town, be that where that's an area of potential  
6 development, residential or commercial, there are  
7 multiple access routes besides both B Street and F  
8 Street, correct?

9 A. That is correct. There is a Prospect Avenue  
10 off of Highway 23 that also accesses that area of the  
11 town.

12 Q. Now with regards to the increased traffic  
13 over be it B Street or be it F Street, from a safety  
14 standpoint, the closure of D Street reduces the risk of  
15 train-vehicle or train-pedestrian contact, correct?

16 A. That is correct.

17 Q. Is that part of the analysis you undertake  
18 with regards to the safety factors, the risk to the  
19 public you look at in terms of consolidation of a  
20 crossing?

21 A. That is correct.

22 Q. Now you were asked some questions with regard  
23 to past oral agreements that may have been made by the  
24 BNSF's predecessor, Burlington Northern, in its  
25 association or dealings with the City of Sprague. Do

0199

1 you remember those questions by the Mayor?

2 A. Yes, I remember.

3 Q. Have you had a chance to review the two  
4 Commission orders that the WUTC admitted as exhibits  
5 dealing with the closure of E Street and C Street grade  
6 crossings in the 1980's?

7 A. Yes, I have.

8 JUDGE MACE: And which exhibit numbers are  
9 those?

10 MR. KINERK: You know, Your Honor, I'm sorry,  
11 I don't know what numbers you attached to those.

12 JUDGE MACE: Let me see if I can find those.  
13 I show Exhibits 19 and 20.

14 MR. KINERK: Thank you, Your Honor.

15 BY MR. KINERK:

16 Q. In looking at Exhibits 19 and 20, which are  
17 the formal orders by the WUTC with regards to  
18 consolidation of those crossings, there's no language in  
19 there indicating that the Railroad is prohibited from  
20 returning and reevaluating potential consolidation of  
21 other crossings?

22 A. There is no language in there, that is  
23 correct.

24 Q. And I believe and I want you to confirm that  
25 you have made a diligent search in terms of review of

0200

1 any old files that predated you to determine whether, in  
2 fact, there was anything that the Burlington Northern,  
3 the BNSF's predecessor, had agreed to in writing  
4 relative to the City of Sprague in evaluating crossing  
5 consolidation?

6 A. That is correct, did a little research, found  
7 nothing.

8 JUDGE MACE: And you found nothing?

9 THE WITNESS: And I found nothing, yes.

10 JUDGE MACE: Thank you.

11 BY MR. KINERK:

12 Q. I guess the \$64,000 question, Mr. Cowles, is  
13 seemingly why D Street, why D Street in the City of  
14 Sprague, and what public risk factors or safety factors  
15 are significant to you in evaluating whether this  
16 crossing was appropriate for a petition for  
17 consolidation?

18 A. D Street was picked as a candidate for  
19 consolidation simply because of the low volume  
20 associated with the fact that the crossing is redundant  
21 with alternate access nearby and also have low volume of  
22 traffic across the street, and the best alternative to  
23 improving safety at any crossing is the closure and  
24 consolidation of that crossing.

25 MR. KINERK: Thank you, sir, that's all the

0201

1 questions I have.

2 JUDGE MACE: Mr. Thompson.

3 MR. THOMPSON: I don't have any further  
4 questions.

5 JUDGE MACE: Mayor Fox.

6 MS. FOX: Nothing.

7 JUDGE MACE: All right, thank you, you're  
8 excused.

9 Anything further on behalf of Burlington  
10 Northern?

11 MR. KINERK: Your Honor, I believe that's all  
12 of the live testimony that the Petitioner BNSF will  
13 offer at the evidentiary hearing. I will just indicate  
14 that the documents or exhibits have already been  
15 admitted, although I'm not sure that all of them have  
16 been referenced during the course of our evidentiary  
17 testimony.

18 JUDGE MACE: They have been admitted, and I  
19 do want to remind you, counsel, that there is one  
20 outstanding Bench Exhibit or Bench Request rather, an  
21 explanation of the statistics that appeared on Table  
22 1-12 from your Exhibit 10.

23 MR. KINERK: Thank you, Your Honor.

24 JUDGE MACE: And I would like to have that  
25 within two weeks, and naturally copies to the parties.

0202

1 Mr. Thompson, is Staff ready to proceed?

2 MR. THOMPSON: Yes, Your Honor.

3 JUDGE MACE: Go ahead.

4 MR. THOMPSON: Actually, if I could, well, if  
5 I could just have two minutes to just sort of collect  
6 our materials.

7 JUDGE MACE: Well, let's just take a second.

8 (Discussion off the record.)

9 JUDGE MACE: Mayor Fox just asked me if  
10 Mr. Cowles was going to be on the stand again, and I  
11 indicated no, that he has been excused. If you had some  
12 issue on limited questions that you wanted to ask him, I  
13 would allow him to return to the stand at this point,  
14 but if not, then I am going to excuse him.

15 MS. FOX: I have one question I would like to  
16 ask.

17 JUDGE MACE: All right, Mr. Cowles, you have  
18 still been sworn, you don't need to go back to the  
19 witness stand, I will allow Mayor Fox to ask you that  
20 question.

21

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

23 BY MS. FOX:

24 Q. You stated that D Street has a low volume of  
25 130 a day. What -- if that's considered a low volume,



0203

1 then what stops D or B and F or what stops B and F from  
2 being closed if they have 120 and 150? If these are all  
3 average of 120, 130, 150, what makes you choose D, and  
4 would this be -- would this make potential for closing  
5 the other two in the near future?

6 A. For one thing, I think every community should  
7 have access on both sides of the tracks one way or the  
8 other. If we were to close the other two, then  
9 basically you have divided your town in half. I don't  
10 think that would be acceptable. And the reason why I  
11 picked D Street was because it was the one in between,  
12 allowing you access from both sides of the community,  
13 would make it easier than if I closed F or B, and it  
14 seemed like B Street was more your main street going  
15 north and south and did have a higher volume, not by  
16 much, but it did have a higher volume. That's why I  
17 identified D Street as the one.

18 MS. FOX: Okay.

19 JUDGE MACE: Anything else, Mayor Fox?

20 MS. FOX: No.

21 JUDGE MACE: Okay, thank you.

22 All right, Mr. Thompson.

23 MR. THOMPSON: At this time, we would call  
24 Ahmer Nizam.

25 JUDGE MACE: Mr. Nizam, would you please

0204

1 raise your right hand.

2

3 Whereupon,

4

AHMER NIZAM,

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

6 herein and was examined and testified as follows:

7

8 JUDGE MACE: All right, please be seated

9

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

11 BY MR. THOMPSON:

12 Q. Mr. Nizam, would you please state your name  
13 again and spell it just for the record.

14 A. Yes, my name is Ahmer Nizam, first name is  
15 spelled A-H-M-E-R, last name is spelled N-I-Z-A-M.

16 Q. And you're employed by the Washington  
17 Utilities and Transportation Commission?

18 A. Yes, I am.

19 Q. And what's your position with the WUTC?

20 A. Grade crossing safety specialist.

21 Q. And what does that job entail?

22 A. It entails working on behalf of the  
23 Commission to administer and investigate petitions that  
24 are received by the Commission for grade crossing  
25 reconstruction projects, grade crossing signal upgrades,

0205

1 the opening of new crossings, and the closings of  
2 existing crossings, as well as providing technical  
3 assistance to rail section staff, railroad companies,  
4 and local agencies on requirements of the State at  
5 railroad crossings, and working on special projects  
6 related to railroad crossing safety in general.

7 Q. And are you familiar with the state and  
8 federal policies with respect to closure of at grade  
9 railroad crossings?

10 A. Yes.

11 Q. Have you testified in prior proceedings  
12 concerning petitions for closure of crossings?

13 A. Yes, I have.

14 Q. Is there a federal policy on closure of grade  
15 crossings?

16 A. Yes, there is. The federal policy on grade  
17 crossing closures comes through the Federal Railroad  
18 Administration and the Federal Highway Administration.  
19 Although neither of those agencies have the authority to  
20 close crossings, they continually encourage states,  
21 railroad companies, and local agencies to identify  
22 crossings that may be considered redundant, that is  
23 crossings where there are multiple crossings that serve  
24 the same area and one crossing can be closed and the  
25 traffic diverted to the other crossing as long as it can

0206

1 be done so efficiently and safely.

2 Q. I want to direct your attention to what's I  
3 guess been admitted as Exhibit Number 17. Can you  
4 explain what this document is, please.

5 A. This is the U.S. Department of Transportation  
6 Railroad Highway Grade Crossing Handbook, and the  
7 section of the handbook --

8 Q. Well, before you go on --

9 A. I'm sorry.

10 Q. What's the publication date of this?

11 A. The publication date is September 1986, and  
12 this is the second edition.

13 Q. Has there been -- is this the latest edition  
14 for this publication?

15 A. It is.

16 Q. Okay.

17 A. And this document is more or less a guidance  
18 document from the federal government for states and  
19 railroads and local agencies to use in treating railroad  
20 crossing safety in general, and the section that's  
21 included in this exhibit is that related to closure of  
22 railroad crossings.

23 Q. And is there a portion of this document that  
24 addresses this issue of redundancy or consolidation of  
25 nearby crossings?

0207

1           A.     On page 93 at the bottom it talks about  
2 criteria for closing crossings on a main line track,  
3 which is the type of track that runs through Sprague,  
4 and one of the recommendations is that at any main line  
5 section with more than five crossings within a one mile  
6 segment. I would like to point out that although it  
7 recommends crossings with five crossings within a one  
8 mile segment, that doesn't necessarily mean that there  
9 have to be five crossings within one mile for them to be  
10 considered redundant.

11          Q.     Are there considerations contained in this  
12 that might cut the other direction in a consolidation  
13 case? In other words, are there considerations about  
14 the community's use of the roadways that should be  
15 considered?

16          A.     Yes. On page 92 under the title closure,  
17 number 3, the end of the second paragraph, for example,  
18 states that:

19                   Alternative routes should be within a  
20                   reasonable travel time and distance from  
21                   a closed crossing. The alternate routes  
22                   should have sufficient capacity to  
23                   accommodate the diverted traffic safely  
24                   and efficiently.

25                   Another similar recommendation is on 93 at

0208

1 the very bottom at the start of a new paragraph, it  
2 says:

3 Another important matter to consider in  
4 connection with crossing closure is  
5 access over the Railroad.

6 JUDGE MACE: You're reading really fast.

7 THE WITNESS: Oh, I'm sorry.

8 JUDGE MACE: And I think it's probably hard  
9 for the reporter to capture what you're saying.

10 THE WITNESS: Okay.

11 JUDGE MACE: If you could just slow down a  
12 little bit.

13 THE WITNESS: Okay, I'll begin again.

14 A. (Reading.)

15 Another important point --

16 I'm sorry.

17 Another important matter to consider in  
18 connection with crossing closure is  
19 access over the railroad by emergency  
20 vehicles, ambulances, fire trucks, and  
21 police. Crossings that are frequently  
22 utilized by emergency vehicles should  
23 not be closed.

24 BY MR. THOMPSON:

25 Q. And as long as we're in this document, does

0209

1 this document address the type three barricade that was  
2 discussed earlier in Mr. Cowles' testimony?

3 A. It does on the very last page, which is page  
4 94, the type three barricade is shown in figure 17.

5 Q. Where would one look to find a state policy  
6 on closure of crossings?

7 A. Besides looking at Commission orders on  
8 previous crossing closures, RCW 81.53 states a statutory  
9 preference for all railroad crossings being grade  
10 separated, that is that the roads would pass over or  
11 under the tracks. Now having said that, the State also  
12 recognizes that it's not feasible because of the cost  
13 associated with those crossings to construct all  
14 crossings that way, so therefore it's necessary for the  
15 State or the Commission who is given authority to  
16 approve crossings to approve at grade crossings where  
17 they are proven to be a public necessity. And if you  
18 apply the same policy to existing crossings, it is that  
19 any existing crossing for which a need isn't  
20 demonstrated ought to be eliminated.

21 Q. Are there any other sources of where we could  
22 look for a state policy besides Chapter 81.53?

23 A. Yeah, the State has adopted a federal  
24 document, a federal publication called the Manual on  
25 Uniform Traffic Control Devices, and the Manual of

0210

1 Uniform Traffic Control Devices in Chapter 8, which is  
2 the chapter pertaining to railroad crossings, states  
3 that any crossing for which a need can not be  
4 established should be closed.

5 Q. Have you conducted an investigation of the  
6 circumstances surrounding this petition for closure of  
7 the D Street crossing?

8 A. Yes, I have.

9 Q. And can you tell me what was involved in your  
10 investigation?

11 A. Yeah, a review of all the materials filed in  
12 this docket, including the petition, the letters of  
13 objection, as well as a site review of the crossing, I'm  
14 sorry, the crossings on three separate occasions, and  
15 also a review of the general roadway system within the  
16 city of Sprague to get an idea of the alternate routes  
17 available, to get an idea of the distances one would  
18 have to travel to take those routes. I have also met  
19 with several representatives of the City of Sprague to  
20 discuss their concerns regarding the closures, and I  
21 have also attended a public meeting organized by the  
22 Burlington Northern Santa Fe Railway Company in I  
23 believe it was May of 2002.

24 Q. And from that investigation and the evidence  
25 you have heard so far at the hearing, I want you to give



0211

1 me your opinion as to the merits of first the, well,  
2 yeah, first the merits of closing F Street crossing and  
3 then D Street. Could you give me just an overview of  
4 your assessment of the merits of closing F Street?

5 A. Okay. Can I step up to this map projected on  
6 the --

7 Q. Yeah, you're referring to I believe what's  
8 marked as Exhibit 18?

9 A. That's correct.

10 Q. And before you do that, could you just  
11 describe what Exhibit 18 is.

12 A. Yes, Exhibit 18 is a map published by the  
13 Washington State Department of Transportation in 1976 of  
14 the town of Sprague.

15 Q. Okay. So it's not the most recent of maps, I  
16 guess?

17 A. No.

18 Q. Is it relatively -- is it accurate at this  
19 point?

20 A. The only changes I would like to make for the  
21 record are I believe what's identified as the police  
22 department in the southern part of the city is now the  
23 fire station, and the two crossings marked in blue, I'm  
24 sorry, they're not marked in blue on the exhibit, the  
25 two crossings which are second from the outermost

0212

1 crossings are now closed, and those are C Street and E  
2 Street.

3 Q. Okay. So with that, why don't you go ahead  
4 and give us your opinion concerning the potential  
5 closure of F Street.

6 A. Okay. If the F Street crossing were closed,  
7 the main concerns that Staff had were related to  
8 emergency vehicle access and pedestrian issues at the  
9 crossings. There's a bridge between D Street and F  
10 Street here. The bridge --

11 JUDGE MACE: And it's north of the railroad?

12 A. I'm sorry, yes, the bridge is north of the  
13 railroad tracks along Railroad Avenue. There's a load  
14 limit of six tons on that bridge, so a fully loaded fire  
15 truck which exceeds six tons legally wouldn't be able to  
16 use that bridge to access this area north of the tracks  
17 that is along F Street and H Street and Alder Street.

18 Sticking to the emergency response topic for  
19 a second, assuming that the trip originated from the  
20 fire station on the corner of C Street and Second,  
21 presumably the fire truck would drive north on C Street  
22 and then drive west on First Street and, excuse me, this  
23 is assuming that F Street is open, and then take a right  
24 turn on F Street to access the area that's served by F  
25 Street crossing.

0213

1           If F Street were closed, that same trip would  
2 be taken north on C Street, west on First, I'm sorry,  
3 north on C Street across D Street, and he wouldn't be  
4 able to proceed west on Railroad because of that load  
5 limit on the bridge, so that means you would have to  
6 drive north on D Street again, up and around making a  
7 left turn on an unidentified street on the very northern  
8 edge of the map.

9           JUDGE MACE: But south of the rubbish dump.

10          A. But south of the rubbish dump, and I would  
11 like to point out that that is a one lane dirt road, and  
12 all the way around south on H Street, east on Alder  
13 Street, and then to the destination if it was somewhere  
14 on Alder Street.

15          Q. And so that's -- is that problematic in your  
16 view?

17          A. Yeah, it's especially because of the fact  
18 that this northernmost east-west road is a one lane dirt  
19 road, and in the wintertime when there's snow on the  
20 road, that would exacerbate the emergency vehicle  
21 response times.

22          Q. Okay.

23          A. And then moving to the pedestrian issue, one  
24 of the concerns that the City had was that since the  
25 school is located along H Street, closing the F

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1 Street --

2 JUDGE MACE: I thought the school was located  
3 on F Street.

4 A. I'm sorry, the school is located on F Street,  
5 yes. One of the problems was that closing the crossing  
6 would lead to a trespassing problem there. So those  
7 were the two problems with closing F Street. And in  
8 order for the F Street crossing to be closed, if there  
9 were improvements to the bridge that would increase the  
10 load limits to accommodate a fully loaded fire truck,  
11 it's Staff's view that that may actually solve the  
12 problem along with a previous Burlington Northern Santa  
13 Fe Railroad Company proposal to put a pedestrian  
14 crossing there.

15 JUDGE MACE: At F Street.

16 A. At F Street, yes. But at this point, I  
17 understand that the costs associated with improving that  
18 bridge are restrictive to closure.

19 Q. So what's your ultimate conclusion about that  
20 proposal?

21 A. That F Street probably shouldn't be closed  
22 unless the bridge improvement would be implemented.

23 Q. Let's turn to the D Street closure proposal.

24 A. Okay.

25 Q. And let's start with the impact on emergency

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1 services.

2 A. Okay. Again, assuming that an emergency  
3 response trip originated at the fire station and went  
4 north along C Street, then headed west along First  
5 Street and then north again on D Street, and for the  
6 purposes of this analysis I'm going to use the points as  
7 let's say a trip originates on the corner of First  
8 Street and C Street. And the reason I say that is  
9 because regardless of which way you go, the truck is  
10 going to have to make a decision from that point either  
11 to go west or east, okay. It's about two tenths of a  
12 mile if you drive from the corner of First and C, go  
13 west on First and go -- no, wait, I'm sorry, go west on  
14 First and then go north on D to the corner of --

15 MS. FOX: D is closed.

16 A. No, no, this is under existing conditions  
17 here. So it would be two tenths of a mile if you  
18 originated from First and C.

19 Q. You mean the police department is just down  
20 from where you're now pointing, which is the corner of C  
21 and First, right?

22 A. C and Second.

23 Q. C and Second.

24 A. The reason I'm saying First and C is because  
25 that's a point --

0216

1 Q. Okay, but you really meant -- but you said I  
2 think a different cross street before, but really you  
3 mean First and C; is that correct?

4 A. Yes.

5 Q. Okay.

6 A. The distance traveled would be two tenths of  
7 a mile from First and C traveling west on First, north  
8 on D to the corner of D and Alder Street, which is this  
9 intersection here. This is Alder Street.

10 JUDGE MACE: And Alder Street is?

11 Q. Which is actually designated North First  
12 Street on the map.

13 A. On the map, that's correct.

14 Q. Okay.

15 A. Now if D Street were closed, from First and C  
16 again, one option would be to go east on First, go north  
17 on B, go west on Railroad, and then go north again to  
18 Alder Street, and that distance is three tenths of a  
19 mile, so it's a difference of one tenth of a mile. And  
20 I did time it, and the first option being that D Street  
21 is open and being able to use the D Street crossing took  
22 40 seconds.

23 Q. 40 seconds was the difference between the  
24 two?

25 A. No, no, I'm sorry, that took 40 seconds

0217

1 total. The second option going north on B Street,  
2 taking a left on Railroad Avenue, and going north on D  
3 Street took 60 seconds, so it's an average difference of  
4 20 seconds.

5 Q. Okay. Is that significant in your opinion?

6 A. In using prior testimony from emergency  
7 response officials and gauging this against that, it's  
8 my opinion that it is not a significant increase.

9 Q. Okay. Are there any generalizations you can  
10 make about the locations of houses, homes currently in  
11 that area north of the tracks?

12 A. Yes, this area to -- on the west side of town  
13 along -- north of the railroad tracks along F Street,  
14 Alder, and H Street, there are approximately eight homes  
15 there. And along D Street north of the tracks, there  
16 are approximately six houses that could be served by D  
17 Street that wouldn't be better served by B Street.

18 JUDGE MACE: That would or would not?

19 A. That would not be better served by B Street.  
20 So in my opinion from what I saw in my analysis, that  
21 there are approximately six houses off of D Street  
22 including those on some of the streets off that have run  
23 perpendicular to D and intersects with it that would be  
24 served by emergency vehicle responders from the --

25 Q. In other words, for six homes along D Street,

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1 there would be a -- there could be a longer emergency  
2 response time of 20 seconds?

3 A. Approximately, yes.

4 Q. Okay.

5 A. Under --

6 Q. Okay, I just wanted to clarify that. So  
7 continue though with your discussion of where the homes  
8 are located.

9 A. Well, when I ended by saying that there was  
10 six houses along D Street north of the railroad tracks,  
11 that's the extent of the information that I took, I  
12 gathered.

13 Q. Oh, okay. And there are homes on B Street as  
14 well, but that's not part of what you --

15 A. That's correct.

16 Q. Okay. Why don't you address next the  
17 potential impacts on let's just call it traffic  
18 circulation issues resulting from a closure of D Street.

19 A. Okay. What I explained about the emergency  
20 vehicle access would also apply to traffic circulation  
21 in general, except for the traffic that would  
22 specifically be meant for the grange, because the bulk  
23 of the customers that use the grange, as I understand,  
24 are semitrucks rather than cars and trucks that you  
25 would expect to be parked at a residential building or



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1 home.

2 Q. Do you have a sense of what the traffic flow  
3 is going to the grange in the existing situation?

4 A. Yes, the way I understand it, B Street is the  
5 designated truck route, so when a truck would come south  
6 on -- I forget the name of the highway.

7 Q. 23.

8 A. 23, he would make his way over to B Street,  
9 which is just west of 23, go north on B Street, cross  
10 the railroad tracks, take a left on Railroad Avenue  
11 where the grange is located on the corner of Railroad  
12 Avenue and D, use the facilities at the grange, and then  
13 exit by taking a left on D Street and out of town that  
14 way.

15 Q. Okay. And assuming the closure of D Street,  
16 do you see any alternatives to that flow of traffic  
17 using the grange?

18 A. A couple of things. Earlier testimony by  
19 Mr. Cowles from Burlington Northern Santa Fe mentioned  
20 that the bungalow would be removed, and I'm not exactly  
21 sure the extent to which the radius would be widened,  
22 but it may well be that it would be sufficient to  
23 facilitate a U-turn for many of the trucks that use the  
24 grange. And the other alternative that I haven't really  
25 heard any argument as to why this isn't a possibility is

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1 for trucks to turn from the grange to turn north on D  
2 Street and then east on Alder Street and then south on B  
3 Street. And, you know, one possibility is that perhaps  
4 the City could designate that as the truck route. I  
5 haven't heard any arguments to suggest that that's not a  
6 possibility.

7 Q. Okay. So given what information you have  
8 been able to gather and what you have heard through  
9 testimony so far, do you have an opinion about the  
10 advisability of closing D Street under the current  
11 circumstances with the grange facility continuing to be  
12 located at its present location on D Street?

13 A. Okay. I think it's important to consider the  
14 closure's impact on the grange first of all, because it  
15 is a significant source of income to the community. So  
16 having said that, if it can be established that the  
17 closure can occur and trucks that use the grange need to  
18 make their necessary maneuvers or can otherwise get to  
19 and from the highway without being terribly  
20 inconvenienced, then that would suggest that closure can  
21 occur without a significant first impact on the  
22 community.

23 Q. And what would be the result if the grange  
24 were to move to the new location that's been discussed  
25 in previous testimony?

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1           A.     Well, I don't fully understand the extent of  
2 the move.  If the move is such that all of the grange's  
3 commercial business, that is all of the business that is  
4 visited by customers, moves south of the railroad tracks  
5 and the remaining facility north of the tracks is a  
6 storage facility that wouldn't be necessarily accessed  
7 by customers, then the same argument doesn't apply,  
8 because there is still access to the grange for  
9 deliveries and things of that nature.  But the reason  
10 that the representatives of the grange and of the City  
11 are claiming that the crossing would hurt the grange is  
12 that the inconvenience of having to drive extra distance  
13 would actually lead customers to use alternate  
14 facilities outside of town.

15          Q.     In other words to go to competitors?

16          A.     That's what I believe, yes.

17          Q.     Okay.  And do you have any independent  
18 knowledge of that, whether that might be the case?

19          A.     No, not anything outside of discussions with  
20 representatives of the grange.

21          Q.     Okay.  Why don't you summarize then and  
22 provide your recommendation, couching it if you need to  
23 in terms of what we may hear in further testimony.

24          A.     Okay.  I think Staff would recommend that D  
25 Street can be closed without any adverse, excuse me,

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1 significant impacts to the community if it can be  
2 established that trucks accessing the grange can use  
3 Alder Street to the north of Railroad Avenue as an  
4 alternative route without terribly inconveniencing  
5 anybody. Because it seems that that's not -- I haven't  
6 done a measurement of the distance around what I'm  
7 suggesting, going north on D, going east on Alder, and  
8 going south on B, but from just a general observation,  
9 it appears that it would take less than 30 seconds.

10 Q. Okay.

11 A. And if that's the case, I wouldn't consider  
12 that a significant adverse impact.

13 Q. Would you recommend the imposition of any  
14 kind of condition in an order?

15 A. If it is argued, or I'm sorry, if it's  
16 demonstrated that it's not a possibility to use Alder  
17 Street and trucks can't make a turn even with the  
18 bungalow gone from the corner of, I'm sorry, from the D  
19 Street grade crossing, then it would be possible to  
20 recommend a closure based on the moving of the grange  
21 south of the railroad tracks.

22 MR. THOMPSON: All right, thank you very  
23 much, Mr. Nizam.

24 JUDGE MACE: Mr. Kinerk next.

25

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

2 BY MR. KINERK:

3 Q. I just have a couple of questions for  
4 clarification. First, I'm going to start with Exhibit  
5 Number 17, which is the Railroad Highway Grade Crossing  
6 Handbook that counsel had asked you about. I believe  
7 that your testimony referenced consideration of  
8 redundant crossings as being one factor to look at in  
9 potential consolidation of a crossing; is that right?

10 A. That's right.

11 Q. And would you agree that three crossings  
12 specifically in this case with D Street sitting in the  
13 middle and B Street and F Street sitting respectively on  
14 each side approximately 600 feet away, would in your  
15 opinion D Street be a redundant crossing?

16 A. Looking at all three of the crossings, I  
17 wouldn't consider at this point F Street and D Street to  
18 be redundant relative to each other because of the  
19 restriction imposed by the bridge, but it appears that  
20 looking at B Street and D Street together that B Street  
21 would be able to handle the traffic flow currently  
22 experienced at D Street.

23 Q. That was my next question. Looking on page  
24 92 of Exhibit 17 and referencing under the section  
25 entitled closure, paragraph 2, consideration should be

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1 given to:

2 Alternative routes should be within a  
3 reasonable travel time and distance from  
4 a closed crossing.

5 Would you agree with me that if the  
6 consolidation of D Street is undertaken that B Street  
7 and F Street would represent alternative routes within  
8 reasonable travel time and distance from D Street  
9 crossing?

10 A. Based on previous testimony I have heard in  
11 other cases from traffic engineers and emergency  
12 response officials, I would say yes.

13 Q. And looking at the follow-up sentence to that  
14 section under closure where it reads:

15 The direct capacity to accommodate the  
16 diverted traffic safely and  
17 efficiently --

18 JUDGE MACE: Where are you, counsel?

19 Q. (Reading.)

20 The alternative routes should have  
21 sufficient capacity to accommodate  
22 diverted traffic safely and efficiently.

23 Which is the following sentence. Do you see  
24 that, sir?

25 A. Yes, I do.

0225

1 Q. Would you agree with me that B Street and F  
2 Street represent sufficient capacity to accommodate  
3 diverted traffic safely and efficiently if the D Street  
4 grade crossing was consolidated?

5 A. Yes.

6 Q. In looking at page 93 of Exhibit 17 of the  
7 Railroad Highway Grade Crossing Handbook, sir, on the  
8 last paragraph on the left side, the last sentence reads  
9 as follows:

10 Crossings that are frequently utilized  
11 by emergency vehicles should not be  
12 closed.

13 Do you see that?

14 A. Yes.

15 Q. Have you in your contact with the townspeople  
16 of the City of Sprague or from any other officials  
17 learned that the D Street crossing has been frequently  
18 used by emergency vehicles?

19 A. I don't know any information that suggests  
20 that it has been frequently used. However, I do know  
21 that it is designated as the primary route to the north  
22 side of the City.

23 Q. And if I understand your testimony with  
24 regards to alternative routes for emergency vehicles or  
25 for vehicle traffic, that if there was a consolidation

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1 of D Street crossing, emergency vehicles could access  
2 residences north of the grange by either taking a left  
3 at the church on Alder Avenue and intersecting D Street  
4 or taking a left just beyond the B Street crossing and  
5 proceeding down Railroad Avenue and then right at D  
6 Street; is that correct?

7 A. That's correct.

8 Q. And either of those routes based on your  
9 timing has added a total of 20 seconds additional  
10 response time; is that correct?

11 A. Approximately 20 seconds.

12 Q. And you would agree with me and I believe  
13 your testimony was that additional 20 second response  
14 time would not be or not significantly affect the  
15 ability to safely and efficiently respond to emergency  
16 vehicles?

17 A. In my experience, an extra time of 20 seconds  
18 is not considered significant.

19 Q. One of the considerations that I believe you  
20 discussed was the -- in terms of commercial traffic at  
21 the grange supply facility was the Railroad's suggestion  
22 of removal of the signal bungalow and thereby opening  
23 increasing radius for turning of trucks. Have you  
24 considered the prospect of trucks merely taking a right  
25 on D Street, backing up and reversing their route and



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1 proceeding east to B Street and proceeding back out that  
2 way?

3 A. When I discussed the options that truck  
4 drivers have with representatives of the grange, I  
5 believe that the extra effort that that would entail  
6 would actually be enough to potentially lead customers  
7 to find competitors or to visit competitors.

8 Q. Now again, I know you are a rail specialist  
9 and not a commercial truck driver, but assuming for a  
10 minute the additional maneuvers necessary between the  
11 turning radius of your commercial semitruck so it's  
12 going back the other way or merely turning it around,  
13 would you agree with me that those types of maneuvers  
14 are done probably on a daily basis by professional truck  
15 drivers?

16 A. Yes.

17 Q. Would you agree with me those are the type of  
18 maneuvers that persons who possess commercial driver's  
19 license or receive a CDL on an annual basis are expected  
20 to be able to perform?

21 A. Yes.

22 Q. And would you agree with me that in order to  
23 perform that type of maneuver, we are talking about  
24 possibly an additional perhaps 30 to 60 seconds in order  
25 to effectuate that type of maneuver?

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1           A.     For a single trailer, yes.  But one of the  
2 other considerations that was stated in my discussions  
3 with representatives of the grange is that double  
4 trailers are also frequent visitors of the facilities,  
5 and it would be especially an extra burdon on them.

6           Q.     Okay.  Now is it your testimony that it is  
7 your belief that this additional maneuver, be it a 60  
8 second maneuver or whatever, would have an adverse  
9 business effect on the grange facility?

10          A.     I can't answer that, because I don't know the  
11 specifics about who the competitor or competitors are,  
12 including proximity to the grange and otherwise, what  
13 they would have to offer that the grange doesn't.

14          Q.     Okay.  Were you provided a copy of Exhibit  
15 Number 22, which was supplied by Sprague Grange Supply  
16 in which they indicate that they intend to move their  
17 hardware store, their long-term goal is to move by March  
18 1st --

19                   JUDGE MACE:  I'm sorry, you're reading very  
20 quickly, and I don't know where you are.

21          Q.     Exhibit 22, paragraph 3.

22          A.     Yes, I have it in front of me.

23          Q.     And at least from your discussions with some  
24 of the local townspeople here, it is the expectation  
25 that the grange supply store would be moved to a

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1 different facility than it currently is; is that right?

2 A. That's right.

3 Q. Is it your understanding in general from  
4 talking to townspeople that the location of the Chevron  
5 station in Exhibit Number 1 is the proposed area where  
6 that would be relocated to?

7 A. Yes.

8 Q. Now assuming that happens, that would remove  
9 all of the considerations or concerns that you have in  
10 terms of additional inconvenience for commercial truck  
11 drivers to turn their trucks or semis around, right?

12 A. As long as the vehicles that we're talking  
13 about that would be affected would be diverted to that  
14 new location.

15 Q. And I believe that there is -- will be  
16 testimony from the City that the chemical component of  
17 the grange supply store may remain indefinitely at its  
18 current location. You had testified a moment ago that  
19 your recommendation upon consolidation of the D Street  
20 crossing would consider closure upon moving of the  
21 grange facility. I assume that you meant that moving  
22 the facility relative to the non-chemical component.

23 A. I'm not sure exactly what chemical component  
24 means, and I expect that the City in their testimony  
25 will clear that up. But just for clarification, what I

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1 meant was that the commercial or the business  
2 interaction part of the grange's activities, if they all  
3 moved to that southern location, that would be  
4 acceptable in terms of not affecting the income or the  
5 potential for the grange to serve those people.

6 JUDGE MACE: I guess I'm still not clear  
7 about what your position is on that. If part of the  
8 operation of the grange moves to the Chevron station and  
9 there's another part remaining, the chemical part, that  
10 still uses or requires the delivery and pick up from  
11 large trucks, including double truck trailers, if that  
12 does not move, what is your position then?

13 THE WITNESS: Well, I'm still not clear.  
14 This whole idea of the chemical component staying, I  
15 don't know if that means that the fueling facility would  
16 remain or if they just need to use that facility as a  
17 storage facility.

18 JUDGE MACE: Even if it's used as a storage  
19 facility, is your position the same if that storage  
20 facility requires a truck trailer to come in there and  
21 deliver goods for storage?

22 THE WITNESS: Yes, because if it's a storage  
23 facility, then the trucks that would be coming into the  
24 grange would basically be operating on a basis that  
25 they're performing a service, and they're not

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1 patronizing the grange. I mean they're not customers of  
2 the grange, so they wouldn't take their business  
3 elsewhere, because they're coming to make a drop off. I  
4 hope that clarified.

5 JUDGE MACE: Yes, I just wondered what you  
6 were thinking about in terms of this indication that was  
7 made in Exhibit Number 22.

8 BY MR. KINERK:

9 Q. Again, I know that you are a railroad  
10 crossing expert and not a commercial truck driver, have  
11 you in other instances in which you have testified or  
12 investigated potential petitions for consolidation of a  
13 crossing conferred with trucking experts to determine  
14 the appropriateness of various type of maneuvers, i.e.,  
15 the turning radius to turn your commercial driver truck  
16 around to do a 180 or turning it up to D Street in a  
17 northerly position, backing it out, and taking it back  
18 out of B Street; is that something that falls within the  
19 necessity to investigate or something you would refer to  
20 with regard to an ultimate?

21 A. This is the first proceeding that I have been  
22 involved with that has taken the turning movements of  
23 trucks into consideration.

24 Q. Okay. And if I understood your testimony  
25 with regard to alternative routes, you have not been

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1 presented with any type of testimony or evidence in your  
2 contacts with the City that if a commercial vehicle  
3 could proceed out of the grange north on D Street,  
4 taking a right on Alder, and then intersecting with B  
5 Street that that could be done without significant  
6 impact?

7 JUDGE MACE: That's a really long question.

8 MR. KINERK: It is.

9 JUDGE MACE: I'm wondering if you would try  
10 to do that a little differently.

11 MR. KINERK: All right.

12 BY MR. KINERK:

13 Q. I believe one of your recommendations in  
14 support of the petition for closure of B Street would be  
15 if D Street can be closed without significant impact as  
16 long as trucks can use Alder Street without I think your  
17 words were without terrible inconvenience, and I'm  
18 assuming that you haven't heard any testimony either  
19 today or from your contacts with the City that would  
20 lead you to draw any other conclusion?

21 A. I have not.

22 MR. KINERK: Okay, thank you, sir, that's all  
23 the questions I have.

24 JUDGE MACE: Mayor Fox.

25

0233

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

2 BY MS. FOX:

3 Q. In consideration with your -- you were saying  
4 that you would recommend the D Street be closed versus F  
5 Street, if an emergency vehicle left from the City, from  
6 the fire department and it had to get up to the point of  
7 F and between F and G, if D Street was closed, they  
8 would have to either go up and all the way around, if  
9 they took Alder across --

10 JUDGE MACE: Again --

11 MS. FOX: Okay.

12 JUDGE MACE: I hate to keep harping on you  
13 about this, but with regard to we need to have you  
14 indicate streets where the person would travel if they  
15 were going to do this trip that you're suggesting.

16 MS. FOX: Okay.

17 BY MS. FOX:

18 Q. On the Exhibit 18, if you were to leave from  
19 the fire department and you were going to go to the  
20 north part of town between F and G, if D Street was  
21 closed, your alternative route would have to be going  
22 from the fire department up D to First, go west on First  
23 up to B Street going north --

24 JUDGE MACE: Well, you just said going west  
25 on First?

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1 MS. FOX: West on First, oh, I'm sorry, east  
2 on First.

3 JUDGE MACE: East on First.

4 BY MS. FOX:

5 Q. East on First, North on B, if an emergency  
6 vehicle had to make a left, which would be west on  
7 Alder, there's a very, very sharp corner down there  
8 towards that that they would have -- I mean so this  
9 would definitely slow down the response. So they would  
10 -- at the end of Alder when they get to the point of  
11 going north on D Street, they would have to almost come  
12 to a stop to make that corner at Alder and D going  
13 north, and then they would have to go up north and then  
14 make a left, which would be west on -- I'm not sure of  
15 the top street up there.

16 JUDGE MACE: It's on the same parallel as  
17 North Third, so let's call it that for this purpose.

18 Q. Where if they were to leave -- if they had D  
19 Street was open, they could leave from the fire  
20 department going north on D straight up north to North  
21 Third and across. So it seems like if you're going to  
22 -- if you're going to use the 20 second response, do you  
23 feel that you should check where there would be a  
24 farther point to give it a proper analysis of stating  
25 the 20 seconds? I mean you took one of the closest



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1 points and used an example. Don't you feel that maybe  
2 you should try some alternatives like for your furthest  
3 points if you're going to use a 20 second response time  
4 difference?

5 A. The reason I used those two intersections was  
6 because it seemed that from the originating intersection  
7 I used, which was First and C, that's where a fire truck  
8 would either have to make a decision to turn right to  
9 use D Street or left to use F Street, so that's why I  
10 used that intersection. And I ended at the corner of --  
11 north of the tracks at the corner of Alder and D Street.  
12 And I think my number was actually 57 seconds, but I  
13 added the 3 seconds to make it 60 seconds for that trip  
14 just to take into consideration maybe the slow turns and  
15 things like that. But again, the reason I used those  
16 two intersections was because even if he were to travel  
17 north on D Street, he would end up at that same  
18 location, facing north however, at the corner of D and  
19 Alder, and then proceed to that same location north of  
20 that that you described.

21 Q. Don't you think that it would be fair to make  
22 -- to take that and look at it in Exhibit 17, in Exhibit  
23 18 and figure out what would be the furthest point and  
24 try to figure what the response time difference would be  
25 on that? Because if you were to leave the fire

0236

1 department going the route up D Street to First up D  
2 Street north, west on or east on First, north on B  
3 Street and taking Alder east and having to almost come  
4 to a stop to make that sharp curve to go north on D  
5 Street, there's going to be a lot of response time in  
6 there that you're going to lose, and you may double your  
7 response time in that period of time. So using the  
8 closer locations doesn't seem fair, and I'm just  
9 wondering if you -- do you feel that you were fair by  
10 using the shorter location rather than looking at the  
11 map and trying to figure out what would be the worst  
12 scenario?

13 A. I think the point I was trying to make was  
14 just to give you an idea of the difference in the  
15 response times, and yeah, I agree it would take perhaps  
16 twice as long or even longer to get to the farthest  
17 point. But the difference in seconds, which I said was  
18 around 20 seconds, would be, it seems to me it would be  
19 the same if you -- so say it took two minutes from -- to  
20 get from the fire department to the farthest house, you  
21 know, up there. If you used the alternate route, it  
22 would take two minutes and 20 seconds is the point I was  
23 trying to make.

24 Q. Do you have any medical experience?

25 A. As an EMT or as a fireman, no, I don't.

0237

1 Q. Okay.

2 A. Besides being first aid trained.

3 Q. So you don't know the -- so you wouldn't know  
4 the difference between somebody that was having a heart  
5 attack, you wouldn't know the different response time of  
6 20 seconds and 40 seconds or 50 seconds would make --

7 A. Oh, I'm --

8 Q. -- on taking a longer route? Because you  
9 measured this other shorter route; what if they had to  
10 take the other, the longer route to that point?

11 A. There's no doubt that 20 seconds is an impact  
12 and is an adverse impact. But what I had testified was  
13 in -- when I have heard expert testimony from emergency  
14 response officials and medical services officials and  
15 law enforcement officials, that they have always  
16 considered an increase in time in terms of minutes and  
17 not seconds.

18 Q. Do you think that it would be fair that maybe  
19 that you should go and take the furthest point and try  
20 to give us an example on that rather than just on the  
21 shorter point, use more than one example; don't you  
22 think it would be --

23 JUDGE MACE: Well, I feel like I need to  
24 intervene here, because I can ask the witness to answer  
25 the question again, but I think that he has already made

0238

1 -- the point that he's making is that using either  
2 alternative the difference is 20 seconds to get to the  
3 farthest point.

4 Am I correct in that, Mr. Nizam?

5 THE WITNESS: Yes.

6 JUDGE MACE: So he has already answered that  
7 question.

8 BY MS. FOX:

9 Q. But you do feel that it would take twice as  
10 long to get up to that point up there if somebody had an  
11 emergency between F and D on the north part of town?

12 A. From the point where I left off?

13 Q. Yes, from that point.

14 JUDGE MACE: At that point where you left off  
15 is Alder and D Street, correct?

16 A. I do agree, it could take twice as long.

17 Q. So you agree that it would be more than 20  
18 seconds if somebody was up between F and G having a  
19 heart attack?

20 JUDGE MACE: I don't want to characterize the  
21 witness's testimony but -- go ahead, Mr. Nizam.

22 A. Yeah, it wouldn't take 20 seconds, it would  
23 take longer than 20 seconds.

24 JUDGE MACE: Let me make sure I'm  
25 understanding what's going on here. You're not saying

0239

1 that it would take twice as long to get from the fire  
2 department to between F and G Street by using the  
3 alternate route.

4 THE WITNESS: I'm not saying that.

5 JUDGE MACE: What you're saying is it would  
6 take twice as long no matter what route --

7 THE WITNESS: Yes.

8 JUDGE MACE: -- you took to get to F and G  
9 Street.

10 THE WITNESS: Right.

11 JUDGE MACE: With the addition of 20 seconds  
12 if you used the alternate route. Do you see what he's  
13 saying?

14 MS. FOX: Maybe he didn't understand what I  
15 was saying.

16 JUDGE MACE: What he said is, just for  
17 clarity, this is very unusual, and it's only because  
18 you're unrepresented, and if you have any objection  
19 about this, I'm happy to entertain it, but I just want  
20 to make sure I understand too. Okay, what he's saying  
21 is from here to here is twice as long as from here to  
22 here except that if you use this alternate route because  
23 the D Street is closed, it will take you an additional  
24 20 seconds to get to here, okay. So that if it takes 2  
25 minutes to get from here to here using D Street, it will

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1 take 2 minutes and 20 seconds to get from here to here  
2 using the alternate route, so that the only additional  
3 time is the 20 seconds. That's his testimony. I'm not  
4 saying -- I'm not characterizing it one way or the  
5 other, but that's what his testimony is.

6 Mr. Nizam, is that right?

7 THE WITNESS: That's correct.

8 MS. FOX:

9 Q. Okay, maybe I need to see what example --  
10 where he was using the example the first time then.  
11 Evidently I misunderstood something in that. Maybe  
12 that's what happened.

13 A. The times I came up with were 40 seconds and  
14 60 seconds and starting at the intersection of C and  
15 First. And again, the reason I used that intersection  
16 was because when the fire truck or ambulance comes out  
17 of the facility there, once he's at that intersection,  
18 he can either go left or right. If he goes left on  
19 First, he can proceed north on D to this point at D and  
20 Alder Street, and that would take him approximately 40  
21 seconds to do that from the corner of First and C. If  
22 he decided to make a right turn on C and then, I'm  
23 sorry, right turn on First and go north on B until Alder  
24 Street and make a left turn on Alder Street, that would  
25 take him approximately 60 seconds, and the difference

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1 between those two is 20 seconds.

2 Q. Okay. And the reason why I was asking about  
3 the difference is because if you were making a left on  
4 First and going down and going north on D, you would  
5 have a straight route each way you're going. If you're  
6 going the other direction, you don't have a straight  
7 route all the time, you're going to have to come to  
8 almost a complete stop with those vehicles at the point  
9 of Alder. Do you understand what I --

10 A. Yeah.

11 Q. Okay. And then proceed north on D Street to  
12 go up to F and G.

13 A. Correct, and I tried to compensate for that  
14 by adding 3 extra seconds to that time, which was  
15 originally 57 seconds, and I rounded it up to 60 seconds  
16 to try to at least consider some of the additional  
17 turning movements involved there.

18 Q. Okay. Do you -- do you not feel -- do you  
19 feel that or do you think that we don't fall under  
20 another important matter in connection, this is in  
21 Exhibit 17, do you feel that we don't fall under the  
22 category of another important matter to consider in  
23 connection with the crossing closure is access for the  
24 railroad by emergency vehicles, ambulance, fire trucks,  
25 and police, crossings that are frequently utilized by

0242

1 emergency vehicles should not be closed?

2 A. I think one of the things that's implied in  
3 this is that if there is an alternate route available  
4 for the emergency vehicle, that should also be  
5 considered.

6 Q. So you --

7 A. In this assessment.

8 Q. So you feel that if that's our main route to  
9 get up to the north side, you feel that we should take  
10 our main route and take an alternative?

11 A. Weighing it against another safety benefit of  
12 closing a crossing is the reason that alternate routes  
13 are considered, yes.

14 Q. Did you, whenever you were doing the  
15 investigating, did you contact the Ritzville grain  
16 growers?

17 A. No, I did not.

18 Q. Did you contact the Reardon grain growers?

19 A. I have had conversation with somebody from  
20 the Reardon grain growers. He had submitted an  
21 objection letter to us, and when I was in Sprague  
22 earlier this year, I contacted him, I can't remember  
23 what his name is, and offered to meet with him at his  
24 facility, and he declined stating that his letter was  
25 indicative of all he had to say basically.



0243

1 Q. Did he feel that we should close the  
2 crossing?

3 A. He was -- he was -- he -- his letter, sorry,  
4 objected to the closure of the crossing.

5 Q. Whenever you were doing your investigation,  
6 did you consider the fact that we have proposed  
7 businesses and residents up on the -- that one of the --  
8 up on the north side of town, north side of the tracks?

9 A. I was not aware that businesses were proposed  
10 on the north side of the tracks. I was made aware that  
11 the north side of the tracks was developing  
12 residentially.

13 Q. Would this make an impact if we had proposed  
14 that possibly would be going up in that area, we are  
15 forming -- would it make an impact if we were proposed  
16 to put businesses up on the north side of town on the  
17 tracks?

18 A. Typically in the proceedings I have been  
19 involved with, the Commission and the Staff can only  
20 consider existing circumstances or something that's  
21 immediately proposed and not something that may or may  
22 not happen.

23 Q. Okay. You said that you -- do you feel that  
24 there -- that a diesel truck could actually turn in  
25 front of the grange?

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1           A.     Without doing an actual analysis to that  
2 effect, I can't answer that, meaning that, you know,  
3 measuring the actual radius available to make a turn and  
4 the required radius for the truck to make a turn.

5           Q.     I thought your testimony was that you felt  
6 that they could make a turn in there if you were to  
7 remove --

8           A.     I believe I said it was -- it is possible,  
9 but I don't know if it's a certainty.

10          Q.     Do you realize that if you take the trucks  
11 and you reroute them from the grange going north on D  
12 Street going west -- east on Alder that -- and then B  
13 Street going north that you're going to run them right  
14 past the little league field and also the church?

15          A.     What I had in mind was them actually going  
16 south on B Street, because currently they go south on D  
17 Street to go out of town, so that's what I was -- I had  
18 envisioned.

19          Q.     Okay. You were going to go south on D?

20          A.     I'm sorry, south on B Street. You were  
21 suggesting that if they take a left on B Street from  
22 Alder they would go past that little league field.

23          Q.     The little league field is right there by  
24 Alder and B.

25          A.     Okay. What I had envisioned was them

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1 actually turning right on B and going south.

2 Q. So they would be -- okay, I'm not under -- so  
3 they would actually be going west on Railroad Avenue and  
4 going south on B?

5 A. West on Railroad Avenue is what I understand  
6 that they do currently.

7 Q. Yes, but if they're coming -- if they're  
8 coming off of a -- off of Highway 23 and they're going  
9 to be going -- if they come -- if they go -- they're  
10 going south on 23, they make a -- they go down near the  
11 Chevron and they make, which is Fourth Street, they go  
12 west, and they go north on B up to Railroad Avenue, then  
13 they go west on Railroad Avenue, then you've got them  
14 parked right in front of the grange, where are they  
15 going to go from that point?

16 A. To make a right on D Street and then another  
17 right on Alder Street and another right on B Street.  
18 And the reason I assumed they would be going south on B  
19 Street was because B Street is assigned as the  
20 designated truck route, so I thought that that would be  
21 logical that they would stick to that designated truck  
22 route.

23 Q. Do you realize when they come out of Alder  
24 that they are right at the little league field?

25 A. The little league field being on the east

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1 side of --

2 Q. Yes.

3 A. I have seen the little league field there,  
4 yes.

5 Q. Does that concern you with safety as far as  
6 all the children being up there?

7 A. It is something to consider. I'm not -- I'm  
8 not sure that I know that the little league field is  
9 directly connected to B Street, so I mean you're saying  
10 that there are a lot of kids on B Street usually?

11 Q. Yes. And we've also got a museum going, do  
12 you realize that we've got a museum going right there  
13 also?

14 A. No, I did not know that.

15 Q. Okay. Have you considered the hill at Alder  
16 and B if the truck was to go down there with three or  
17 four inches, five inches of snow on there, do you  
18 realize the impact it would have on that truck and  
19 trailer?

20 A. Can you repeat the question one more time?

21 Q. Do you realize that if they go up -- if they  
22 go west or east on Alder and then they go south on B  
23 Street, when they leave Alder on B going south there is  
24 a very sharp incline right there, and if there's snow on  
25 the ground, that tractor and trailer will probably wind

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1 up probably on the railroad?

2 A. I was aware of the grade, yes.

3 Q. You don't feel that it would have a large  
4 impact on that, if a truck, tractor trailer had to go  
5 that route and didn't have the choice?

6 A. To use D Street, the choice to use D Street,  
7 is that what you're characterizing?

8 Q. At this point right now if they have D Street  
9 -- I mean if they have D Street open, they can come --  
10 they can come back south across D Street and not have  
11 that big grade on Alder and B.

12 A. That's correct.

13 Q. But if they're shifted up to Alder and E,  
14 Alder and B, when they come down that incline down  
15 there, they will wind up on the railroad tracks. That's  
16 at the bottom of the tracks.

17 MR. THOMPSON: Your Honor, I think I'm going  
18 to object, because there's a lot of hypotheticals. I'm  
19 sorry to do this because I know it's difficult to do  
20 this, but there's a lot of assumption in the question  
21 by, you know, steep grade and so forth, and it hasn't  
22 even been established during testimony.

23 JUDGE MACE: If you watch TV, Law and Order,  
24 it assumes a fact not in evidence, and essentially what  
25 you're doing in your question is you're testifying, and

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1 what we need to have you do is ask Mr. Nizam questions.  
2 And if you want to testify about that, that's another  
3 matter. But for him, you need to ask questions about  
4 his testimony and trying to elicit facts and not testify  
5 in the question. Do you see what I'm trying to get at  
6 here? And I know that it's hard, and I understand that  
7 you're representing yourself, and I don't want to make  
8 you nervous or uncomfortable, but we need to try to make  
9 the record as fair as possible.

10 MS. FOX: Appreciate that.

11 BY MS. FOX:

12 Q. Was it part of your consideration when you  
13 did your investigation having snow on the ground and  
14 having to go up a large ingrade or down a large, sharp  
15 incline; was that part of your consideration?

16 A. It was part of my consideration when I was  
17 looking at the west end of town but not the east end of  
18 town, not along D Street.

19 Q. Okay. Is it your recommendation that if they  
20 do close D Street that they put a pedestrian crossing  
21 across it?

22 A. Across D Street?

23 Q. Yes.

24 A. In my investigation, I have discovered that  
25 there is a pedestrian need for F Street, and I'm sure

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1 that pedestrians use D Street, but I have not heard it  
2 suggested that D Street is, well, would require a  
3 pedestrian crossing.

4 Q. Do you realize -- have you been -- have you  
5 watched how many people actually walk across that  
6 crossing during the day?

7 A. I have never observed over an extended period  
8 of time to watch for pedestrians.

9 MS. FOX: Okay, I don't think I have any  
10 other questions.

11 JUDGE MACE: Anything further, Mr. Thompson?

12 MR. THOMPSON: No.

13 JUDGE MACE: Okay.

14 MR. KINERK: Your Honor, I just have one  
15 question.

16

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

18 BY MR. KINERK:

19 Q. Not to beat a dead horse, but I just want to  
20 make sure that the record is clear, and I want to direct  
21 your attention if I could, sir, to Exhibit Number 4-F,  
22 which is one of the subsection photographs showing B  
23 Street looking in a northerly direction. Tell me when  
24 you've had a chance to look at that.

25 A. Okay, I'm looking at it.

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1 Q. On the right-hand side of that particular  
2 photograph is the church; is that right?

3 A. Yes.

4 Q. And looking at the transparency and the  
5 alternative route that you have suggested of going north  
6 on D Street, taking a right on Alder Street, and then  
7 intersecting B Street, I believe that you were asked  
8 questions about the fact that there is a church and a  
9 ball field right there. Do you remember those  
10 questions?

11 A. Yes.

12 Q. And do you see that in looking at photograph  
13 4-F that there is a parking lot, concrete parking lot in  
14 front of the church; can you see that, sir?

15 A. Yes.

16 Q. And then east of that is where the actual  
17 ball field is; were you aware of that?

18 A. Yes.

19 Q. Okay. And so the ball field is not parallel  
20 or I should say adjoining B Street but, in fact, is a  
21 distance off of B Street; were you aware of that?

22 A. Looking at the photograph, it appears that  
23 way.

24 Q. And although this photograph doesn't -- see,  
25 I don't know in terms of your drives through the various



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1 routes specifically if you were aware that the play  
2 field is fenced, and by that I mean there is a fence  
3 separating the parking lot for the church and the actual  
4 play field. Were you aware of that?

5 A. I was not aware of that.

6 Q. And if I understood your testimony, sir, you  
7 also indicated that B Street is designated as a truck  
8 route; is that correct?

9 A. According to the signs along B Street, that's  
10 what I understand.

11 Q. And in terms of a truck route, that does not  
12 end at the intersection of B Street and Alder, but, in  
13 fact, that truck route would be able to proceed in a  
14 northerly direction intersecting I assume Prospect  
15 Street leading out to State Route 23, if you know?

16 A. The extent of the signs I have seen are up to  
17 Railroad Avenue.

18 MR. KINERK: All right, thanks very much.

19 JUDGE MACE: Ms. Fox.

20

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

22 BY MS. FOX:

23 Q. Do you realize that whenever they have church  
24 or a little league game that there's always a parking  
25 lot full of people and children walking around and

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1 adults walking around, of course, when they have church  
2 or --

3 JUDGE MACE: You know, we're getting into  
4 that same situation.

5 MS. FOX: Okay.

6 MR. THOMPSON: I have a redirect.

7 JUDGE MACE: Go ahead, Mr. Thompson.

8

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

10 BY MR. THOMPSON:

11 Q. Mr. Nizam, is your understanding just looking  
12 at this Exhibit 17 I think it is that trucks coming,  
13 under the current circumstances, coming out of the  
14 grange here proceed down D Street and how far they --  
15 what's your understanding of how far they go before  
16 turning back to the east?

17 A. My understanding is based on an assumption  
18 that they use First Street.

19 Q. First Street?

20 A. But that may not be the case.

21 Q. Is there a city park on this block?

22 A. There is.

23 Q. And does it encompass the whole block?

24 A. I believe it does.

25 Q. And are there -- I mean I imagine there are

0253

1 -- are there playground facilities there, do you know?

2 MS. FOX: Yes.

3 Q. I mean is that frequented by children there,  
4 I imagine?

5 A. I have seen families in the park, yes.

6 Q. So under current circumstances, trucks pass  
7 by a park that's probably frequented by children under  
8 current circumstances?

9 A. Yes.

10 MR. THOMPSON: Okay, that's all I have.

11 JUDGE MACE: Ms. Fox.

12 MS. FOX: The park is not on First Street.

13 JUDGE MACE: Well, what you can do when you  
14 get up to make your testimony is you can indicate where  
15 the park is. Because he's testifying from his base of  
16 knowledge, and you will testify from yours, okay. So  
17 you will have an opportunity to address that if you just  
18 make a note about it so you can remember it.

19 Okay, Mr. Nizam, you're excused.

20 I would like to take a five minute recess  
21 before we go ahead with the presentation of the City's  
22 case just so that we can take a little breather, and  
23 then we'll have you. Is that okay?

24 MS. FOX: Can I have about 15 minutes?

25 JUDGE MACE: Oh, sure, absolutely, we'll take

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1 15 minutes.

2 (Recess taken.)

3 JUDGE MACE: Before we begin with the City of  
4 Sprague, we're at 4:30 in the afternoon, and I want to  
5 talk a little bit about our proceeding. We have a  
6 public hearing tonight at 6:30, and we still have to  
7 hear from the City of Sprague witnesses. Now I know  
8 that when we talked on the telephone, Ms. Fox, you  
9 thought a half an hour, but I certainly want to make  
10 sure that you have an opportunity to present your case  
11 as you would like to have it presented. And so I want  
12 to talk about what happens if we go to 5:00 or 5:30 and  
13 we're still not finished. We could either go later than  
14 that, going right up into the public hearing, or we  
15 could adjourn until tomorrow at a time that we -- we  
16 could adjourn at a time we agree upon and then continue  
17 tomorrow. So I wanted to hear from the parties just  
18 briefly what your sense of how things are going is and  
19 what you think would be a good process for us to follow.

20 Ms. Fox, I will let you go first.

21 MS. FOX: I think that whenever we were  
22 talking on the phone that I stated that it would be  
23 about a half hour each at the very most.

24 JUDGE MACE: It would be a half an hour each,  
25 okay.

0255

1 MS. FOX: At the very most.

2 JUDGE MACE: I misunderstood you.

3 MS. FOX: And it probably won't take that  
4 long, but.

5 JUDGE MACE: You would want, yes, you would  
6 want to have the time.

7 MS. FOX: So maybe 15 to 20 minutes each.

8 JUDGE MACE: The other thing we need to  
9 consider is that if oral argument is going to take place  
10 after we finish the presentation of evidence, we will  
11 need time for that as well. Let's say it did take a  
12 half an hour each, and you have three witnesses, right?

13 MS. FOX: Yeah.

14 JUDGE MACE: So that's an hour and a half,  
15 and then we will need time for oral argument. It sounds  
16 like we're going to need to talk about adjourning until  
17 tomorrow at any event, so maybe we should think about  
18 adjourning at a reasonable time so we can have some  
19 dinner before the public hearing, 5:00 or 5:30?

20 We would begin at 9:30 again tomorrow,  
21 assuming we can have this place at 9:30.

22 MS. FOX: Yeah.

23 So what are we going to -- what's next?

24 JUDGE MACE: Well, you're going to present  
25 your witnesses, but will we adjourn at 5:00 or at 5:30

0256

1 for dinner?

2 MR. KINERK: Your Honor, my preference would  
3 be 5:00.

4 JUDGE MACE: That's fine.

5 MR. KINERK: In addition, I was certainly  
6 inaccurate in my estimate of how long it would take the  
7 petitioner BNSF to complete their case.

8 MS. FOX: That's fine.

9 JUDGE MACE: So you want to try for 5:00  
10 then. Okay, we will adjourn at 5:00 no matter where we  
11 are, and we will resume tomorrow at 9:30.

12 All right, Ms. Fox, why don't you begin. Are  
13 you going to be the first witness? Who is going to be  
14 the first witness? You tell me.

15 MS. FOX: KON LAMPARTER.

16 JUDGE MACE: Okay.

17

18 Whereupon,

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

22

23 JUDGE MACE: All right, please be seated, and  
24 make sure that you say your name and spell your last  
25 name for the reporter.

0257

1 THE WITNESS: All right, my name is Kon,  
2 K-O-N, Lamparter, L-A-M-P-A-R-T-E-R.

3 JUDGE MACE: Now typically when a party is  
4 represented, their attorney will be asking questions,  
5 direct questions, of the witness, and then the witness  
6 is cross-examined by the other attorneys. Ms. Fox, are  
7 you intending to ask this witness questions, or are you  
8 going to just ask him to in a narrative fashion to state  
9 his testimony?

10 MS. FOX: I have some questions here to ask  
11 him, and if he feels that he needs to add something to  
12 that, can he could do it at that time?

13 JUDGE MACE: Sure, I just wondered how you  
14 were going to proceed.

15 MS. FOX: Okay.

16 JUDGE MACE: Go ahead. I would like to know  
17 sort of what his position is in the community, if we can  
18 put that on the record.

19

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

21 BY MS. FOX:

22 Q. What is your capacity with the City of  
23 Sprague?

24 A. I am the water distribution manager for the  
25 City, and I also serve as their public works director,

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1 and I am also the fire chief for Lincoln County Fire  
2 District Number 1, which the City has contracted with  
3 for emergency medical services and fire protection.

4 Q. How many years have you lived here in  
5 Sprague?

6 A. I have lived in Sprague almost all of my  
7 life, just about 60 years.

8 Q. How many years have you been a fire chief  
9 here in Sprague?

10 A. I have been the fire chief for Lincoln County  
11 Fire District Number 1 for close to 30 years.

12 Q. Does your department operate an ambulance in  
13 Sprague?

14 A. Yes, we do operate an ambulance. We have  
15 eight EMT's. Three of them are basic life support, or  
16 excuse me, six of them are basic life support, and two  
17 of them are intermediate life support personnel.

18 Q. Have you ever responded to any railroad  
19 incidents on the railroad track in Sprague?

20 A. Oh, ten years ago the railroad probably  
21 started 50% of the fires within our district, but they  
22 have improved over a number of years. Within the past  
23 five years, we had a near fatality at the railroad  
24 crossing out on Brown Road, which is approximately five  
25 miles east of Sprague, and we have had two railroad



0259

1 accidents at the Four Seasons Campgrounds on that  
2 railroad crossing. I'm not sure what the name of that  
3 road is. But both of these are not gated crossings.

4 Q. Have you ever responded to D or F Street  
5 crossings or in the city of Sprague?

6 A. In all the years I have lived in Sprague and  
7 the number of years I have been fire chief, I can not  
8 recall an accident being on any of these crossings.

9 Q. All right. How do you feel about the closure  
10 of D or F Street crossings?

11 A. I'm totally opposed to closing any of the  
12 crossings. Like I say, I could understand it if we --  
13 if it was a safety issue because we have had accidents  
14 on them, but like I say, we have not had any accidents  
15 on them. D Street not only gets quite a bit of vehicle  
16 traffic, but it does get a lot of foot traffic because  
17 it's close to downtown, or I should say the Sprague  
18 grange is close to the center of town, so a number of  
19 people, of pedestrians, they cross right there at D  
20 Street to get to the Sprague grange. We do have older  
21 people in town, and we do have some handicapped people  
22 that do not drive vehicles that I have seen cross that  
23 crossing many times, sometimes three or four times in  
24 the same day.

25 Q. So they live north of the tracks and have to

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1 come down to the business district to shop?

2 A. And some people live south of the tracks and  
3 want to go to the Sprague grange to shop.

4 Q. Have you seen these crossings blocked for a  
5 period of time, the three of them at the same time?

6 A. I haven't seen the three at the same time. I  
7 have seen the F Street crossing where they bring the  
8 unit trains in to the grain elevators to load, and I  
9 have seen that crossing blocked a number of times for a  
10 period of time. And even when the crossing isn't  
11 blocked, they usually have the grain carts close enough  
12 to the crossing where you can't see around the cars to  
13 the main line.

14 Q. Whenever they have it blocked, is it for a  
15 longer period than ten minutes?

16 A. I have seen it, yeah, I have seen it blocked  
17 for longer periods than ten minutes.

18 Q. Do you have anything else that you would like  
19 to present to the Judge that I haven't asked you?

20 A. I might mention also, Your Honor, that D  
21 Street is a school bus route as well as F Street. We do  
22 have children that live on these streets, and the bus  
23 route makes, well, I know the bus route crosses D Street  
24 crossing at least twice a day, in the morning and in the  
25 evening with children that are going to school.

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1                   I don't know, like I say, I really feel this  
2 is just an injustice that they close these crossings  
3 when the City of Sprague is trying to grow. And as the  
4 mayor stated, we are in a flood plane here in the  
5 lowlands, and about the only place there is to go is up  
6 on the north hill, which is north of the tracks. And  
7 within the past two years, we have had, I believe, five  
8 residences that have been established up there on the  
9 north hill, which is a pretty good percentage for our  
10 little town of Sprague, which has a population of 451.  
11 And I don't know if you noticed or not, but they are  
12 leveling quite a bit of land up there. It would be west  
13 of D Street just right off of Poplar, which would be  
14 north of Poplar, they're leveling quite a bit of land.  
15 I think it's mostly for a development up there.

16           Q.     Do you feel that the ambulances and the fire  
17 trucks would have a slow down in response to respond if  
18 they were to close either one of the D Street or the F  
19 Street crossings?

20           A.     As we mentioned, in the wintertime, north of  
21 the tracks on B Street there is quite an incline there.  
22 The City does not own a sander, and I have seen --

23                   JUDGE MACE: The City does not own a?

24                   THE WITNESS: A sander.

25                   JUDGE MACE: A sander?

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1 THE WITNESS: Right.

2 JUDGE MACE: And you mean by that a truck  
3 that spreads sand?

4 THE WITNESS: Right, that we can actually  
5 sand the streets for traction.

6 A. And I have seen numerous times where a semi  
7 will turn off of Railroad Avenue, going east on Railroad  
8 Avenue and turn off of Railroad Avenue trying to go up B  
9 Street, and they will get stuck on that hill, and they  
10 will jackknife, and they will be -- they will have that  
11 road blocked for a period of an hour, hour and a half.  
12 Whereas it would be a hindrance if they did close the D  
13 Street crossing or even the F Street crossing. In my  
14 opinion, we take the shortest route, and if either one  
15 of these crossings are closed, it's definitely going --  
16 cutting down our route and make it longer.

17 I believe that's all I have to say.

18

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

20 BY JUDGE MACE:

21 Q. Mr. Lamparter, let me ask you this, the  
22 company has proposed closing D Street crossing, but they  
23 have an alternative of the F Street crossing. After  
24 hearing all of the evidence and the public comment, the  
25 Commission is going to have to arrive at a decision. I

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1 don't know what that decision is going to be, but in  
2 order to inform the record and the Commission, if there  
3 was a question whether to close the D Street crossing or  
4 the F Street crossing, assuming the Commission decided  
5 one of those had to be closed or should be closed, which  
6 one of those would be in your opinion the better  
7 crossing to close?

8 A. Well, since the Railroad feels that it's cost  
9 restrictive to make the repairs on that bridge to get  
10 the tonnage up to where we could actually go over it  
11 with the fire units, it would have to be D Street. We  
12 would have to keep F Street open, because if we don't  
13 use that bridge, I mean it wouldn't make any sense to  
14 close F Street.

15 JUDGE MACE: Okay, thank you.

16 Mr. Thompson.

17

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

19 BY MR. THOMPSON:

20 Q. Is it Mr. Lamparter?

21 A. Yes.

22 Q. Okay. Well, on that point about the bridge,  
23 that's located on Railroad Avenue; is that right?

24 A. Railroad Avenue, yes.

25 Q. If that could be brought up to weight limits

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1 sufficient to support a fire truck, and asking the same  
2 question, would -- and if you had to choose, you know,  
3 choose one or the other, you don't have the opportunity  
4 to say no in other words, would closure of F Street be  
5 preferable under that condition, improvement of the  
6 bridge?

7 A. My own opinion, yes, it would be. One of the  
8 reasons is that the grain trucks use F Street, and they  
9 make a wide turn when they pull into the elevators off  
10 of F Street, and sometimes this could be a hindrance to  
11 traffic coming, well, it would be going south on F  
12 Street. And so, yeah, if I had my rathers.

13 Q. When you say that, is that because meaning  
14 somebody could be stopped on the tracks at F Street  
15 while a truck is making a right-hand turn there?

16 A. Yes.

17 Q. In other words, they would have to be waiting  
18 there on the tracks?

19 A. Right, yeah, you don't argue with a semi.  
20 When they decide they're going to turn, you stop.

21 Q. Right. What about the concern that somebody  
22 mentioned that people would continue to use that  
23 crossing, you know, if it were actually closed, that  
24 people would trespass on the right of way basically, the  
25 railroad right of way, and use that place to cross the

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1 tracks anyway, is that currently do you see that as  
2 being a crossing that's used much by pedestrians?

3 A. I actually see the D Street crossing used  
4 more by pedestrians than I do the F Street crossing.

5 Q. Okay. And do you have any idea of where  
6 people are going that do use the F Street crossing? In  
7 other words, are we talking about are kids actually  
8 walking to school from all the way north of the tracks  
9 down several blocks to the school? Or you mentioned  
10 there was a bus route there.

11 A. Right.

12 Q. Would those kids be more likely to take the  
13 bus, or would they really walk to school?

14 A. More likely to take the bus until they reach  
15 a certain age, and then they think that the bus is --

16 Q. Not cool?

17 A. Right, not cool, so.

18 Q. Okay. Well, under the hypothetical that the  
19 D Street were to be closed, do you generally agree with  
20 the analysis that Mr. Nizam went through as far as what  
21 the extra time would be in responding to emergencies at  
22 homes along D Street resulting from the closure of the D  
23 Street crossing? In other words, it would add about  
24 another 20 seconds on average to the response time to  
25 something occurring on B street, I'm sorry, D Street?

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1 JUDGE MACE: D Street north of the tracks.

2 Q. North of the tracks.

3 A. I think one thing you would have to take into  
4 consideration would be the weather, and the weather  
5 definitely in the winter time we do have some very nasty  
6 winters around here, and it could definitely make a  
7 difference.

8 Q. Where would that present a problem, let's say  
9 icy streets?

10 A. I think probably the biggest problem, driving  
11 a fire unit, when you had to come to make a 90 degree  
12 turn that you kind of lose your momentum. Whereas if  
13 you get a straight shot at it and you have enough  
14 momentum where you can go ahead and make the grade  
15 without any problems. And there is a pretty good little  
16 grade also right on D Street going up that hill.

17 JUDGE MACE: D Street or B Street?

18 THE WITNESS: D Street, Your Honor, on the  
19 north side of the tracks.

20 BY MR. THOMPSON:

21 Q. Well, okay, but that -- I mean you have to do  
22 that anyway, right? I mean if D Street were closed, the  
23 D Street crossing were closed, you would still have the  
24 hill on D Street to contend with. Let's say if you were  
25 headed -- well, first of all, maybe I could ask you to



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1 step up here and show me just assuming that the D Street  
2 crossing were closed, what -- well, back up.

3 Tell me what -- let's say there's some sort  
4 of an incident that you need to respond to, you know, a  
5 fire or somebody having a heart attack or something of  
6 that nature in this D Street kind of area.

7 A. All right.

8 Q. How would you respond to that?

9 A. All right. Okay, say there's -- there is a  
10 residence right up in this area here.

11 JUDGE MACE: And you need to describe it,  
12 because we can't see when we're reading the record. You  
13 have to say the streets.

14 A. Okay, let's say there is a residence right at  
15 actually this street below the rubbish dump is actually  
16 called Oak Street, so let's say there's a residence  
17 right at the intersection of Oak and D Street, which is  
18 north side of the tracks. If D Street was closed, our  
19 response naturally would be to come down B Street,  
20 probably go north across the tracks. We would then go  
21 west down Railroad Avenue to D Street where we would  
22 then turn right and go north. And like I say, in winter  
23 conditions, this could very well be a problem, because  
24 you lose your momentum as you come around this corner  
25 climbing the hill. Whereas if D Street was open, we

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1 would come across the crossing, we would have a pretty  
2 good run at that hill to make that hill. And that's one  
3 scenario, but that does happen.

4 Q. Well, okay, so there's the loss of momentum,  
5 but then in terms of the extra, is 20 seconds additional  
6 response time -- did you hear Mr. Nizam testify to that?

7 A. Right.

8 Q. Is that realistic; do you think that's about  
9 right?

10 A. Well, once again we're talking in perfect  
11 conditions. We're not talking winter conditions, icy  
12 roads, snow drifts. But I'm sure that, you know, in  
13 perfect conditions, 20 seconds is not a -- it's no big  
14 deal, no.

15 Q. Okay.

16 A. But during a heart attack, I mean you're  
17 talking minutes, and if you can reach a patient who is  
18 having a heart attack within five minutes, your  
19 percentage of saving that patient are much higher than  
20 reaching that patient in eight or ten minutes. In fact,  
21 at ten minutes you might as well forget it.

22 Q. Do you have a standard -- we can sit down  
23 now. Do you have in the Lincoln County Fire District a  
24 standard that you try to meet in terms of response time,  
25 a certain number of minutes or something?

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1 A. We do have a protocol, yes.

2 Q. And what is that?

3 A. Pardon?

4 Q. What is it, what's the protocol?

5 A. Well, actually our protocol is written by  
6 Dr. Apple, Davenport, Lincoln County Protocol, and it's  
7 for all of Lincoln County, and it's a standard of  
8 operation or standard of procedure I should say is what  
9 we go by.

10 Q. I see. But is there a part of it that  
11 addresses maybe for planning purposes of, I don't know,  
12 where you would place your stations, for example, as to  
13 what your response time should be?

14 A. No, we're an all volunteer department.

15 Q. How large an area does this particular fire  
16 station serve?

17 A. Actually, we serve, the Lincoln County Fire  
18 District Number 1 serves 400 square miles.

19 Q. So I mean we're talking, what we're looking  
20 at in, you know, Exhibit 17 map is the very closest  
21 parts of your territory? I mean there's --

22 A. Right.

23 Q. Okay. I will have you switch hats to the  
24 public works director at this point away from fire  
25 chief. But do you happen to know what the grade is on B

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1 Street between Railroad Avenue and Alder; could you  
2 guess, I mean make an educated guess?

3 A. No, I couldn't.

4 Q. Is it substantial? I mean is it a steep  
5 grade; would you characterize it as a steep grade?

6 A. Yes, I would characterize it as a steep  
7 grade.

8 Q. Okay. What's the actual -- there was some  
9 discussion of what the current truck route through town  
10 is; is there a -- are you aware of a truck route?

11 A. Actually, it's First Street actually, Main  
12 Street and B Street.

13 Q. Okay.

14 A. Going up to Poplar.

15 Q. Up to Poplar, which is the --

16 A. That there would be the street going --  
17 that's the street north of the tracks going up B.

18 Q. So it does continue --

19 A. Which adjoins Highway 23, that's Poplar  
20 Street.

21 Q. So it does continue past the church and the  
22 ball fields?

23 A. Yes, it does.

24 MR. THOMPSON: Okay, I think, let me just  
25 check my notes to see if I have any other questions for

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1 you.

2 I think that's all I have. Thank you very  
3 much, Mr. Lamparter.

4 JUDGE MACE: Mr. Kinerk.

5

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

7 BY MR. KINERK:

8 Q. Mr. Lamparter, good afternoon.

9 A. Good afternoon.

10 Q. I want you to put your fire chief hat back on  
11 for a moment, and you and I had a chance to talk at the  
12 break for a moment earlier today, and I had a chance to  
13 look at a little bit of the equipment through the glass  
14 that you have as part of the volunteer fire department  
15 here. Could you identify how many different vehicles  
16 that you have and of those vehicles how many of them are  
17 beyond a six ton weight limit?

18 A. Probably only two major vehicles that we do  
19 have that would be under the six ton weight limit would  
20 be our ambulance number 155 and our rescue truck number  
21 157. All of our other vehicles I'm sure would be over  
22 the six ton limit.

23 Q. Now would you, if you were responding to a  
24 call north of the tracks at the crossings in question,  
25 would you generally respond to an emergency situation

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1 with the ambulance and the rescue truck?

2 A. Yes.

3 Q. So just for purposes of our hypothetical,  
4 sir, if the D Street were consolidated and F Street and  
5 B Street remained open, and you're positioned down here  
6 at the police department, or at the fire department, if  
7 you needed to respond to let's say an incident just  
8 north of the D Street crossing, you would be able to use  
9 either access on B Street, taking a left on Railroad  
10 Avenue, and heading up on D Street, or in the  
11 alternative, you would have the option of proceeding  
12 northbound over F Street, right on Railroad Avenue, and  
13 over the bridge in question in order to get to that  
14 location, wouldn't you?

15 A. With the ambulance and 157, the rescue truck,  
16 you could.

17 Q. Right. And when you are talking about  
18 instances where the bridge might come into question in  
19 terms of load limits, that's when you're talking about  
20 the water truck that you might be responding to a brush  
21 fire or a residential fire; is that correct?

22 A. Right.

23 Q. And given, if I'm right, in looking out here  
24 on Second Avenue just outside your place, that  
25 particular street is closed right now, is it not?

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1 A. Yes, it is.

2 Q. So if you as the fire chief were responding  
3 to a call today, in order to respond to any residential  
4 brush fire north of the tracks in the area that has been  
5 identified by the mayor as potential for development, I  
6 take it that you would be proceeding up the F Street  
7 crossing or the B Street crossing in order to respond to  
8 that fire?

9 A. Yes.

10 Q. I'm sure there's some variety in terms of the  
11 number of calls, the type of calls you respond to, but  
12 can you give us some idea of the average number of calls  
13 that the Sprague Fire Department has had to make north  
14 of the railroad tracks in the areas that are encompassed  
15 in Exhibit 17 say in the last calendar year?

16 A. Within the last calendar year, we only had  
17 one call, which was a grass fire.

18 Q. Okay. And when you responded to that grass  
19 fire call in the last year, what was the route that was  
20 taken, and what were the emergency vehicles that  
21 responded?

22 A. Actually, we went down F Street and up H  
23 Street. We were north of the tracks, went down -- went  
24 north on F Street, down east on Alder and then up F  
25 Street, or H Street, excuse me.

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1 Q. Now if I understood your testimony in  
2 response to Mr. Thompson's question, you said that the  
3 volunteer fire department responds to over 400 --

4 A. We cover over 400 square miles.

5 Q. Okay. And just so we have our understanding  
6 in terms of the distances that are involved relative to  
7 where the emergency vehicles are in Sprague, if you go  
8 from the Sprague Fire Department to Oak Road, which I  
9 believe is the furthest north road in the city limits  
10 north of the tracks in question here, what type of  
11 distance are we talking?

12 A. Oh, we're probably talking I would guess  
13 maybe just a little over a mile.

14 Q. Okay. So the entire period -- distance that  
15 we are talking about in terms of various routes, you  
16 would agree with me that with the consolidation of the D  
17 Street crossing, we would still have multiple avenues of  
18 access for emergency vehicles to respond to calls, be it  
19 via B crossing or over the F crossing, correct?

20 A. Yes.

21 Q. And I think I understood your testimony to be  
22 that relative to the B Street crossing, that is the  
23 designated truck route for the City of Sprague; is that  
24 correct?

25 A. Yes.



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1 Q. And with regard to truck traffic, and I  
2 assume that includes semi trucks, correct?

3 A. Yes.

4 Q. That you can proceed northbound off of Alder,  
5 intersect Poplar, and get out to Highway 23.

6 A. That's true.

7 JUDGE MACE: And because Poplar is not  
8 designated on this exhibit, let me just indicate that it  
9 appears to be a continuation of what's marked as Second  
10 Street above the north of the train tracks.

11 Q. And I assume, sir, that as a designated truck  
12 route, one of the considerations that was taken into  
13 effect in designating that as the truck route was that  
14 it was with the expectation that semi trucks would be  
15 proceeding north and southbound on B Street over the B  
16 Street crossing, be it to the grange or be it to the  
17 downtown area.

18 A. Yes.

19 Q. And that was with the expectation that that  
20 could happen at any time of the year, be it wintertime,  
21 summertime, springtime, correct?

22 A. Right.

23 Q. Now when you indicated in earlier testimony  
24 that the D Street crossing is a school route, I can only  
25 assume, sir, and correct me if I'm wrong, given that the

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1 school is located I think on Sixth Street south of F  
2 Street crossing that F Street is also a school route,  
3 because it is the most direct route for residences north  
4 of the crossing proceeding south towards the elementary,  
5 junior high, and high school, is it not?

6 A. Right. The only reason they don't use the F  
7 Street crossing at this time is because there are no  
8 school children in that area that are of age to go on  
9 buses.

10 Q. And if the mayor's expectations are that  
11 there will be progress made in that area of Sprague with  
12 additional residences and so forth, it's likely that  
13 that would continue to be a designated school route,  
14 correct?

15 A. Oh, I'm sure.

16 MR. KINERK: Okay.

17 JUDGE MACE: I notice that we're at 5 after  
18 5:00, with your indulgence, I would like to try and  
19 finish Mr. Lamparter before we adjourn.

20 MR. KINERK: I have no further questions.

21 Thank you very much.

22 JUDGE MACE: Do you have any anything else,  
23 Ms. Fox?

24 MS. FOX: Yes.

25 JUDGE MACE: Go ahead.

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1

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

3 BY MS. FOX:

4 Q. Which of the routes is most used by the  
5 trucks, the route going north on B Street up to Alder  
6 and going east or going down B Street to Fourth and  
7 going east to Highway 23?

8 A. I would say going down B Street south and  
9 then east on Fourth on the way to 23.

10 Q. A school bus loaded with kids, can they go  
11 across that bridge, are they, tonnage-wise, can they use  
12 that bridge there?

13 A. I doubt it. I'm sure they would be over the  
14 six ton limit.

15 Q. So the school bus couldn't go north on F and  
16 go east on Railroad Avenue?

17 A. No.

18 Q. Okay.

19 A. West on Railroad Avenue? What was that  
20 question again?

21 Q. East towards Spokane and go across that  
22 bridge.

23 A. No.

24 Q. If D Street was closed, they would have to go  
25 north on -- they would have to go north on F, can they

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1 -- can the bus then go across the bridge going east on  
2 Railroad Avenue?

3 A. No, I would guess not.

4 Q. Can the school bus go north on H Street in  
5 the wintertime, north on H?

6 A. No, actually Oak Street up there, which is  
7 just a dirt road, isn't even -- the City doesn't even  
8 maintain it in the wintertime.

9 Q. Okay. So what route would the bus take to go  
10 to the north side of town? How would they -- they would  
11 have to go all the way down to B Street to go north?

12 A. Yes.

13 Q. If the grain growers were to have the F  
14 Street crossing blocked, say they were loading train  
15 cars and they had it blocked, then the school bus  
16 wouldn't be able to go across the F Street at that point  
17 either, right?

18 A. No, it wouldn't.

19 Q. So they would have to go all the way down to  
20 B Street and go?

21 A. (Nodding head.)

22 Q. And that's something that can't be done in  
23 the wintertime up that grade?

24 A. I would say not in the wintertime. In the  
25 summertime, you're probably -- in the fall, spring, you

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1 could probably do it, but during a bad winter I would  
2 say no, it wouldn't be able to make it.

3 JUDGE MACE: They wouldn't be?

4 A. They would not be able to make it around that  
5 route.

6 MS. FOX: That's all.

7 JUDGE MACE: Mr. Thompson.

8 MR. THOMPSON: No questions.

9 JUDGE MACE: Mr. Kinerk.

10

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

12 BY MR. KINERK:

13 Q. Mr. Lamparter, just one question. I'm just  
14 assuming that the emergency personnel vehicles that you  
15 have as part of your volunteer fire department have  
16 either traction tires or chains available to negotiate  
17 roads.

18 A. Yes.

19 Q. And likewise I can assume that the school  
20 buses that transport your children in your community are  
21 equipped with chains and so forth to negotiate all the  
22 roads to safely escort the children to and from school?

23 A. Oh, I'm sure they do.

24 MR. KINERK: Thank you, sir.

25 MS. FOX: I have one more question.

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1 JUDGE MACE: Okay.

2

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

4 BY MS. FOX:

5 Q. Your response time if you have to put chains  
6 on, isn't that going to slow your response time down if  
7 you have to take an emergency vehicle and put chains on  
8 them?

9 A. As far as the fire department, in the  
10 wintertime, in a bad winter, we usually go ahead and  
11 chain our trucks up in the station so they're ready. As  
12 far as the buses, I don't -- they normally don't chain  
13 up until they absolutely have to.

14 MS. FOX: That's all.

15 JUDGE MACE: Anything else?

16 MR. KINERK: Nothing further, thank you.

17 JUDGE MACE: Thank you, Mr. Lamparter, you're  
18 excused, and I appreciate your coming to testify today.

19 It's 10 after 5:00, we will adjourn until  
20 6:30 for the public hearing and then resume the  
21 evidentiary hearing tomorrow morning at 9:30.

22 (Hearing adjourned at 5:10 p.m.)

23

24

25