

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 THE BURLINGTON NORTHERN AND)
4 SANTA FE RAILWAY COMPANY,) Docket No. TR-010684
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10 A hearing in the above matter was held on
11 September 19, 2002, from 9:30 a.m. to 1:40 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:

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24 Joan E. Kinn, CCR, RPR
25 Court Reporter

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

2 JUDGE MACE: Let's be back on the record in
3 TR-010684, Burlington Northern Santa Fe Railroad Company
4 against the City of Sprague. This is December 19th,
5 2002. We are convened again this morning at the Chamber
6 of Commerce building in the City of Sprague. Today we
7 are scheduled to continue the presentation of the case
8 of the City of Sprague. I believe yesterday that you
9 presented the testimony of Mr. Lamparter.

10 MS. FOX: Yes.

11 JUDGE MACE: And today you're scheduled to
12 present two more witnesses; is that right, Mayor Fox?

13 MS. FOX: Yes.

14 JUDGE MACE: Very well. Is there anything of
15 a preliminary nature before we go ahead with that?

16 MR. KINERK: Nothing from BNSF.

17 MR. THOMPSON: Nothing from us, although I
18 think we would want to reserve the opportunity to offer
19 rebuttal testimony after the close of the City's case.

20 JUDGE MACE: Let's take that up after the
21 close of the City's case.

22 MR. THOMPSON: Okay.

23 JUDGE MACE: Are you ready to proceed?

24 Please raise your right hand.

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1 Whereupon,

2 DON RINGWOOD,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 JUDGE MACE: All right, please be seated.

7 THE WITNESS: My name is Don Ringwood.

8 JUDGE MACE: Don Ringwood?

9 THE WITNESS: R-I-N-G-W-O-O-D.

10 JUDGE MACE: Thank you.

11 THE WITNESS: I'm the Chairman of the Board

12 of the Fire Commissioners of Lincoln County Fire

13 Protection District Number 1, and we have a contract --

14 JUDGE MACE: Hold on just a second. Chairman

15 of the board of the Commissioners of Lincoln County.

16 THE WITNESS: Fire Protection District Number

17 1.

18 JUDGE MACE: And what does that encompass?

19 THE WITNESS: That's the square miles that

20 Mr. Lamparter talked about yesterday.

21 JUDGE MACE: Was that 400 square miles?

22 THE WITNESS: Yes.

23 JUDGE MACE: And that includes the city of

24 Sprague?

25 THE WITNESS: It includes the city of

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1 Sprague, and with the ambulance we go with to Lamont
2 also and to --

3 JUDGE MACE: You go to?

4 THE WITNESS: Lamont.

5 JUDGE MACE: Lamont.

6 THE WITNESS: And also to Edwall.

7 JUDGE MACE: Thank you, I'm sorry, I just
8 wanted to get that information on the record.

9

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

11 BY MS. FOX:

12 Q. Don, as a 14 year veteran for the fire
13 commission, what do you feel your duties and
14 responsibilities are?

15 A. I think two. First of all, the financial,
16 the financial part of the district, and then the rest
17 lays with the community and the protection of the
18 community and the protection of the fire fighters and
19 the EMTs as best they can.

20 Q. In your fire commissioners' meeting
21 discussing the railroad crossing closure, what was the
22 Commissioners' concerns?

23 A. All three of the commissioners were opposed
24 to the closure. The main reasons were that not the
25 normal run or the normal day is a day that causes the

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1 problems in getting to the fire or away from the fire.
2 We didn't think that the circumstances that we can't
3 control, I guess that it would heighten the risk of the
4 circumstances that we can't control. Does that make
5 sense?

6 Q. Are you saying like with the weather and
7 stuff like that?

8 A. The weather, the state highway working on 23
9 on the overpass and it being closed, the rail crews in
10 to repair the rail or replace it, and the other
11 crossings being closed. Most of the, well, I think
12 that's -- our big concern isn't the day to day, every
13 run every day. It's the day we can't get there and we
14 can't help the person or can't stop the fire.

15 Q. Are you referring to like during harvest
16 season when possibly the F Street is blocked when
17 they're loading the cars and stuff like that over in
18 that area?

19 A. That might be part of it. They might be
20 loading cars at that time. 23 and that ramp could be
21 closed for a number of reasons. There has been a wreck
22 on the freeway, a person came out of the westbound rest
23 area going east bound on committing suicide, got the job
24 done, and all the traffic got routed off of I-90 and
25 through Sprague. And if at that time the overpass on 23

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1 was tore up or being redone, all the traffic would have
2 to come across just those two crossings.

3 Q. Why do you think that BNSF wants to take out
4 the D or F Street crossing; what is your feeling about
5 that?

6 A. My feeling is strictly financial. It's one
7 crossing they don't have to maintain. I don't think
8 it's a safety issue period.

9 Q. What is the concerns of the fire
10 commissioners on any railroad crossing closures?

11 A. On the Doerschlag crossing west of town, we
12 would be in favor of that, because it's a hazardous
13 crossing, one that there's been accidents on. There's
14 probably at least three to four a year that run off the
15 road at that crossing. They don't bother the trains.
16 There's been a couple of times that vehicles have ended
17 up on the track. The reason why I don't think it's
18 being addressed, because they would have to fix the
19 bridge on F Street, no, on --

20 Q. Railroad Avenue?

21 A. On Railroad Avenue. Plus they would have to
22 move the bridge farther down the crick to the north side
23 of the railroad track, and they would have to make a
24 fill to bring Doerschlag Road in to hit Railroad.

25 Q. So your recommendation if they were going to

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1 close any closure, you would rather see the Doerschlag
2 versus one of the three crossings in the town of
3 Sprague?

4 A. Strictly on a safety, yes.

5 Q. People have asked you in what circumstances
6 can you see that the closing of the D or F Street
7 crossing would affect the Fire District's capacity or
8 capabilities of their job?

9 A. I found that a very hard question to answer,
10 because I found that the factors that we can't control
11 are the factors that most hinder our EMS and our fire
12 department. So I can't say we've got to go up a certain
13 street and across a certain street and down. And it
14 will take longer, because if crossings are closed or
15 blocked, it may take much longer. And that's why the
16 commissioners feel as many crossings that we can
17 possibly keep, we would like to keep, because every one
18 that we take out, it takes away an access.

19 Q. Okay. Has your district responded to any
20 fires where everything went wrong?

21 A. We had the west end fire, the hydro fire at
22 Ritzville. And it was a normal day, nothing should have
23 went wrong, there was no wind. The fire was set, not --
24 I don't want to use the word set, because it wasn't set.
25 It was caused by one of the Burlington Northern

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1 vehicles. It burned north from the tracks three miles
2 at about five miles an hour. It was reported by the
3 State Patrol and the people going down I-90. It was not
4 reported by Burlington Northern.

5 The tracks crossing at Keystone, Tokio,
6 Wheeler Road were all removed, because they were laying
7 ribbon rail. Ritzville responded to the fire, and they
8 couldn't get to the fire, because all the crossings were
9 removed. To get the crossings put back in, they had to
10 threaten arresting the Burlington Northern employees for
11 impeding the response.

12 About the time that the Ritzville got to the
13 crossing, the wind came up from -- the wind that was
14 traveling north about 2 to 5 miles an hour to a 40 miles
15 an hour wind coming from the east to the west. That end
16 of the fire the Ritzville fire trucks couldn't get to at
17 all, and this fire is the one that I use that everything
18 went wrong that the fire districts could not control.
19 They were not -- the Ritzville District was not informed
20 that those crossings would be out. There was a loss of
21 life of one person in that fire.

22 Q. Why are you taking the time to sit through
23 these meetings during such a busy and important time of
24 the year for a farmer?

25 A. Because I think it's my duty as a fire

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1 commissioner to protect the people the best I can in my
2 district and in the city that we have the contract with.

3 Q. Do you have anything else that you would like
4 to tell the Judge, any other concerns?

5 A. No, I don't think so.

6 JUDGE MACE: Mr. Thompson.

7 MR. THOMPSON: Just a moment, I want to
8 confer with Mr. Nizam.

9

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

11 BY MR. THOMPSON:

12 Q. I guess, Mr. Ringwood, I would like to just
13 talk to you a little bit about the issue you discussed
14 about Highway 23. I guess your point was that if for
15 some reason the Highway 23 overcrossing were out of
16 commission for some reason that traffic would then have
17 to be diverted onto Poplar Street and down through those
18 grade crossings.

19 A. Yes. When that accident happened on I-90,
20 they put all the traffic from I-90 -- the person bound
21 on suicide hit a semi loaded with rugs head on, and it
22 had closed both lanes of I-90, so they diverted all the
23 traffic off I-90 through Sprague.

24 Q. I see. So it was diverted off I gather
25 farther to the --

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1 A. At that time they came down 23, came onto
2 Fourth Street, went up B Street to the center of town,
3 and then went west on First.

4 Q. Okay.

5 A. And it went and stopped all the traffic down
6 at Keystone and brought it all in coming the other way
7 on the old road.

8 Q. I see. But I mean wouldn't -- I guess the
9 scenario you're worried about is that something like
10 that would occur again and the Highway 23 overcrossing
11 would be out; is that right?

12 A. Right. My concern is that any access that we
13 get taken away from us is a risk to the people because
14 it's not available as an alternate anymore.

15 Q. Well, okay, but aren't people going to --
16 let's say that that exact thing were to occur and for
17 some reason the bridge on Highway 23 over the railroad
18 tracks were not in order. Couldn't people come down 23
19 and go on Poplar Street over to B Street and down? I
20 mean it seems like you're suggesting that they would
21 also go through D and I guess possibly F.

22 A. Well, I think they would if a train came
23 through and people started piling up on B Street and
24 Poplar Street, I think they would.

25 Q. Okay. You also mentioned I think that or you

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1 stated your opinion that as many crossings as you
2 possibly can keep open should be kept open from a fire
3 and emergency response standpoint. Do you have any way
4 of measuring the danger that you see being created by
5 blocking off a crossing against the danger of having a
6 crossing, you know, exposing motorists to the
7 possibility of being struck by a train? Does that
8 figure into your thinking at all on that?

9 A. Can you repeat that?

10 Q. I mean would you -- well, do you -- I mean
11 would you concede that the fact that a crossing is open
12 to the traveling motoring public is itself a hazard?

13 A. Yes.

14 Q. And that, well, that there's a greater hazard
15 in having three crossings instead of two?

16 A. But I'm also concerned with the lack of
17 taking a crossing away plus the people that I think are
18 going to cross that anyway. Those three crossings are
19 much safer now than they were when I was a kid. On
20 Railroad where it shows a grainery, that grainery came
21 right up to the track, and you had to be on the track to
22 see around it. That's no longer there. Down at Boxcar
23 and D, the grainery there went right out to the tracks
24 also, and you had to get your front end of your car
25 right out on the track to get by. And the depot is now

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1 moved, and I see all three of those crossings as fairly
2 high visibility crossings where people should be able to
3 see everything, compared to the Doerschlag crossing
4 where you come along the track, turn 90 degrees, by the
5 time a big truck gets swung around to where they can see
6 down the track, they're right on the track, and that's I
7 think probably a 30 mile an hour speed limit.

8 Q. My question is just I guess you're saying
9 that the --

10 A. What I'm saying.

11 Q. -- that you don't see these as
12 particularly --

13 A. Hazardous.

14 Q. -- hazardous crossings, but that there is --
15 I guess you concede that there is some --

16 A. I can see --

17 JUDGE MACE: Now see the problem we're having
18 here is everybody is being very polite, and that's
19 great, but you are crossing into each other's questions
20 and answers, and that makes it really hard for the
21 reporter to take down what you say.

22 THE WITNESS: Oh, I'm sorry.

23 JUDGE MACE: You need to let him ask a
24 question, and then you answer, and you let him finish,
25 Mr. Thompson.

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1 MR. THOMPSON: Okay.

2 JUDGE MACE: And it will go better that way.

3 BY MR. THOMPSON:

4 Q. I guess I just want you to concede the point
5 even though I understand what you're saying that you
6 don't think these are particularly hazardous crossings
7 that there is a hazard associated with having three
8 crossings instead of two. With all the stuff you have
9 already said, would you agree with that?

10 A. I don't -- no, I don't think so. And you're
11 the one that brought it up, because those vehicles are
12 still going to cross, but they're going to use the other
13 two.

14 Q. Wouldn't you agree that there's greater
15 exposure to the possibility of being struck by a train
16 if there's three areas to cross as opposed to two?

17 A. No, I think it would be higher risk with them
18 out. Because if you're at the grange, you're going to
19 go down the street and have to turn down Depot, or not
20 Depot, what is that, Railroad, and you're going to have
21 to turn right on F Street where the train traffic would
22 be coming at your back instead of 90 degrees away from
23 you.

24 MR. THOMPSON: I think that's all the
25 questions I have for you, thanks.

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1 JUDGE MACE: Mr. Kinerk.

2 MR. KINERK: I do have a question.

3

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

5 BY MR. KINERK:

6 Q. Good morning, Mr. Ringwood.

7 A. Good morning.

8 Q. Not to get too far astray, but perhaps we
9 could, for purposes of the record, we could clarify
10 this. When the emergency fire department vehicles
11 responded to the Ritzville fire, did they use the D
12 Street crossing to do so?

13 A. No.

14 Q. When the emergency vehicle trucks responded
15 to this suicide incident you described, did they use the
16 D Street crossing in order to respond to that?

17 A. No.

18 Q. If I understand your testimony, Mr. Ringwood,
19 what you're indicating in your capacity as a fireman is
20 that with regards to day-to-day calls that the Sprague
21 Fire Department responds to, be it north of the B Street
22 or D Street or F Street crossings, that you believe that
23 you can efficiently and safely respond to those,
24 correct?

25 A. Could I get you to repeat that, please.

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1 Q. Sure. If I understood your testimony on
2 direct examination, you indicated that your concern as a
3 fire chief is not with the day-to-day calls or
4 responding to the calls, be it north end of B Street, D
5 Street, or F Street; is that correct, that you can
6 respond to those in a safe and efficient fashion
7 currently?

8 A. Yes.

9 Q. Now your concern is for the catastrophic type
10 of incident in which under a worse case scenario the F
11 Street crossing were blocked, the B Street crossing were
12 blocked, State Route 23 were blocked, First Avenue
13 heading out west was blocked, in essence all of the
14 access routes, either ingress or egress, for emergency
15 vehicles were blocked, and your concern is that under
16 that type of scenario it would be helpful to have had an
17 additional access point, i.e., D Street; is that your
18 testimony, sir?

19 A. Yes.

20 Q. Would you agree with me, Mr. Ringwood, that
21 that type of scenario is purely speculative? By that I
22 mean you --

23 A. I would agree that, yes, that all our
24 thoughts here are pretty speculative.

25 Q. You would agree with me, would you not, that

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1 with regard to the closure or the consolidation of the D
2 Street crossing that the emergency vehicles for Sprague
3 can and would be able to use alternative routes? And by
4 that I mean B Street would remain open and F Street
5 would remain open to service emergency calls to the
6 northeast and northwest sections of your town?

7 A. Yes. Could I make a statement?

8 Q. You can clarify your answer, but I want you
9 to answer my questions.

10 A. Yes.

11 Q. Okay.

12 A. But we are not considering the firemen's
13 response to the call here.

14 Q. I appreciate that.

15 The Sprague Fire Department is a volunteer
16 fire department, correct?

17 A. (Nodding head.)

18 Q. You have to answer audibly.

19 A. Yes.

20 Q. And in terms of notifying fire fighters to
21 respond to an emergency call, that's done on a dispatch
22 or radio basis, correct?

23 A. Right.

24 Q. So you don't have fire fighters at the
25 station at all times, do you?

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1 A. Correct.

2 Q. So there may be delays in your volunteer fire
3 fighters department personnel's response time because of
4 circumstances that have nothing to do with the
5 consolidation of D Street crossing, correct?

6 A. Correct.

7 Q. And you heard the testimony from the fire
8 chief yesterday that he agreed that a 20 second
9 additional response time assuming the consolidation of D
10 Street would not be something that would adversely
11 affect the ability of the fire department to respond to
12 emergency calls in the north part of Sprague; would you
13 agree with that?

14 A. On a normal basis, yes.

15 Q. Now you had also referenced that it is your
16 opinion that the motivation for the consolidation or
17 petition by BNSF to consolidate this D Street crossing
18 is financial and not safety. Do you have any factual
19 basis to offer support for that opinion, sir?

20 A. Just speculation and what I was told before
21 by the, I don't know what you call him, he was the head
22 of the office in Spokane about -- Burlington Northern, I
23 think it was Burlington Northern then, it wasn't
24 Burlington Northern Santa Fe, and the Railroad had went
25 into a practice of not plowing any fire guards.

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1 JUDGE MACE: I'm sorry, of not?

2 THE WITNESS: Plowing any fire guards on both
3 sides of the tracks.

4 JUDGE MACE: Can you tell us what that is?

5 THE WITNESS: That's a strip that's been
6 either graded or dozed to make a dirt strip along the
7 track. So if the train sets a fire, it usually stops
8 there and doesn't jump over this dirt strip and go to
9 the other ground.

10 A. When I tried to get them to plow this fire
11 guard, their statement at that time was it is no longer
12 -- we no longer do that, we would rather pay the damages
13 than spend the money on plowing the fire guard.

14 BY MR. KINERK:

15 Q. And from that conversation that you had,
16 Mr. Ringwood, you drew the speculative conclusion that
17 the decision to petition for consolidation of the D
18 Street crossing in Sprague in a different location was
19 motivated by financial concerns and not safety concerns;
20 is that a fair statement?

21 A. Yep.

22 MR. KINERK: Thank you, sir, that's all the
23 questions I have.

24 JUDGE MACE: Anything further?

25 MS. FOX: Yes, I have a question.

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

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BY MS. FOX:

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Q. Don, beings that we do have volunteers and it does take a little bit longer to respond to a call, wouldn't you think that would be even more reason to leave all of our options of going whichever direction we need to go to respond to an accident or a heart attack or whatever it be?

10

A. Yes, I agree with that.

11

MS. FOX: That was my only question.

12

JUDGE MACE: Anything else, Mr. Thompson?

13

MR. THOMPSON: No further questions from us.

14

JUDGE MACE: Mr. Kinerk?

15

MR. KINERK: No further questions, thank you.

16

JUDGE MACE: Thank you, you're excused.

17

THE WITNESS: Thank you.

18

19

JUDGE MACE: What's happening in terms of your next witness?

20

21

MS. FOX: She was supposed to be here at 9:30, and she's not.

22

23

24

25

JUDGE MACE: Well, we will take a few minutes recess at this point and wait for her. I don't know how long we can do that, but if you can find out where she is.

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1 (Recess taken.)

2 JUDGE MACE: Would you like to take our
3 witness stand over there, and please raise your right
4 hand.

5

6 Whereupon,

7 BETH ANN ENGLER,
8 having been first duly sworn, was called as a witness
9 herein and was examined and testified as follows:

10

11 JUDGE MACE: All right, please be seated, and
12 make sure you state your full name, and spell your last
13 name for the reporter.

14 THE WITNESS: Beth Ann Engler, E-N-G-L-E-R.

15 JUDGE MACE: And can you tell us your
16 capacity in the town of Sprague; are you a resident,
17 member of the City Council?

18 THE WITNESS: I'm a general manager for the
19 Sprague Grange Supply.

20 JUDGE MACE: Thank you.

21 THE WITNESS: I'm not a resident, I live in
22 Lamont.

23 JUDGE MACE: You live in Lamont?

24 THE WITNESS: Mm-hm.

25 JUDGE MACE: Okay.

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

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BY MS. FOX:

4

Q. Beth Ann, how many years has the grange been
5 in operation in Sprague?

6

A. 69 years.

7

Q. 69 years?

8

A. Mm-hm.

9

Q. What is your job, and how long have you been
10 employed there, and how long have you been -- how long
11 have you lived here?

12

A. Well, I'm the general manager with the
13 Sprague Grange, and I have been employed with them five
14 years, only the general manager for three, and I have
15 lived in Lamont my whole life.

16

JUDGE MACE: And where is Lamont from
17 Sprague?

18

THE WITNESS: Nine miles.

19

JUDGE MACE: Nine miles?

20

THE WITNESS: South. We go to school here.
21 I mean the kids from Lamont go to school here in
22 Sprague.

23

JUDGE MACE: And where is the grange? Can
24 you describe it in terms of this map here, what
25 intersection on the map?

0325

1 THE WITNESS: We're at Railroad and D Street.

2 JUDGE MACE: Railroad and D Street, thank
3 you.

4 MS. FOX: And that's south of the tracks; is
5 that right?

6 THE WITNESS: Yes.

7 JUDGE MACE: Is that south of the tracks?

8 THE WITNESS: North, excuse me.

9 BY MS. FOX:

10 Q. There was an issue brought up yesterday, and
11 to the best of your knowledge would a diesel truck be
12 able to leave from say your dock area if he was facing
13 west, his trailer of course would be east, and he was
14 straight, would he be able to make a left-hand turn and
15 not use the D Street crossing?

16 A. No.

17 Q. And go back to the --

18 A. No.

19 Q. -- to B Street?

20 A. And I know this for a fact, because we have
21 had people try. When we have stock come in and they
22 use, you know, get close to the dock side, and we have
23 had semis come in and fuel because they fuel on that
24 side between the pumps and the docks because it's the
25 easiest way to make the loop to get across E Street, let

0326

1 alone to try -- there's a mail building there that's in
2 the way, the railroad building, and then plus there's
3 about 30 feet from the tracks towards the grange that
4 you can not use because of the rocks and the slope of
5 it.

6 Q. Is there also telephone poles in that area
7 that are close to that same corner?

8 A. The one telephone pole to the grange, they
9 can miss that pole if they were to use D Street. But if
10 they were not, it cuts off accessibility to swing right,
11 you know, wide and try to make it around to head down to
12 B Street.

13 Q. It was brought up that the grange business
14 will be moving soon to the Chevron station location. Is
15 there going to be any operation at the grange building
16 after that time?

17 A. Yes.

18 JUDGE MACE: And what will that operation be?

19 THE WITNESS: Well, we still have -- the
20 chemical warehouse will not move. Behind the grange,
21 that little loop that you have drown from the -- I'm not
22 familiar, wouldn't know what that block is, but the one
23 that shows the alley in the middle of that block,
24 there's a warehouse.

25 JUDGE MACE: Let me refer you to an exhibit.

0327

1 I'm going to look at 2-B.

2 THE WITNESS: 2-B?

3 JUDGE MACE: 2-B, and can you tell in that
4 picture where the warehouse would be?

5 THE WITNESS: It's right behind this
6 building.

7 JUDGE MACE: It's behind the building that we
8 know as the grange?

9 THE WITNESS: Right.

10 JUDGE MACE: So it would be north of the
11 building?

12 THE WITNESS: Right.

13 MR. KINERK: Your Honor, can I suggest 2-C.

14 THE WITNESS: You can't see it in this
15 picture either.

16 MR. KINERK: It's right behind that building.

17 THE WITNESS: Yes, behind on the left-hand
18 side of that building, and then that alleyway goes
19 around those tanks.

20 JUDGE MACE: So in the picture, 2-C, there's
21 some tanks to the right, and the alleyway goes behind
22 those tanks?

23 THE WITNESS: Yes.

24 JUDGE MACE: Okay. I will leave this with
25 you.

0328

1 THE WITNESS: Okay. And on that alleyway, a
2 fuel tanker with a trailer can not make that loop.

3 JUDGE MACE: Which loop are you talking
4 about?

5 THE WITNESS: By the fuel tanks. I mean it's
6 too sharp for them to make around that. They back out.

7 JUDGE MACE: So when they're coming in to
8 make a delivery, they come behind those tanks?

9 THE WITNESS: Yes, for fuel.

10 JUDGE MACE: Down the alleyway, and they go
11 to the warehouse, which is behind the grange.

12 THE WITNESS: Right.

13 JUDGE MACE: They unload.

14 THE WITNESS: Yes.

15 JUDGE MACE: And then what do they do? They
16 back out?

17 THE WITNESS: The fuel trucks have to back
18 out if they have a trailer on them. The others do not
19 if it's a non-trailer. So the warehouse will still
20 remain as part of the Sprague Grange, and we still will
21 have deliveries, and the building will be utilized as
22 well.

23 BY MS. FOX:

24 Q. Would those trucks use the D Street crossing
25 when they exit?

0329

1 A. Yes.

2 Q. What is the base of the business at the
3 grange?

4 A. It's an agricultural based business.

5 Q. So this is something -- the chemicals is
6 something that's going to remain in this area?

7 A. Yes.

8 Q. For a very long time.

9 A. And we have no idea when the store is
10 actually moving. Something could happen, the board
11 could decide that they don't want to do that. It could
12 be a year, it could be this March, it could be next
13 March, it could be two years down the road.

14 Q. Is there a possibility that the grange supply
15 would remain in there and employees man that one also as
16 well as the Chevron station?

17 A. Yes.

18 Q. Okay.

19 A. There's always a possibility, we could change
20 -- the economy will determine if we move or not.

21 Q. How often do your customers use the D Street
22 exit versus the F Street or the B Street crossing?

23 A. I would say 90% of the time.

24 Q. Do you have children or handicapped or people
25 that don't have vehicles, which exit, which crossing of

0330

1 the railroad would they use to come to the grange
2 business?

3 A. They use D Street. It's the shortest from
4 Main Street to the grange.

5 Q. Do you feel that this would hurt your
6 business at this time with the business that's in there
7 and in the future for future businesses if they were to
8 purchase that building, do you feel that that crossing
9 being closed would hinder their business in the future?

10 A. Yes, definitely. You can't see the building
11 and the business from any other crossing other than D
12 Street. If you're unfamiliar with what's in Sprague or
13 you're from out of town looking for the grange, it's not
14 visible from B Street, it's not visible from F Street.
15 You would drive down, and it's not noticeable.

16 Q. So your customers generally use --

17 A. D Street.

18 Q. 90% of the time, at least 90% of the time use
19 D Street?

20 A. Yes. In fact, it was the gentleman -- when
21 you guys came to the grange and talked to us, we made
22 note that while we were standing there every person that
23 came to the grange used that, and I commented to them
24 about that.

25 Q. Being the D Street crossing?

0331

1 A. D Street, yep.

2 JUDGE MACE: And the them that you're
3 referring to, is that the people from Burlington
4 Northern?

5 THE WITNESS: Right.

6 MR. THOMPSON: Mr. Nizam.

7 JUDGE MACE: Oh, Mr. Nizam from Commission
8 Staff?

9 THE WITNESS: You guys came down before the
10 meeting at the school, and they came down to the grange
11 and --

12 JUDGE MACE: And you guys means Commission
13 Staff?

14 THE WITNESS: Yes.

15 JUDGE MACE: Okay.

16 THE WITNESS: Thank you, you guys.

17 JUDGE MACE: I just wanted to make sure we're
18 clear.

19 THE WITNESS: Yeah.

20 BY MS. FOX:

21 Q. Beth Ann, is there any other comments that
22 you would like to make to the Judge that you feel that
23 if the D Street crossing was closed that it would hinder
24 our emergency response or any other detriment to the
25 community as far as children, handicapped, or any other

0332

1 references that you would feel need to be addressed
2 today?

3 A. The amount of kids that cross that track is
4 for Sprague, the majority of the kids use that crossing
5 to cross that track. It's the shortest route from Main
6 Street. If they -- if somebody, you know, the ladies
7 that don't drive walk to the post office, they walk down
8 D Street. They're not going to come clear around the
9 other direction, because they don't have to walk on
10 gravel roads that way. Where if they use Railroad
11 Street and from the F Street crossing, that's all
12 gravel.

13 I have never seen a response unit go up F
14 Street, and we watch where they go, because that's
15 something to do when you hear the sirens. You go out,
16 and you find out where they're going.

17 I also know on the business end, that bridge,
18 if it were to stay the way it is, not one of our trucks
19 except for our one ton could utilize that bridge. If we
20 did not have D Street, if we went in to fill up all of
21 our fertilizer trucks, they're either 32,000 pounds or
22 60,000 pounds gross weight. Our fuel truck could not
23 use the bridge.

24 JUDGE MACE: And you're referring to the
25 bridge on Railroad Avenue?

0333

1 THE WITNESS: Yes.

2 A. If they did nothing to the bridge, none of
3 our vehicles except for, like I said, the one ton and
4 the pickup could use that bridge.

5 I think that accessibility and convenience is
6 important to the grange, very important. Because if
7 it's not convenient, they're not going to come here.
8 And it's -- this is a agricultural based town, and
9 that's what that business is based on is the farmers in
10 this community.

11 BY MS. FOX:

12 Q. Basically the building, the grange building,
13 will still be used for your agricultural part of your
14 business?

15 A. Yes. And if the grange doesn't utilize it,
16 we have three businesses that are interested in renting
17 the facility.

18 Q. Will they be agriculture?

19 A. Two of them are.

20 Q. And have you spoke with them about the
21 closing of the D Street?

22 A. No, I have not.

23 Q. To see how they feel about it?

24 A. I have not.

25 Q. Is there anything else that you have concerns

0334

1 about as far as that crossing being closed, D Street
2 crossing being closed?

3 A. I did go down on my way here today to the F
4 Street crossing, and it's -- the approach is in better
5 shape on the road wise than D Street is. But the actual
6 crossing is in much worse shape. And I think that that
7 hinders when you send trucks down there and the bolts
8 are sticking out of the crossing that that is not a good
9 thing either, and I thought it was very inconvenient
10 when I left to go that way.

11 And one person on that bridge at a time is
12 all that will handle. Where will those large trucks go
13 if they do -- are capable weightwise to go across the
14 bridge, do they pull into Claudia's, you know, to the
15 yard, or do they go into the other side? I think that's
16 a huge inconvenience also.

17 Q. So if a large truck was coming across the F
18 Street exit, they would wind up in Hugh's and Claudia's
19 front yard?

20 A. If there's somebody else on that road, yes,
21 they would.

22 JUDGE MACE: And who are Hugh and Claudia?

23 MS. FOX: On Railroad Avenue.

24 THE WITNESS: Corner of F and Railroad
25 Avenue.

0335

1 A. I think we employ 22 people in this
2 community, and we're very much a part of the community,
3 and we generate revenue through our tax dollars. And I
4 think it will be very noticeable in all the financial
5 aspects if the D Street is closed.

6 MS. FOX: Okay, no further questions.

7 JUDGE MACE: Mr. Thompson?

8 MR. THOMPSON: Yes.

9

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

11 BY MR. THOMPSON:

12 Q. Ms. Engles, I guess I don't have a -- could
13 you give us a better sense of what the business does. I
14 mean what do you sell?

15 A. We sell petroleum, fuel, hardware, feed,
16 chemicals, fertilizer, seed, twine.

17 Q. Okay.

18 A. Automotive parts.

19 Q. Can you describe your customer base for me
20 just in general?

21 A. I would say that every person in this town
22 uses the grange. The customers range from we sell
23 hardware, gardening supplies, hoses, you know, all
24 automotive parts. People that are cattle farmers buy
25 their feed, salt, fencing, twine.

0336

1 Q. Would you say it's pretty -- your customer
2 base is limited to the local people?

3 A. Yes.

4 Q. How many -- do you have customers that
5 patronize your business that come to the business in
6 semi trucks?

7 A. Yes.

8 Q. And --

9 A. And we get a lot of our supplies from semi
10 trucks.

11 Q. Okay. How much of your business -- well, let
12 me put it this way. How many times would a semi truck
13 come to your business in an ordinary day?

14 A. I know I can honestly say three times for
15 sure, because Reardon grain growers uses our fueling
16 facility, and they park the trucks here, and they fill
17 up every day.

18 Q. Okay.

19 A. And that's just their trucks.

20 Q. And their facility is just across the tracks
21 to the south of your business, right?

22 A. Right.

23 Q. Who else or do you know the other people?

24 A. We have other trucking companies that -- it
25 depends if the grain growers -- either one of the grain

0337

1 growers are hauling wheat between Ritzville and their
2 location. Like I said, our suppliers when we get
3 suppliers bring in a semi, because we have a loading
4 dock.

5 Q. I'm just sticking to customers now.

6 A. Customers, okay.

7 Q. So this would be people bringing grain
8 primarily from Ritzville to bring it to the elevators?

9 A. No, they ship it down to the terminal.
10 They're not going to the elevators.

11 Q. Oh, I see.

12 A. They just park their trucks there at the
13 evening. They might go to Eatons elevator and haul
14 wheat from there to the terminal, and they use our
15 facility for fuel.

16 Q. Presumably because it's nearby the grain
17 elevators?

18 A. Well, and they have probably been doing it
19 for 60 years, and they're very loyal.

20 Q. And are these double tractor trailer type?

21 A. Most of them are.

22 Q. Okay. And I think you testified that --
23 well, wait, before I, I'm sorry, I'm changing gears a
24 lot here.

25 How often would you have a big rig like that

0338

1 making a delivery at your place?

2 A. They come twice a week, once on Thursdays is
3 from Yakima Hardware, and then Agriliance comes in once
4 a week. A lot of times they might come more often than
5 that, but they pick up orders in small vehicles, you
6 know, if they forget to get it on the truck during the
7 busy season for the chemicals that we have brought in.
8 They bring in one major truck a week.

9 Q. With merchandise on it?

10 A. Yes, and then Yakima Hardware also does that
11 with merchandise once a week.

12 Q. All right. Explain for me what the movement
13 of the fuel truck is that you mentioned. I'm looking at
14 Exhibit 17 right now, and you mentioned an alleyway
15 behind --

16 A. See that --

17 Q. -- the business, and I think it's --

18 A. On the other side.

19 Q. So if we're looking at D Street here and then
20 we go north of Railroad Avenue and then at the first --

21 A. Right there, that alleyway right there.

22 Q. -- street right here, this is the alleyway.

23 A. Now the tanks are right on the very bottom
24 corner. See where the corner turns?

25 Q. Right, where the alleyway turns south --

0339

1 A. Yes.

2 Q. -- and connects in with Railroad Avenue?

3 A. Right.

4 Q. And so --

5 A. It is not long enough for a truck and a
6 tanker to get around that corner.

7 Q. But nonetheless, the tanker has to come in to
8 this point?

9 A. Yep.

10 Q. And fill up the fuel tanks?

11 A. Yep.

12 Q. And then back out again?

13 A. Yep.

14 Q. And when they back out again, do they back up
15 D Street?

16 A. Yes.

17 Q. And then proceed --

18 A. Right.

19 Q. -- south on D?

20 A. Because there's a larger area with the
21 chemical shed, doesn't go flush with the street where
22 the grange and the street run right side by side, so he
23 has more room to back up that way. If he were to back
24 down the other way, the grange and the street are right
25 there.

0340

1 Q. I see.

2 A. The chemical shed does not sit flush with the
3 street.

4 Q. Is there anything to prevent the fuel truck
5 from turning left from D Street onto Railroad Avenue and
6 heading east?

7 A. Have you seen the road, how the road
8 situates?

9 Q. Well, let's take a look at -- well, maybe you
10 could --

11 A. I mean it's --

12 Q. -- describe it. I'm trying to think of a
13 good way to do this, but maybe you could point to the
14 aerial photo. It's not very big.

15 A. I know, I mean I could do my best. I'm not
16 very good with north, south, east, or west.

17 Q. Or how about the D Street photographs here.

18 A. Okay. Well, this -- and these aren't really
19 very fair, I shouldn't say fair, but I mean this road
20 that comes down, if they didn't use this --

21 JUDGE MACE: We're looking at 2-C now.

22 THE WITNESS: Okay.

23 JUDGE MACE: I just want to make sure that
24 the --

25 THE WITNESS: Right.

0341

1 A. If they come down here and turn in front of
2 this, this is one width.

3 JUDGE MACE: Now I think the witness is
4 pointing to D Street north of the grange and to trucks
5 making a turn east in front of the grange dock.

6 A. On Railroad Street, correct.

7 JUDGE MACE: On Railroad Street.

8 A. So if you have a person sitting where this
9 car is sitting now on the fuel tanks --

10 JUDGE MACE: And that is more to the east of
11 the front of the grange dock.

12 A. So this -- and this -- if they were to come
13 down this road, it's a one way road.

14 JUDGE MACE: Railroad is a one way road.

15 THE WITNESS: Right.

16 JUDGE MACE: And it runs to the east; is that
17 correct, or does it run to the west?

18 MR. RINGWOOD: To the east.

19 JUDGE MACE: To the east.

20 THE WITNESS: Thank you, Don.

21 A. So if there's anybody here, they can't get
22 through there. Now the Railroad also parks all their
23 vehicles there.

24 JUDGE MACE: In front of the grange?

25 A. On this -- the grange is -- it's split, the

0342

1 road is -- I don't know how you would describe it, it's
2 like a lot. Where the pumps are, it's paved. The
3 gravel road goes this way. A lot of times they utilize
4 this space down here, the Railroad vehicles do, because
5 that's where their building is.

6 JUDGE MACE: So that's more or less in front
7 of those storage tanks.

8 A. Well, this is elevated. It's below here.
9 The road that the truck would have to take would be
10 Railroad that's gravel that's below this. There is no
11 way to get around that corner to get on the pavement to
12 go across.

13 JUDGE MACE: And the corner they can't get
14 around is the corner that comes from D Street and would
15 be a turn to the left or east on Railroad.

16 A. Right. And so they just utilize D Street
17 because it's straight.

18 BY MR. THOMPSON:

19 Q. Can I ask this, do they come in on D Street
20 in the same way?

21 A. Yes, they do. And I will tell you because --

22 Q. Well, let me just --

23 A. Go ahead.

24 Q. You're talking about a -- I'm showing you now
25 the, I don't know what exhibit number this is, but it's

0343

1 the aerial photograph.

2 MS. FOX: Exhibit 1.

3 Q. Exhibit 1, the aerial photograph, and just
4 pointing you to the what's labeled the grange here. Do
5 you recognize that as the roof of the grange?

6 A. Yes.

7 Q. Kind of an L shaped white building in the
8 picture?

9 A. Right.

10 Q. And here's D Street running along the west
11 side?

12 A. Mm-hm.

13 Q. And then isn't -- there's a fairly large area
14 here on Railroad Avenue, isn't there, in front of the --

15 A. Well, there's pumps sitting there. There's
16 35 feet between our dock to the pumps, and there is also
17 a telephone pole here, there's a shed here, and this
18 bank is not usable.

19 Q. And why is it --

20 JUDGE MACE: And the shed you're referring to
21 is the signaling shed that we spoke of yesterday, I
22 believe.

23 A. Correct. So if he were to -- you're talking
24 about if he backed up and came down, why does he not go
25 this way?

0344

1 JUDGE MACE: And this way is to turn east.
2 We need to, again, I'm just trying to make sure the
3 record is clear.

4 THE WITNESS: Sure.

5 A. So then they would have to -- are you
6 referring to why don't they come down and take -- go
7 east on Railroad?

8 Q. Yes.

9 A. Railroad Street is split in front of the
10 grange.

11 Q. So you're saying that Railroad Street is the
12 portion of this kind of gray area on the photo?

13 A. Exactly.

14 Q. That is actually closest to the --

15 A. No, the whole --

16 Q. -- grange?

17 A. Railroad Street is the gravel street that
18 runs from B Street to D Street; is that not correct?

19 Q. Well, I guess I'm asking you.

20 A. Well, the Railroad owns the property where we
21 lease, also where the pumps are, it's actually paved,
22 it's not a street. Railroad Street doesn't go straight
23 in front of the grange building. It comes in straight,
24 and then it goes low towards the tracks.

25 Q. Mm-hm.

0345

1 A. The up above part is just -- there's a berm,
2 and it's like a parking lot area where the tanks are.

3 Q. And that's where your customers would pull up
4 to fuel, that upper part?

5 A. Correct. Customers also park down below when
6 they're not fueling, because they can't block the fuel
7 aisles, so they park on Railroad Street or in front of
8 the dock, because they can't block the pumps. So if
9 someone is parked on Railroad Street, the truck can not
10 get by them when they go from D Street left to B Street.

11 Q. If there were nobody parked there, would they
12 be able to, you know, in your judgment make a left
13 there?

14 A. From D Street?

15 Q. From D Street.

16 A. Yes, if nobody is coming or is parked there.

17 Q. How often does the fuel truck come?

18 A. Well, right now we go through a load a day.

19 Q. So once a day?

20 A. At least, and that's because we have two
21 facilities, and we're utilizing both facilities.

22 Q. Okay. Do you have a -- does your business
23 have a nearby competitor that customers would go to
24 for --

25 A. For fuel, yes.

0346

1 Q. For fuel?

2 A. Well, there's two options now. Up until
3 three weeks ago there was two competitors, but now
4 there's only us because we purchased that. We have a
5 competitor with feed. We have numerous competitors with
6 fertilizer and chemicals. Doesn't mean they're not --
7 they might not have an actual location in this town,
8 doesn't mean that they're not -- you don't need to have
9 a building to be a fertilizer or chemical dealer.
10 There's three in this area. Hardware store, unless they
11 need -- we need to be convenient and accessible, because
12 if not, it's something that they don't need two weeks
13 from now, people drive to Spokane three times a week at
14 least I would say.

15 Q. Is it accurate to look at your business as
16 having hardware, like a hardware part, a feed part, and
17 a fuel part?

18 A. Yes, it is.

19 Q. Okay. And for the hardware part, I would
20 imagine people who are coming there for that purpose are
21 in -- tend to be in smaller vehicles; is that correct?

22 A. Or on foot.

23 Q. Or on foot.

24 A. Automotive, we have automotive.

25 Q. What about feed customers, do they --

0347

1 A. They're usually in trucks, because they buy
2 it usually a ton at a time.

3 Q. What size of truck is typical, not a semi
4 tractor trailer?

5 A. No. Well, no, most.

6 Q. Okay. Would it be possible for a semi truck
7 that's coming to your store for fuel to come down
8 Railroad Avenue, pull up to the pumps, and then after
9 fueling up take a right on D Street and proceed up to
10 Alder Street, take a right there, and then either up to
11 Poplar out to I-90 or south down to E Street?

12 A. My opinion is honestly if they have a
13 trailer, no. Because if they go to take a right on
14 Poplar, and if you have actually looked at -- didn't you
15 just call Poplar that street?

16 Q. Yeah, the one that goes from B Street over to
17 23.

18 A. Okay, let's -- so we go up D Street, what is
19 that street that cuts across there?

20 Q. Well, this is Alder.

21 A. Okay, Alder, excuse me. So if they went up D
22 Street to go to Alder Street, if they had a trailer on
23 behind them, I believe that they would not make the
24 corner. I don't think there's enough room there.

25 Q. Okay. Isn't this about an average sized --

0348

1 A. No, it is not.

2 Q. -- city street?

3 A. No, because from there it makes a Y, either
4 go up or down, and it's not -- and maybe it's supposed
5 to be a normal width street, but it is not. And if you
6 met somebody on that corner whether you were in a car or
7 a truck, there's not enough room there for one -- for
8 both at the same time.

9 Q. What percentage of your revenues would you
10 say depends on fueling from I think you said was it two
11 to three semi tractor trailer rigs a day?

12 A. But it also affects our rural routes. We
13 will need to be, to be fair, because in order to put
14 fuel in that tank to load our truck that we deliver
15 rurally, we have to get a semi into our facility as
16 well.

17 Q. Well, I'm just talking about of your --

18 A. Of our pumps?

19 Q. Your sales, how much of that depends on sales
20 to people who show up in tractor trailer rigs?

21 A. Well, I would say 150 gallons at a time per
22 day for probably realistically 25 weeks out of the year.
23 So out of our volume at our pumps, I would say the semis
24 probably are a quarter to a third.

25 Q. Of your fuel business?

0349

1 A. Out of those pumps. Not our fuel business,
2 we have a route rural delivery as well. I'm just saying
3 at --

4 Q. So what would be your total of your total
5 fuel business?

6 A. That's --

7 Q. You can't say?

8 A. I can't say.

9 Q. Okay.

10 A. But we couldn't sell fuel if we can't get the
11 semis in to put -- the tanks run the pumps. Unless we
12 have fuel in those tanks, there's no fuel in the pumps.

13 Q. Right, I'm talking about the delivery.

14 A. Right. Or at the pumps in general. I mean
15 if the -- not just the delivery. If there's no fuel in
16 those tanks, not only do we load our rural truck, but
17 that's what runs those pumps out front, so we need to
18 have available -- do you understand what I'm saying?

19 Q. I guess I don't understand, no.

20 A. There's pipes from those tall tanks to those
21 gas pumps. So to put fuel in those tall tanks, the
22 semis have to have accessibility to those tanks to fill
23 them with fuel.

24 Q. Right, which is what we were talking about
25 earlier with the --

0350

1 A. Correct.

2 Q. -- with the tanks, oh, I'm sorry, with the
3 trucks going on the alley behind the grange in order to
4 fill up the tanks.

5 A. Right. So without that accessibility, not
6 only would it affect the pumps, but it affects our rural
7 route which is about -- we put out about 1.2 million
8 gallons rurally a year.

9 Q. You mentioned that you have plans to move to
10 the, at least I guess part of your business, to the
11 location of the Chevron station. And I understand
12 there's some indefiniteness in that, but what is your
13 current plan as far as what parts of your business would
14 move to the Chevron and what parts would stay at the
15 present location?

16 A. The plan is that the hardware store would
17 move to a different location. At that time, the fuel
18 would move to a different location. The rest would
19 remain. The chemicals would remain and the twine is not
20 moving.

21 Q. What is the chemicals, is that fertilizer
22 or --

23 A. Well, it's what the farmers put on their
24 spray, weeds. It comes in -- it can come up to 1,000
25 pound totes to 2 gallon, 2 1/2 gallon jugs.

0351

1 Q. Understood. But the idea is for the fuel
2 portion of the business to move to the Chevron location?

3 A. When the hardware store moves, right. We
4 have to keep fuel there at the hardware store until the
5 hardware store moves.

6 Q. Okay. You mentioned in your testimony that
7 there's not a lot of noticability I guess for the
8 location of your store. In other words, it's not
9 something that somebody driving through town for the
10 first time would notice because of its location.

11 A. From --

12 Q. Is that right?

13 A. I said -- excuse me, go ahead, finish your
14 sentence.

15 Q. Is that correct?

16 A. I said --

17 Q. I'm just trying to understand your testimony.

18 A. I said from -- if you were driving down Main
19 Street, you can not see the grange from B Street. If
20 you were driving -- excuse me, now I realize we have to
21 do directions.

22 JUDGE MACE: East.

23 A. West, if you were driving west on Main
24 Street, or east, doesn't matter, you can not see the
25 grange if you look down B Street. You can not see the

0352

1 grange if you look down F Street where those crossings
2 are. But when you look down D Street, because it's an
3 open area on Main Street, the grange is very visible
4 from there.

5 Q. But didn't you testify that your business
6 consists entirely --

7 A. No.

8 Q. -- of local people?

9 A. I did not say entirely.

10 Q. Well, okay, mostly?

11 A. There is people that have lived in this
12 community three years locally that did not know the
13 grange was there. I consider them locally people, but
14 it's not entirely. We have fishermen that stop. We are
15 the only -- we are the only people that sell propane.
16 We have a lot of tourists that come to the facility for
17 propane. So it's not exclusively local people.

18 Q. Well, if you're concerned about loss of
19 visibility in your business, can you tell me why that
20 visibility would suffer as a result of the closure of D
21 Street crossing?

22 A. If they see it and there's no crossing and
23 they're not from here, are they going to take the time
24 to say, okay, where do I go to get it. And then when
25 they cross that, they still would have to go completely

0353

1 over the crossing before they can see where the grange's
2 location is. And I know that this would be a concern,
3 because I have watched people be told to cross the
4 highway, I mean, you know, convenience is important, and
5 it would not be convenient.

6 Q. I guess just one last question. If no --

7 MR. THOMPSON: Strike that, I think that's
8 all the questions I have. Thank you.

9 JUDGE MACE: Mr. Kinerk.

10

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

12 BY MR. KINERK:

13 Q. Ms. Engles, when did you obtain your
14 commercial driver's license?

15 A. Mine, I do not have one.

16 Q. I take it that you have not operated
17 professionally a semi truck trailer?

18 A. No.

19 Q. All right. So with regards to the ability of
20 a professional truck driver to operate a semi truck
21 trailer in the confines of the grange supply store, you
22 would agree with me that someone with those
23 qualifications would be better able to offer an opinion
24 with regards to those maneuvers than you?

25 A. My opinion was just based on what I have

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1 seen.

2 Q. You would agree with me, would you not?

3 A. Yes.

4 Q. All right. Were you aware that B Street as
5 opposed to D Street is the designated truck route in the
6 city of Sprague?

7 A. Yes, I do.

8 Q. All right. Now I understand your testimony,
9 you have indicated with the present location of the
10 grange supply that semi truck trailers are unable to
11 proceed to the chemical warehouse facility without going
12 into the alley behind the actual grange supply, correct?

13 A. Could you repeat that, please.

14 Q. Sure. In order for the semi truck trailers
15 to get to the chemical component of the grange supply,
16 they have to use this alleyway?

17 A. Yes.

18 Q. And is it your testimony and your
19 understanding, Ms. Engles, that in order for those
20 trucks to get access to that alley that they use
21 exclusively Railroad Avenue?

22 A. Yes.

23 Q. You have not seen any of those trucks using
24 the actual truck route in the city of Sprague, taking a
25 left on Alder, and following that down into the back of

0355

1 the facility?

2 A. No.

3 Q. It's your testimony that in order for those
4 semi truck trailers to get to your chemical facility,
5 they have to take a right on Railroad Avenue up north on
6 D Street, correct?

7 A. Mm-hm.

8 JUDGE MACE: From B Street.

9 Q. From Railroad Avenue, up D Street, and take
10 another right, correct?

11 A. Right.

12 Q. In other words, they have to make basically,
13 if you follow this map on Exhibit Number 17, a 90 degree
14 turn, do they not?

15 A. It's not 90 degrees.

16 Q. Well, the pictures speak for themselves. I'm
17 looking at the photograph that's shown in 24-C --

18 A. Well, okay.

19 Q. -- and it's --

20 A. Well, it's very wide. You can see if you
21 look at the Exhibit 2-C, you can see the amount of grass
22 higher, because they run over the --

23 Q. Ms. Engles.

24 A. Okay.

25 Q. The corner of D Street.

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1 A. Right, okay.

2 Q. And Railroad Avenue and the corner of B
3 Street and Railroad Avenue, they're about the same
4 width, are they not?

5 A. Correct.

6 Q. All right. So these trucks with professional
7 truck drivers are able to make that corner and head in a
8 northerly direction, make another right, come in the
9 back of your facility; is that correct?

10 A. Correct.

11 Q. Now in order for those professional truck
12 drivers to get out, apparently they have to reverse
13 their truck trailers and direct them such that the
14 trailer is proceeding in a reverse direction up D
15 Street, correct?

16 A. Right.

17 Q. Now it's your opinion, although you as
18 indicated do not have a commercial driver's license and
19 are not a professional driver, but it's your belief that
20 those trucks that made the turn to the right can not now
21 make that turn to the left on Railroad Avenue to proceed
22 out to B Street. Is that your testimony?

23 A. I said if it was blocked.

24 Q. If it is not blocked --

25 A. Yes.

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1 Q. And by that, if there's not a vehicle --

2 A. Right.

3 Q. -- on the far side, they're able to make that
4 turn, are they not?

5 A. They are.

6 Q. And if the Railroad as a condition of the
7 consolidation of D Street were to remove the signal
8 bungalow, the metal building you saw, those truck
9 drivers would have additional space in which to
10 effectuate that left-hand turn on Railroad Avenue
11 heading towards B Street, wouldn't they?

12 A. Yes. If they didn't buy fuel.

13 Q. Ms. Engles, one thing I wanted to make clear
14 with you in terms of your previous testimony is that you
15 testified that Railroad Avenue is a one way road. Are
16 you certain of that?

17 A. I said the width of it is one way.

18 Q. You would agree with me that vehicles can
19 proceed on Railroad Avenue either in an easterly or
20 westerly direction, can they not?

21 A. Yes.

22 Q. The average speed with which those semi truck
23 trailers proceed eastbound or westbound on Railroad
24 Avenue is certainly below 10 miles an hour, is it not?

25 A. Oh, I'm sure it is.

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1 Q. All right. You have testified with regard to
2 your expectations as to this grange supply facility. I
3 would assume from a business standpoint there has to be
4 some advantage to moving your facility to the proposed
5 Chevron station facility shown on Exhibit Number 1.

6 A. (Nodding head.)

7 JUDGE MACE: And your answer is yes?

8 A. Yes.

9 Q. From a business standpoint, that is probably
10 seen as a better location for your customers, be it
11 commercial drivers or otherwise, to gain access in and
12 out in order to buy products, correct?

13 A. No.

14 Q. Okay. What is the business decision behind
15 moving your station to Chevron or moving your facility
16 to the Chevron station?

17 A. In a year and a half, we will be out of
18 compliance in regards to fuel containment. We don't
19 wish to put in a \$60,000 containment facility at that
20 location, because it would be too small, and that's the
21 only area, space that we have to put that in. So it was
22 more based on when is -- when do we have to either move
23 the fuel or not supply fuel.

24 Q. Okay. So in a year and a half, would I be
25 correct in concluding that there -- it is likely that

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1 the fuel pumps at that facility that you currently have
2 would be removed?

3 A. If the hardware store removes -- if we don't,
4 we have -- we could put in a temporary containment
5 liner. It doesn't have to be -- so we would supply
6 enough fuel in there to maintain the pumps, but not
7 enough to warrant a cement containment facility.

8 Q. And if, in fact, those pumps are moved, that
9 then gives additional space for vehicle, truck,
10 pedestrian traffic along Railroad Avenue, doesn't it?

11 A. Yes, but the fuel pumps will not be removed
12 unless the store is moved.

13 Q. Now the other concern you apparently had
14 expressed was one of visibility for your current
15 location and your grain facility or grange facility.
16 Were you aware that with the consolidation of D Street
17 that there would be the installation of barricades and
18 class three barricades being three feet tall, that with
19 regards to at least seeing your facility from First
20 Avenue that, in fact, the visibility would be exactly
21 the same?

22 A. Correct.

23 Q. Okay.

24 A. Convenience.

25 Q. Sure. And with regards to additional

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1 visibility, as I have noted coming into your town, you
2 guys have signs indicating where the grange supply store
3 is, don't you?

4 A. Mm-hm.

5 Q. And those particular signs designate entry
6 over the B Street crossing, do they not?

7 A. That sign there is because that's where our
8 fertilizer store is.

9 Q. And my question for you is, doesn't that sign
10 indicate truck traffic to proceed down B Street over
11 that crossing towards your grange supply store?

12 A. Yes, somewhat.

13 Q. Okay. Now I'm looking at Exhibit 22, which
14 is a document that is typewritten and unsigned that
15 indicates, and undated, that states at the top that this
16 is the position of the grange supply with regards to the
17 Railroad closure or crossing.

18 A. Right.

19 Q. Have you seen this document?

20 A. Yes, I have.

21 Q. Did you prepare this document?

22 A. Yes.

23 Q. And in this particular document on paragraph
24 4, you indicate:

25 Safety is also a great concern. Being

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1 able to respond to townspeople is a
2 large responsibility. Closing the
3 crossing will affect the different
4 routes available. Having only one route
5 would be negligent.

6 Do you see that?

7 A. Mm-hm.

8 Q. Did you write that?

9 A. Mm-hm.

10 Q. Were you aware that with the consolidation of
11 the D Street crossing that F Street and B Street
12 crossings would remain open for vehicle and pedestrian
13 traffic?

14 A. Yes.

15 Q. So when you reference having only one route
16 would be negligent, you're referencing your own analysis
17 relative to your business specifically as opposed to
18 emergency vehicle personnel or the general public?

19 A. It was reference to emergency personnel if
20 nothing was done to the bridge. When we discussed this
21 in our -- when I say we, we have a board of directors.
22 Under the assumption that if the bridge was not
23 maintained that fire vehicles could not go across the
24 bridge, that's what that's in reference to.

25 Q. And were you aware of the testimony of the

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1 personnel from your fire department indicating that with
2 the exception of the water pump truck that they can
3 proceed over the bridge separating the F crossing?

4 A. I was under the assumption the only vehicles
5 that could use that bridge was the ambulance and the
6 rescue squad that -- not just the water pump, but that
7 any fire truck that, period, can not use that bridge.

8 Q. Okay.

9 A. Is that correct?

10 Q. Well, let me ask the questions.

11 A. Okay, I'm sorry.

12 JUDGE MACE: It's 11:00 --

13 MR. KINERK: Your Honor, I've got one more
14 question.

15 BY MR. KINERK:

16 Q. Ms. Engles, you had mentioned that you
17 believe that the closure or consolidation of D Street
18 crossing will have an adverse effect on your business.
19 You would agree with me that you have no actual factual
20 basis to support that conclusion. In fact, that is
21 basically a speculative conclusion and speculative as to
22 what's going to happen with regards to the grange in
23 terms of its relocation in March of this year or five
24 years down the road or ten years down the road.

25 A. I have no facts, no.

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1 MR. KINERK: Thank you, I have nothing
2 further.

3 JUDGE MACE: All right, we will recess for 15
4 minutes at this point.

5 (Recess taken.)

6 JUDGE MACE: Let's be back on the record
7 right now. Briefly I would like to deal with the
8 document that was marked as Exhibit Number 29. This was
9 presented by Mayor Fox. It's a profile of General
10 Demographic Characteristics from the year 2000 for the
11 City of Sprague, and my understanding is that counsel
12 for Staff and the company have no objection to the
13 admission of this exhibit; is that correct?

14 MR. THOMPSON: That's correct.

15 MR. KINERK: No objection.

16 JUDGE MACE: I will admit Number 29, Exhibit
17 Number 29.

18 Mayor Fox, do you have any further questions
19 of Ms. Engles?

20

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

22 BY MS. FOX:

23 Q. The sign that is at the corner of B and First
24 Street, does that face east and west or north and south?
25 Doesn't that sign face east and west?

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1 A. Yes.

2 Q. Sending them --

3 A. Up.

4 Q. -- east, no sending them west on First?

5 A. Yes.

6 Q. Down to D Street?

7 A. Correct.

8 Q. And across the D Street crossing?

9 A. Correct.

10 Q. Okay.

11 A. You have to help me, I'm sorry, east and
12 west.

13 MS. FOX: That's all.

14 JUDGE MACE: Okay, Mr. Thompson.

15 MR. THOMPSON: Nothing more for us.

16 JUDGE MACE: Mr. Kinerk.

17 MR. KINERK: Nothing further, thank you,

18 Ms. Engles.

19 JUDGE MACE: All right, thank you Ms. Engles.

20 And I understand now, Mayor Fox, that you
21 wish to testify; is that correct?

22 MS. FOX: Mm-hm.

23 JUDGE MACE: Go ahead, sit over there.

24 Please raise your right hand.

25

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1 Whereupon,

2 SYLVIA FOX,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 JUDGE MACE: All right, please be seated.

7 Now, Mayor Fox, there is no one to ask you questions, so

8 why don't you just go ahead.

9 MS. FOX: Okay, I don't know the best way to

10 do this, and I will probably get a little scrambled up

11 on different ways of stating it, but --

12 JUDGE MACE: Just remember that if you're

13 reading, you need to go slowly so the reporter can take

14 down what you say.

15 MS. FOX: Yeah, I just jotted notes down.

16 I'm not only here to represent the City, I'm

17 here to also represent the Chamber of Commerce. I'm a

18 member of the Chamber, I'm the President of the Chamber

19 of Commerce. I'm also a business owner here in town, a

20 residence here in town. I am representing the children

21 of the community as, you know, talking to them and

22 knowing what -- how they feel about the different things

23 that go on in the community and their concerns. The

24 farmers, I have spoke with them. And, of course, the

25 rest of, you know, the rest of the community, I have

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1 spoke with all of them. So things that I'm going to be
2 bringing up today are concerns of not only just the
3 City, but of the whole community and the surrounding
4 community.

5 Public safety has been a big issue with
6 everyone. They're worried about being able to get our
7 ambulances and our fire trucks to rescue on the north
8 side if we have D Street closed, and F Street for that
9 matter. I spoke with an EMT after I left here last
10 night, because I wanted to get another opinion of an EMT
11 that practices on a daily basis. And I talked to her,
12 and I asked her, I says, is 20 seconds a big response
13 time. And she says --

14 MR. KINERK: I'm going to object to the
15 extent that the Mayor is -- it's hearsay is the
16 objection that I'm making, and to the extent that she's
17 testifying with regards to that, I have to enter an
18 objection. I have given her extensive leeway with
19 regard to the questions both on direct and cross of
20 witnesses, but if she's going to be testifying relative
21 to other individuals, other citizens, then she had the
22 option of providing some sort of a written documentation
23 in support thereof, calling those witnesses live, or
24 having those people testify at the hearing last night.
25 While I understand that the rules of evidence are not

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1 something that she is intimately familiar with,
2 nonetheless for purposes of this record when it gets to
3 the issues, specific issues of safety, unless there is a
4 proper foundation, I am going to object on proper
5 evidentiary grounds, in this case on hearsay.

6 JUDGE MACE: Mr. Thompson, do you have
7 anything to contribute to this?

8 MR. THOMPSON: Well, I would agree that
9 that's an appropriate objection, particularly -- well,
10 there has been testimony on this issue as well, and it
11 sounds as if she's trying to impeach the testimony of
12 her own witness, which I think is another grounds to be
13 cautious with admitting hearsay, even though we don't
14 slavishly adhere to that at the Commission I know.

15 JUDGE MACE: All right. Let me just explain,
16 you have probably heard this, hearsay is the grounds for
17 objection to evidence coming in, and what it means is
18 you can't repeat through yourself someone else who could
19 be a witness here, the words of someone else who could
20 be a witness here. It's a way of bringing in someone
21 else's testimony, and it's not permitted. Although
22 there are some exceptions to the hearsay rule, I don't
23 believe that they would apply in the instance of your in
24 effect filtering the testimony of this EMT person
25 through you into this proceeding. So I can't permit you

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1 to do that. You can tell from your own experience, you
2 can give testimony based on your own personal
3 experience, but you can't say to this Court the words of
4 someone else.

5 MS. FOX: So under my understanding, a 20
6 second response is a -- can be very crucial when someone
7 has a heart attack. In the near past -- in the past --
8 or just recently in the last year, few years or so, they
9 have equipped your airports, a lot of your public
10 courthouses with something that is called a defib unit,
11 which is an automatic defib unit. It's used for heart
12 attack people. They need to get the electricity to that
13 person immediately. And my understanding is that an
14 extra 20 seconds could be very -- could be fatal to that
15 person.

16 The children in the community walk across the
17 tracks at D Street quite often, my own business right
18 there at D Street crossing --

19 JUDGE MACE: And what business is that?

20 MS. FOX: Fox's Services. And my lot is just
21 kitty corner from the crossing, within 100, probably 100
22 and -- probably about 100 feet. And so when I look out
23 the back, I can see the children walking across there
24 quite often. And I feel that if you close that crossing
25 that those children are still going to cross there,

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1 because when they leave from the Main Street, Main
2 Street basically as far as the stores and stuff ends
3 right at D Street. So when the children leave to go
4 home, they're going to leave from that business district
5 and from the park, and they're going to go right up D
6 Street to the north side. They're not going to go down
7 to F Street or go the other way to B Street. They
8 usually always generally go to D Street and go up and
9 across.

10 And handicapped people, that's also an easier
11 way for them to get across the tracks, because the same
12 thing applies. The business district is at the D -- it
13 basically ends -- it's between C and D is your basic
14 business district, your city park, your city hall is
15 within that close proximity too. And when everybody
16 leaves from those basic areas and if they go -- are
17 going to the north side, that's where they would go, to
18 the D Street and walk up. And if there's a handicapped
19 person doing that, it's going to be much easier for them
20 to go to the D Street exit from the park or the market
21 or the bank or the post office to go to D Street and go
22 to the north side.

23 Beth Ann mentioned that there's, you know, of
24 course, that there's a lot of trucks that use that
25 route, and I didn't really realize until I bought the

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1 business down in town a couple of months ago how many
2 trucks at harvest are back behind that building. I mean
3 those guys were constantly from 5:00, 6:00 in the
4 morning if not earlier until after dark or right at
5 dark, those trucks were constant through there. I mean
6 between fueling and taking their grain to the elevator
7 or getting their grain from the elevator. And they not
8 only went left on D Street, which would be south, they
9 also went north to go to the grange to fuel or whatever
10 they needed there to do, supplies or whatever they
11 needed to pick up. Let's see.

12 Anyway, the traffic is very intense in that
13 area at that -- during harvest and harvest time, so I
14 guess August through part of September or the end of
15 July I guess through September, somewhere in that area.
16 And I feel that if you close that D Street crossing that
17 it's going to limit these people from having the
18 mobility of getting from one area without going a longer
19 route to get to their supplier, which is on the other
20 side of the tracks. The grain elevators are on the
21 south side. The grain elevator -- I mean the supplier
22 is on the north side of the tracks, so that's the
23 easiest access to that grange. And they're still going
24 to have to get -- I mean if they're getting, like she
25 said, the fuel is there at this point, and even if the

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1 fuel was to move, they still have other supplies that
2 they're going to need to pick up there. They carry auto
3 supplies and other things that the farmers are going to
4 need.

5 Okay, as far as three crossings versus one or
6 two crossings, no matter if we only had one crossing in
7 the city of Sprague, you're still going to have to slow
8 that train down to a certain extent, and we still have
9 -- are going to have the same amount of vehicles going
10 across crossings whether we have one crossing or we have
11 three crossings or we have two crossings. You're still
12 going to have the vehicles going across the same -- the
13 same amount of people are still going to cross the
14 crossings. So as far as being a safety issue, we are
15 still going to have that same traffic no matter what --
16 how many crossings we have to go across, and I don't --
17 we have talked, you know, I have talked to -- okay, so I
18 don't want to -- I talked to somebody, okay.

19 There has been no -- there has been no
20 accidents on any of these three crossings, and as far as
21 I know, there was not any on the other two crossings
22 that they closed, so there's not really a safety issue
23 as far as people being hit or run over on the -- or
24 whatever on the tracks. There hasn't been any
25 accidents, so I don't feel that there's a safety issue

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1 there.

2 JUDGE MACE: You know, I want to interrupt at
3 this point, not because you're doing anything wrong, but
4 one of the concerns -- some of what you're doing is
5 giving testimony, but some of what you're doing is
6 presenting argument, and there is going to be an
7 opportunity for you to do that after we close the
8 testimony, in other words after you finish giving your
9 testimony.

10 MS. FOX: Okay.

11 JUDGE MACE: So, you know, I don't want to
12 have to have you present all of this all over again.

13 MS. FOX: Okay.

14 JUDGE MACE: If you have things to say like
15 what you have already told us, you have told us that you
16 have observed people crossing D Street quite a bit or
17 that you have observed the trucks during the harvest
18 time, that kind of thing, that's fine, that's testimony.
19 But some of what you're doing is when you're saying, you
20 know, there aren't that many accidents, that's already
21 -- that's commenting on the testimony we have already
22 had, and that's really argument.

23 MS. FOX: Okay.

24 JUDGE MACE: So I know it's hard, and I
25 understand that you're here on your own, you know,

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1 you're representing the City, but if there's a way that
2 you can just confine what you're doing right now to
3 testimony and evidence, and then I will allow you to
4 make argument after we finish that part of the
5 proceeding.

6 MS. FOX: I think that would be it.

7 JUDGE MACE: Okay, Mr. Thompson, do you have
8 any questions?

9 MR. THOMPSON: I don't have any questions.

10 JUDGE MACE: Mr. Kinerk?

11 MR. KINERK: No questions, thank you.

12 JUDGE MACE: All right, thank you, you're
13 excused.

14 Earlier on, Mr. Thompson, you asked me about
15 whether you could have permission to present rebuttal
16 testimony. Are you still interested in making that
17 request?

18 MR. THOMPSON: Yes, we would like to do that,
19 and I will tell you why. I think that we're generally
20 -- Staff is generally on the side of the proposal by
21 BNSF in terms of supporting some sort of closure type
22 remedy, whether that includes conditions or something of
23 that nature. And therefore typically the party with the
24 burden of proof and parties that are on that side have
25 the opportunity to provide rebuttal testimony. I think

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1 it's particularly important in this case where we
2 haven't had discovery and there hasn't been any
3 pre-filed testimony to really know what's coming our way
4 in terms of the case against closure that would be -- I
5 don't have much to offer through Mr. Nizam, but some
6 points that were raised through testimony from the City
7 I think would -- the record would benefit from an
8 opportunity for Mr. Nizam to give his opinions on some
9 of those issues.

10 JUDGE MACE: Well, rebuttal is not typical in
11 a case, or I should say it's not usual, but on the other
12 hand, I do want to make a good record for the
13 Commission, and so I will ask if there's anyone that has
14 any objection to a brief presentation of rebuttal
15 testimony by the Staff.

16 MR. KINERK: No objection from BNSF.

17 MS. FOX: I don't understand what rebuttal
18 is.

19 JUDGE MACE: Mr. Nizam is going to take the
20 stand again and give further testimony, and you will
21 have further opportunity to ask him questions.

22 MS. FOX: So rebuttal is basically then he is
23 going to bring up points that he thinks that the City
24 shouldn't be putting in, is that what that is?

25 JUDGE MACE: Not precisely, but he has heard

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1 the City's testimony, and he has some further testimony
2 to make on his own on topics that the City has
3 addressed.

4 MS. FOX: That sounds like a 50/50 gamble to
5 me.

6 JUDGE MACE: Well, I have to ask you, do you
7 have an objection?

8 MS. FOX: I have an objection.

9 JUDGE MACE: And can you tell me the basis of
10 your objection?

11 MS. FOX: I just feel that he may have
12 something that is not in the City's best interest.

13 JUDGE MACE: Well, it's possible that that
14 may be the case. You will have a chance to ask him
15 questions, and I think in view of the fact that the
16 Commission does need to have a good record in order to
17 make a decision and a full record, I am going to allow
18 him to present rebuttal testimony.

19 MS. FOX: Okay.

20 JUDGE MACE: And as I say, you will have the
21 opportunity to ask further questions.

22 Are you ready to present him at this time?

23 MR. THOMPSON: Yes, I am, if I could just
24 have two minutes to confer.

25 JUDGE MACE: Two minutes.

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1 (Brief recess.)

2 JUDGE MACE: Mr. Nizam, you have already been
3 sworn in in this proceeding. Why don't you take the
4 witness chair.

5 THE WITNESS: Thank you.

6 JUDGE MACE: Mr. Thompson.

7

8 Whereupon,

9

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

13

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

15 BY MR. THOMPSON:

16 Q. Mr. Nizam, we have heard testimony about the
17 fact that pedestrians currently utilize that D Street
18 crossing. Does that play into your analysis at all of
19 the advisability of closing D Street?

20 A. Yes, it does. One of the outstanding issues,
21 or I'm sorry, one of the outstanding effects of the
22 closure on D Street in Staff's view is that of the
23 effects on pedestrians using D Street. We have heard
24 testimony from the City that D Street is a frequently
25 used pedestrian crossing. And, in fact, during my

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1 investigation, I have observed pedestrians, mostly
2 children, crossing at D Street. So closing D Street
3 without any mitigation in that regard may have the
4 effect of either encouraging trespassing across Railroad
5 property or what would be hoped would be that the
6 alternative is they would be diverted to one of the
7 other two crossings.

8 Q. Do you have any opinion about the likelihood
9 of that occurring?

10 A. Well, from all the testimony we have heard,
11 it seems like that's a likely scenario, that people
12 would actually trespass rather than walk either east or
13 west to B or F Streets.

14 Q. And what kind of mitigation would you
15 recommend to address that problem?

16 A. The use of a, I'm sorry, the establishment of
17 a pedestrian only crossing, which would be gated and
18 signalized.

19 Q. And could you describe what that -- how that
20 might be configured?

21 A. A pedestrian only crossing is typically the
22 width of a sidewalk, so somewhere around six feet, with
23 signals and gates that are designed specifically for use
24 at pedestrian crossings. So in other words, we would
25 create a designated crossing in the space where the

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1 existing highway-railway crossing stands.

2 Q. Does that -- would that nonetheless
3 constitute a gain in safety in your opinion, even though
4 there's still a crossing, albeit just a pedestrian
5 crossing, that that would be an improvement from having
6 a vehicle and pedestrian crossing?

7 A. Yes, it would, for the reason that there
8 would still be a decrease in the number of highway-rail
9 intersections that could be utilized by vehicles.

10 Q. You were here during the testimony of
11 Ms. Engles, correct?

12 A. Yes, I was.

13 Q. And do you recall her testimony about the
14 ability of a truck turning right from Railroad Avenue
15 and proceeding north on D Street not being able in her
16 opinion to turn right onto Alder Street?

17 A. Yes, I do.

18 Q. And what's your opinion on that matter?

19 A. My opinion is that trucks could make that
20 right-hand turn. And what I'm basing that on is that it
21 appears that Alder Street is wider than the alley behind
22 the grange that was described earlier in the testimony
23 to which trucks could make right turns and therefore
24 could probably make right turns onto Alder more easily.

25 Q. What's your observation of Alder Street?

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1 A. My observation is that it is a two lane
2 roadway. Although it's a gravel roadway so not marked
3 as such, the width suggests that it is a two lane
4 roadway.

5 Q. Were you able to take any measurements of the
6 area between the grange and the railroad tracks?

7 A. Yes, I was.

8 Q. And can you tell us what you found?

9 A. The distance between the dock, in other words
10 the physical structure of the grange facility, and the
11 railroad signal bungalow is 91 feet approximately.

12 Q. Maybe you could point it out on Exhibit 1,
13 the aerial, if we get it up close to the Judge to show
14 what measurement we're talking about.

15 JUDGE MACE: Well, so you can show everybody.

16 Q. And everybody.

17 A. The distance between the signal bungalow
18 located just south of the grange and the loading dock at
19 the grange is 91 feet. And also the distance between
20 the signal bungalow and the nearest rail is 29 feet, so
21 therefore the --

22 Q. Well, okay, if the bungalow were removed,
23 then how many feet would there be from the grange to the
24 edge of the tracks?

25 A. If the bungalow were removed, there would be

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1 120 feet between the grange and the edge of the tracks,
2 however 10 feet of clearance minimum are required from
3 the tracks. Actually State rules are 8 feet 6 inches
4 minimum clearance are required from the nearest rail to
5 the traveled portion of the roadway and 10 feet where
6 practical, so that would leave 110 feet between the
7 grange and the point of required clearance. It is
8 though important to note that there is railroad ballast
9 that extends out past that point.

10 JUDGE MACE: And what is railroad ballast?

11 THE WITNESS: Railroad ballast is the rock
12 you find that the track sits on, and it's purpose is for
13 drainage and support of the track.

14 JUDGE MACE: Thank you, go ahead.

15 A. I'm not sure about the extent to which that
16 railroad ballast could be altered to accommodate
17 increased turning radiuses, if needed.

18 BY MR. THOMPSON:

19 Q. What's the problem with driving on railroad
20 ballast?

21 A. Well, I'm not sure if it could be considered
22 a drivable surface. I don't know what types --

23 Q. It's just fairly coarse rock?

24 A. Yeah.

25 MR. THOMPSON: All right, I think that's all

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1 my questions. Thank you, Mr. Nizam.

2 JUDGE MACE: Mr. Kinerk.

3 MR. KINERK: Thank you, Your Honor.

4

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

6 BY MR. KINERK:

7 Q. Mr. Nizam, could you tell us what the extent
8 of your investigation has been with regards to
9 pedestrian traffic over the D Street crossing in
10 Sprague?

11 A. Yes, my investigation has been limited to
12 comments by members of the public from Sprague as well
13 as city officials filed with the Commission.

14 MS. FOX: Can I object to that, he's doing
15 the same thing that I got objected for. He's bringing
16 in somebody else's testimony.

17 JUDGE MACE: Well, okay, you're objecting on
18 a hearsay basis, and I know this seems -- it is going to
19 seem very -- well, let me just try to explain. He's
20 telling what his opinion is based on. He is not saying,
21 this person told me that there was all this traffic.
22 And I know that may seem like a distinction without a
23 difference for you, but under rules of evidence, it's
24 permissible. We're trying to get the basis for his
25 opinion. We're trying to find out why he's saying this.

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1 And he has listened to the testimony, and that has been
2 in open court, so he is permitted to say those types of
3 things even under hearsay constraints.

4 Go ahead.

5 A. Testimony by members of the public,
6 representatives of the City, and my personal
7 observations during the course of my investigations at
8 the D Street crossing.

9 BY MR. KINERK:

10 Q. Let's start with your personal observations.
11 Outline for us the extent of your personal observations
12 in terms of dates and times that you specifically
13 focused or investigated on pedestrian traffic over the D
14 Street crossing in Sprague.

15 A. My investigation was never specifically
16 focused on pedestrian traffic. But, for example, when I
17 was conducting an investigation at and around D Street,
18 I did observe pedestrians and from my recollection
19 mostly children that would use the D Street crossing.

20 Q. Tell us based on your recollection, sir, the
21 number of children that you saw using the D Street
22 crossing.

23 A. No more than five total.

24 Q. Now the five total children that you saw
25 using the D Street crossing in Sprague, would that have

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1 been spread out over multiple, I think you testified
2 previously that you had made three separate inspections
3 in Sprague, would that encompass all three of the
4 separate inspections that you did?

5 A. Yes, it would.

6 Q. Now with regard to comments made in these
7 proceedings, can you reference me to any specific
8 testimony outlining a specific number of pedestrians
9 that have used the D Street crossing?

10 A. No.

11 Q. With regard to information that you have
12 received in written form with regard to pedestrian use
13 of D Street crossing in Sprague, have you been provided
14 any specific numbers as to the use of that crossing by
15 the public?

16 A. No.

17 Q. You have heard testimony, and I know that you
18 have done your personal investigation, so I would be
19 correct in concluding that you share the opinion that
20 the B Street crossing sits approximately 600 feet away
21 from the D Street crossing?

22 A. Yes.

23 Q. Likewise you would share the conclusion or
24 opinion that the F Street crossing sits approximately
25 600 feet away from the D Street crossing?

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1 A. Yes.

2 Q. And you are aware, are you not, that the F
3 Street crossing is in terms of residents north of the
4 tracks the most direct route in a southerly direction to
5 the elementary, junior high, and high school on Sixth
6 Avenue, correct?

7 A. Yes.

8 Q. You heard the testimony with regards to
9 consolidation of D Street, and by that with the
10 expectation that the Railroad would barricade the
11 crossing at D Street and remove the planking and install
12 the barricade, correct?

13 A. I did.

14 Q. Would you consider an appropriate alternative
15 to a pedestrian crossing at D Street to be barricading
16 coupled with fencing so as to divert the limited
17 pedestrian traffic that might be expected or have been
18 historically using D Street to instead use F Street or B
19 Street situated a mere 600 feet away in either
20 direction?

21 A. That is considered an acceptable engineering
22 solution too.

23 Q. With regard to your testimony regarding the
24 ballast surface, would it be your opinion or
25 recommendation that there be investigation into the

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1 appropriateness of looking at other types of surface
2 conditions to assist professional or non-professional
3 drivers in negotiating Railroad Avenue in terms of turns
4 if the D Street crossing were consolidated?

5 A. Would I recommend surface improvements that
6 would entail altering the surface to make it more
7 friendly, let's say, if trucks were adversely impacted,
8 yes.

9 MR. KINERK: Thank you, sir, that's all the
10 questions I have.

11 JUDGE MACE: Mayor Fox.

12

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

14 BY MS. FOX:

15 Q. Do you know how many children are above the F
16 Street, north of the F Street crossing?

17 A. I do not.

18 Q. What is your experience with putting in a
19 pedestrian crossing and having children go around it if
20 that rail -- if that arm is down?

21 A. In my experience, a pedestrian crossing is a
22 mitigating factor in reducing the potential for a person
23 crossing in the general vicinity that the pedestrian
24 crossing is meant for to be hit or struck by a train.
25 I'm not sure if I answered your question.

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1 Q. Is there a statistic on a pedestrian crossing
2 that states how many accidents happen on a pedestrian
3 crossing or around a pedestrian crossing, walking around
4 it rather than staying there where you got a closed
5 gate?

6 A. I'm not aware of any, no.

7 Q. Are you aware of any accidents at a
8 pedestrian crossing where a child or a person has gone
9 around it?

10 A. No, I'm not.

11 Q. How long has it -- how long ago has one of
12 these been put in; how much usage have these had?

13 A. The last pedestrian crossing I'm aware of
14 that went in went in in 19, I'm sorry, the year, no,
15 1999 in the city of Winlock, and it's my understanding
16 that the usage of the pedestrian crossing is quite
17 frequent.

18 Q. Is this the only one that exists?

19 A. No, there are several pedestrian crossings
20 nationwide as well as in Washington.

21 Q. Several meaning?

22 A. I don't have the 2000 railroad statistics
23 book with me, but that number could be found in that
24 publication by the U.S. Department of Transportation.

25 Q. So you don't know if these are successfully

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1 being used or not; in other words you're --

2 A. I have no reason to think otherwise.

3 Q. Okay. There's going to be or you're stating
4 that there will be 110 feet from the dock to the 10 feet
5 leadway that you have to stay away from the track?

6 A. Yes.

7 Q. How much of that is the rock that the gravel
8 -- that the Railroad has put down there?

9 A. I don't know that.

10 Q. So you don't know how much of that can't be
11 driven on because of that rock that's there, because you
12 can't drive on that rock, right?

13 A. Right.

14 Q. You don't know how much of that 110 feet --

15 A. Because --

16 Q. -- is going to be taken away from your
17 measurement?

18 A. -- the edge of the rockway isn't delineated
19 in a straight line, and it varies, so I'm not sure at
20 which point you would be talking about.

21 Q. Are you familiar with a 110 foot trailer?

22 A. No.

23 Q. Are you familiar with the measurements of a
24 double trailer?

25 A. I am not.

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1 Q. Okay. Do you think that a 110 foot trailer
2 could turn in a 110 foot space?

3 A. It's my understanding that the maximum length
4 of a single trailer is less than 110 feet.

5 Q. There's not trucks at 110 feet?

6 JUDGE MACE: Well, you have to ask him
7 questions.

8 Q. Okay, well, if you have two sets -- if you
9 have a set of doubles, they're going to be more than 110
10 feet.

11 A. Okay, I'm sorry, I was referring to a single
12 trailer.

13 Q. Okay. How would -- I mean if you have a set
14 of doubles, is there a way that they're going to be able
15 to turn in front of that grange?

16 A. I'm not -- I don't have the expertise to
17 answer that.

18 Q. Okay. Are you familiar with the fact that a
19 52 foot trailer, single trailer, takes 75 feet to make a
20 turn?

21 A. Not previously, no.

22 Q. Okay. You stated a little while ago that you
23 felt that a tractor trailer could leave from the grange
24 going north on D Street, could make the right-hand turn
25 there.

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1 A. On Alder Street?

2 Q. On Alder.

3 A. Yes.

4 Q. Okay. Now if that -- if the grain truck or if
5 the fuel truck had come in on Railroad Avenue going
6 east, made a right on D Street, which would be going
7 north, went in to be fueled, which would be going in the
8 alleyway, okay, if, okay, now her testimony, Beth Ann's
9 testimony was that the tractor trailer has to back out,
10 it has to back out with the trailer going south because
11 of the turn not being able to be made, pushing the
12 trailer north, or pushing the trailer, I'm sorry,
13 pushing the trailer -- the trailer has to go north, it
14 can not go south because of the building there. Okay,
15 so that trailer, I mean that truck and trailer is going
16 to have to come down and go across D Street, right? Is
17 that my --

18 A. Can I comment on what I think I heard the
19 previous witness testify to?

20 JUDGE MACE: Well, I think you need to --
21 well, hm.

22 MS. FOX: Do you want me to say it over
23 again?

24 JUDGE MACE: Are you asking him --

25 MS. FOX: I'm just asking --

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1 JUDGE MACE: -- was that her testimony?

2 MS. FOX: No, I'm asking, in other words, is
3 your understanding that once a trailer -- once a truck
4 comes in here to get fuel and backs -- pushes the
5 trailer north on there, you're saying that the trailer
6 -- the truck can come south and make that -- okay,
7 you're saying that it would be -- never mind, I don't
8 even remember what I was going to ask. I'm frustrated.
9 No other questions.

10 JUDGE MACE: Mr. Thompson.

11 MR. THOMPSON: I don't have any redirect.

12 JUDGE MACE: Okay, thank you, you're excused.

13 THE WITNESS: Thank you.

14 JUDGE MACE: Okay, that completes the
15 presentation of the evidence in this case, and it's
16 noon, and we have the oral argument yet to complete. We
17 can either go ahead with that now and finish when that's
18 done, or we can take a break for lunch and come back at
19 1:00 and do oral argument.

20 Mr. Thompson, what's your sense of the
21 procedure to follow here?

22 MR. THOMPSON: Well, I would kind of like to
23 have lunch time to think about our closing.

24 JUDGE MACE: Okay.

25 Ms. Fox?

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1 MS. FOX: I agree.

2 JUDGE MACE: And Mr. Kinerk?

3 MR. KINERK: I'm happy to take a break, Your
4 Honor.

5 JUDGE MACE: All right, then we will resume
6 at 1:00 here and take oral argument.

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

8

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

10 (1:00 p.m.)

11

12 JUDGE MACE: Let's be back on the record in
13 Docket Number TR-010684, BNSF versus City of Sprague.
14 We are returning from our lunch recess, and now we will
15 commence with oral argument. After oral argument is
16 completed, there are a couple of housekeeping matters
17 that I want to attend to before we close, so don't just
18 all jump up.

19 I will begin with you, Mr. Kinerk.

20 MR. KINERK: Thank you, Your Honor, and thank
21 you for your courtesies extended to all the parties in
22 this two day hearing.

23 From a statutory standpoint, it's RCW
24 81.53.060 which provides the Commission with the
25 authority and the standard under which to consider a

1 closure consolidation of a crossing. The standard under
2 the statute is whether public safety requires that
3 consolidation or closure.

4 It is the Railroad's position that the D
5 Street, as born out by the evidence heard, is a
6 redundant crossing. It sits 600 feet away from B
7 crossing, 600 feet away from the F crossing. It is a
8 crossing based on the exhibits and testimony presented
9 to this Court of one of low traffic volume and is one in
10 which there exists with its consolidation alternative
11 routes for the traveling public, be it pedestrian, be it
12 vehicle, to proceed in a north-south direction across
13 this particular town.

14 I would like to be able to represent to the
15 Court that the installation of gates and flashing lights
16 and signs is enough to protect the public, but as the
17 Court heard from a statistical analysis gathered by the
18 Federal Railroad Administration, over 50% of the
19 incidents involving motor vehicles in highway -- in
20 rail-traffic involve incidents at gated crossings such
21 as what we currently have at the D Street crossing.

22 There seems to have been some emphasis in the
23 testimony with regard to the lack of accident history at
24 the D Street crossing, thereby I guess obviating the
25 need for consolidation. I think the testimony bears out

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1 just the opposite result. I think it's appropriate that
2 the Railroad is assuming a proactive approach. What we
3 know factually from the testimony in this case is that
4 there are close to 30 trains running on the main line
5 track in both directions at all times of night and day
6 through Sprague, running at lengths of up to 6,000 to
7 7,000 feet, weighing several thousand tons, operating on
8 a 1% grade at a speed of 45 miles an hour.
9 Statistically the likelihood with three of these
10 crossings here of there being a motor vehicle-train
11 collision is unfortunately probably a greater likelihood
12 certainly with the configuration that exists currently
13 in Sprague. And to protect the public, to reduce that
14 risk, the only viable option is to close that particular
15 crossing, the D Street crossing, in order to do so.

16 One of the key pieces of testimony I think
17 that's been -- that's come forward has been the
18 testimony from the Sprague Fire Department personnel
19 that the consolidation of the D Street crossing would
20 not result in any significant detriment of the emergency
21 personnel response to the north side of Sprague, and the
22 testimony that we have heard is there would be
23 approximately a 20 second difference. And assuming the
24 accuracy of that, we know that that is in general terms
25 not considered a significant deterrent in terms of

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1 emergency personnel.

2 There's also been some testimony with regard
3 to the potential for adverse business consequences by
4 the consolidation of the D Street crossing. I would
5 indicate that first, I don't believe that that type of
6 analysis is really appropriate when the analysis is one
7 of public safety, not of business repercussions.
8 Needless to say, however, we have allowed that testimony
9 to go forward, although I believe that the testimony as
10 it is in the record does not show significantly more
11 than conjecture or speculation as to what might
12 transpire in the future. That type of testimony or
13 evidence is really not something that the Commission
14 should consider in evaluating the standard, which is
15 whether public safety is at risk by not engaging the
16 consolidation.

17 I think it's fairly clear from the testimony
18 that the consideration of the amended petition for the F
19 Street crossing closure is one that still meets the
20 criteria of both the FRA and BNSF with regard to grade
21 closure consolidation. It is likewise a redundant
22 crossing. It is likewise a crossing with low traffic
23 volume. And lastly, it is a crossing that if it were
24 closed or consolidated, there would still be alternative
25 routes for both the vehicle and pedestrian traffic.

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1 It's clear, however, and I think Mr. Cowles went over
2 this in greater detail, that in evaluating the
3 appropriateness from a safety standpoint of the D Street
4 crossing versus the F Street crossing, it's clear that
5 the F Street crossing represents a most direct line
6 currently and likely into the future with regard to the
7 present location of the school on Sixth Avenue. And if,
8 in fact, there is the expected growth that happens in
9 the north end of Sprague, it's likely that that would be
10 the route for greater amounts of schooling. And so it
11 would be appropriate in looking at that that from a
12 safety standpoint that D remains the appropriate and
13 proper crossing for the Commission to consider for
14 consolidation.

15 It has to be emphasized, both on a local
16 basis and on a national basis, that the Railroad has
17 undertaken really from the initiative first started in
18 1991 by the FRA and the Department of Transportation
19 that at grade consolidation is a significant safety
20 initiative. It's one in which literally thousands of
21 crossings are ear marked for closure for safety
22 purposes, and people with far greater skills than I
23 evaluating whether a crossing is a viable candidate for
24 consolidation have concluded that in looking at those
25 factors you must look at whether you have a redundant

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1 crossing, whether you have traffic volumes that are of a
2 low enough volume to not be adversely affected but need
3 to use alternative routes. The criteria both from
4 BNSF's grade closure program and that of the FRA DOT has
5 been satisfied in this case. It is clear that the best
6 and safest remedy to the current configuration of the
7 three crossings here in Sprague is with consolidation of
8 C Street crossing. At the end of this morning's
9 testimony --

10 JUDGE MACE: You probably mean D Street.

11 MR. KINERK: D Street. At the end of this
12 morning's testimony, there was the suggestion that
13 perhaps a pedestrian only crossing would be appropriate
14 at D Street. What I guess would be the Railroad's
15 position is that the request for consolidation of D
16 Street in this case was premised and still is upon a
17 safety analysis and a safe to the public analysis. And
18 I guess what needs to also be emphasized is that in
19 evaluating options or alternatives, one has to weigh the
20 specific facts relative to a crossing. Testimony
21 evidence in the record before this Commission is that
22 there is a extremely low number of pedestrian usage of D
23 Street crossing. That's what's in the record. And to
24 suggest that a reasonable alternative or condition to be
25 attached to closure should be a pedestrian crossing is

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1 one I don't think is supported by the testimony or the
2 evidence. The long and short of it is the safest way to
3 protect the public is to close or consolidate the D
4 Street crossing in its entirety, and that is the
5 position of BNSF. That is why they have undertaken this
6 particular petition, and that is the relief that we are
7 seeking.

8 Thank you.

9 JUDGE MACE: Mr. Thompson.

10 MR. THOMPSON: Thank you, Your Honor. I just
11 want to review first the applicable legal standard just
12 for clarity of that, although Mr. Kinerk covered that
13 ground as well. It is, of course, RCW 81.53.060, and
14 the standard is whether the public safety requires the
15 closure. That standard as set out in the statute
16 doesn't tell you a whole lot, but you can learn more by
17 taking a look at the case Department of Transportation
18 versus Snohomish County, which you will find at 35 Wa.2d
19 247, and I believe that's a case from about 1949. So
20 it's a pretty old case, but it involved an application
21 of this exact statute, which has been around a good long
22 time.

23 What you get out of that case is that what
24 we're doing in these cases is weighing the public
25 convenience and necessity of having a crossing, an at

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1 grade crossing, against the inherent danger that is
2 posed by having an at grade crossing. And underlying
3 the statutory scheme for at grade crossings, which is in
4 Chapter 81.53 RCW, is the underlying assumption that all
5 at grade crossings are inherently dangerous and should
6 not be -- should be the exception rather than the rule,
7 and there shouldn't be a need for them to exist.

8 Another place where you look at law for the
9 applicable standard is at RCW 47.36.030, and that
10 statute directs the Washington State Department of
11 Transportation to adopt standards for traffic control
12 devices in the state, and it directs those standards to
13 be as close as possible to standards set out in a
14 document that's called the Manual of Uniform Traffic
15 Control Devices. A portion of that, the Manual of
16 Uniform Traffic Control Devices, which is at 884, states
17 essentially that crossings for which there is not a
18 demonstrated need should be closed. And this is where
19 we come up with this concept of redundancy of crossings
20 and looking for opportunities to direct traffic to as
21 few crossings as is possible in order to limit the
22 amount of exposure that vehicles have to trains
23 traveling on the tracks. And the Railroad's testimony
24 showed there is considerable rail traffic on this set of
25 tracks. This is a major corridor, and there are many

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1 trains through this town every day.

2 I want to emphasize to you that you don't
3 have before you necessarily the simple decision of yes
4 or no, up or down, close or don't close. The Commission
5 has a history of requiring the satisfaction of
6 conditions prior to the closure of crossings, and I can
7 provide you a couple of citations in which the
8 Commission has required the construction of frontage
9 roads on railroad right of way as a condition precedent
10 to closing the crossing.

11 JUDGE MACE: I would appreciate having those
12 citations.

13 MR. THOMPSON: There are two that I was able
14 to locate. The first is a May 1995 decision in Docket
15 number TR-940282, and it was captioned Burlington
16 Northern versus Skagit County. The second one is
17 captioned Union Pacific Railroad versus Spokane County,
18 and it is Docket Number T-950176, and the date of that
19 one was July 1996. Also the case referred to in that
20 Washington State Supreme Court decision that I referred
21 you to discusses a case in which the crossing was
22 ordered closed to vehicular traffic but was left open to
23 pedestrian traffic in the after situation, and the full
24 Commission order itself is set out in that decision.

25 In looking then at the merits, this weighing

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1 of public use and necessity against the inherent hazard
2 of having an at grade crossing, there's two main
3 considerations we have gone over in this case. One is
4 impacts on emergency access in the after situation, and
5 the other is general traffic flow and mostly in the
6 evidence focused on access to the grange business.

7 As far as emergency access is concerned, I
8 think it was pretty clearly established through the
9 testimony of Mr. Lamparter that if D Street were to be
10 closed, it would not have a substantial impact on
11 response time to the homes in the north of the railroad
12 tracks.

13 The second consideration, again it was the
14 impact on traffic flow, and there we have some stickier
15 questions, but ultimately I think the case has been made
16 that we're not looking at a substantial and serious
17 impact on traffic flow to the grange business. And
18 that's for two reasons. It's demonstrated by the aerial
19 photos and the maps and the testimony of Mr. Nizam that
20 crossing either -- the use of the D Street crossing is
21 not essential to the operation of the current business
22 at that location. There was discussion of the ability
23 of customers, the convenience of customers to that
24 facility, but really the testimony was not that it would
25 be impossible for people to use the facility but that it

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1 would be so burdensome that they would tend to go to
2 other businesses, for example.

3 As a matter of fact, the testimony was that
4 the fuel business of the grange, which is the portion
5 that draws the larger rigs to come to the grange, is in
6 all likelihood to be moved to a different location
7 because of a problem with compliance with underground
8 storage tank problems in that location. And secondly,
9 even under present circumstances, Ms. Engels testified
10 that she has a very loyal customer base who have been
11 customers for a long time, and as to her fuel business,
12 she really doesn't have competitors.

13 There are other considerations in addition to
14 emergency access and traffic flow that also became
15 apparent in the course of the testimony. And as
16 Mr. Nizam testified, there is the potential after
17 closure of D Street for people that currently use that
18 crossing to basically continue to cross there without
19 the benefit of having a crossing surface and a signal to
20 warn them of approaching trains. One solution of that
21 that has apparently been suggested by the Railroad is
22 using fencing to fence off the area. And certainly that
23 would probably deter trespassing, but it would also have
24 an impact on public convenience and necessity.

25 There was quite a lot of testimony from a

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1 number of different people that that crossing is
2 utilized by the community, which only makes sense since
3 it's the center crossing in town. It's the central
4 access to vital services in the downtown area just from
5 looking at the maps that you have as part of the record,
6 and it would have the obvious impact of bisecting the
7 town near its center. So it's our position that any
8 mitigation of that trespassing problem ought to, rather
9 than requiring pedestrians to go around to either of the
10 other crossings, ought to allow them to continue to use
11 the crossing and to require as a condition of the
12 closure that a pedestrian crossing with signals be
13 installed prior to any closure of vehicular traffic.

14 As another condition that Staff would
15 recommend, we would recommend that in order to
16 accommodate turning movements near the grange business
17 that a condition should be imposed prior to closure of
18 the crossing to improve the surface for vehicles to the
19 greatest extent allowed by law, that is for clearance
20 next to the railroad tracks for vehicles to be able to
21 travel on what's currently ballast next to the railroad
22 tracks. And with those two mitigating conditions, that
23 there would be not -- that would mitigate concerns that
24 there is a substantial need for this crossing to keep it
25 open.

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1 Finally, a third condition that could be
2 imposed on closure of D Street is to require that
3 Railroad Avenue and Boxcar Avenue remain open as a
4 condition of the crossing being closed. And I think
5 this only makes sense in light of the fact that all of
6 the traffic flow analysis has, from both the Railroad
7 and from Staff in support of the crossing, has been
8 based on the assumption that those roads would remain
9 open to vehicles in the after situation.

10 So that is Staff's recommendation, that since
11 there is not with the conditions that we suggest a
12 public need for the crossing sufficient to justify the
13 inherent danger of having such a crossing, that the
14 Railroad should be authorized to close it subject to the
15 three conditions I have outlined. Thank you.

16 JUDGE MACE: Thank you, Mr. Thompson.

17 Mayor Fox.

18 MS. FOX: There was testimony by an EMT last
19 night, her name is Arletta Hoffman, and Arletta stated
20 in her statement that the response time was very
21 important to the north side and that the D Street
22 crossing was the most used crossing. It's the most used
23 in not only pedestrian crossing, it's the most used in
24 traffic, and it's the most used in the emergency
25 response time.

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1 We feel that if you closed one of our
2 crossings that it would be a detriment to the community
3 for the fact that we are in the process of growing, and
4 all of our growth will be in the north side of the
5 tracks. We were in the process of forming a PDA which
6 would bring businesses, possibly warehousing or
7 commercial businesses, to the community, and our growth,
8 beings we're in a flood area, in a flood zone, our
9 growth potential is on the north side. Our residents
10 can build up there without a lot of restrictions. When
11 you build down in the base part of the town, you have a
12 lot of restrictions on any kinds of permits. You can't
13 bring in a lot of stuff to prepare the ground even to
14 build something on it, so all of our growth potential is
15 in the upper north area, and that's all within the city
16 limits up in the north area. So that way the revenue
17 that would come off of any business that would
18 potentially put a business up there, the revenue would
19 go to the city, because it is city limits.

20 The Railroad has come in here in the past and
21 closed two crossings, which is E and B or E and C, and
22 at that time there was promises made to the City that
23 they would not come back and close any closures. There
24 was verbal agreement, there was nothing in writing, but
25 there was verbal agreement. And the City is very

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1 reserved to believe that the Railroad, if they were to
2 close one of our crossings, that they wouldn't come back
3 in the future and want to close the other ones. And our
4 community depends on those crossings. It accesses
5 everything from downtown to the north side, and if our
6 growth is in the north side, our residents from the
7 south side of the tracks is going to need to get up to
8 the north side if there's potential growth up there and
9 possibly other businesses that are going to be needed on
10 a daily basis, then our residents from the south side of
11 the tracks are going to need to go to the north side of
12 the tracks.

13 We've got a museum going in on B Street, so
14 that's going to put more traffic onto B Street, which is
15 not in the closure proceedings, but we also have summer
16 activities, we've got two -- we've got lakes in the
17 close area. We've got several lakes, probably about
18 eight of them within a ten mile radius. We've got the
19 largest lake, which is Sprague Lake is three miles from
20 downtown, which everyone comes right through, all of
21 your fishermen, your hunters and everybody, everybody
22 goes right down Main Street. If they need any kind of
23 supplies, any kind of fuel or special clothes, you know,
24 like in the winter time they come out here and they do
25 fishing for ice fishing, and if there's any extra

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1 clothing needed or their clothes get wet, they can
2 always go to the grange. The Sprague grange is the only
3 one who carries anything like that. So the D Street
4 exit is used not only by our fishermen and our people
5 that are here all the time, D Street is the main used
6 even with our recreational people. They sell batteries,
7 they sell auto parts, and that's also used by
8 recreational people, they sell propane.

9 I have contacted both people from the grain
10 growers. I spoke with Reardon grain growers. I spoke
11 with an Ed Hoffman. He had told me that -- he told me
12 that he had written a letter to the Staff stating that
13 if there was a crossing closed that he would like to see
14 F Street closed. In Ahmer's testimony I believe it was
15 yesterday, he stated that he had gotten a letter that
16 stated that they wanted neither one of the crossings
17 closed, and so I know I -- so for us to be trying to
18 close D Street so strongly, I feel that I -- the F
19 Street is probably the least used of the three, which I
20 don't want to see any one of the three closed. But
21 taking our main crossing away from us I think would be
22 the most destructive to us at this point.

23 We do have residents up on the north side
24 that have children, but from my understanding, there's
25 only three children or so up on the north side at this

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1 point. There's eight as it is up off of F Street. And
2 for them to be using, you know, stating that, you know,
3 because it's the north -- it's the main access to F
4 Street, F Street goes up, and then it basically goes
5 into an area that is a lot of dead ends. We have closed
6 a lot of alleyways in that area, and we have closed a
7 lot of roads in that area. So the traffic is, once you
8 get up F Street, once you get to going north from the
9 downtown area on Main Street, once you go north on F,
10 when you -- after you cross the railroad tracks, you
11 basically come in to like almost like a cul-de-sac type
12 area. Everything kind of dead ends up into that corner.
13 And that's, you know, at this point, that's where our
14 growth will be, and in the future it would -- it would
15 definitely need to have that F Street crossing there for
16 the access to the people where the most growth potential
17 is.

18 But to take our D Street exit, our D Street
19 crossing away from us would be more detrimental at this
20 point. But then F would be more detrimental to us for
21 our future growth. Well, it would be as equally
22 detrimental I should say, not more, because we need the
23 -- we definitely need the D Street to stay as it is,
24 because we've already got everything accessed off of
25 that. Our emergency vehicles, the most used route is D

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1 Street, and that was in Arletta Hoffman's testimony last
2 evening. So what they're doing is they're going up, and
3 they're expanding out to the east or the west from the
4 most center point of our northside area.

5 Whenever the trains come through Sprague,
6 they've got to -- they have to slow down whether we have
7 one crossing or we have three crossings. So by taking
8 -- by taking one away, the train is not going to have to
9 -- there's still -- the train's still going to have to
10 continue on the same pattern that it's using now. It's
11 not going to have to slow just because of or it's not
12 going to be able to go any faster because of you closing
13 one of our crossings.

14 And as far as traffic, if the traffic is
15 going to go across the railroad tracks, they're going to
16 be going across the railroad tracks whether they're
17 using the B or the D or the F Street crossing. So
18 either we're -- all we're going to be doing is just
19 moving it to a different area, but it's still -- it's
20 going to take away from our main access to everything by
21 taking D Street away from us. So I can't see where
22 taking a crossing at all is going to benefit the train
23 from coming through there. We're still going to have 30
24 trains a day no matter whether we have one crossing or
25 we have three crossings or two crossings, and we're

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1 still going to have the same traffic at that point
2 whether we -- no matter how many crossings we have
3 through there, we're still going to have people on the
4 tracks.

5 Originally when this issue was brought up to
6 us at the -- by testimony by Mike Cowles at the hearing
7 in the end of May of 2002, we were told that it was
8 basically a safety and liability issue. And in Mike
9 Cowles' testimony yesterday, he said that it was not a
10 safety and liability issue. And in his attorney's
11 testimony a few minutes ago, he stated that this is a
12 liability or this is a safety and liability issue again.
13 So we have gone from safety and liability issue to the
14 fact that the track is -- that that particular D Street
15 crossing is redundant. So we have gone from safety and
16 liability to redundant and now back to safety and
17 liability.

18 All of our three crossings use approximately
19 the same amount of people within a matter of 15 or 20
20 people a day. So being redundant is -- we are still
21 going to use, I don't know, let's see, we're still going
22 to have just as much exposure whether we have three or
23 we have two crossings at this point, and I just don't --
24 I just don't feel that we should close a crossing
25 because of the fact of it being -- and I -- the

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1 liability issue if they put a crossing across there for
2 pedestrians to walk on, we're still going to have the
3 liability, because the children are still going to be
4 crossing it. If they close the D Street crossing, we're
5 going to have the children crossing between the closure
6 and F Street and the closure and B Street. We're not
7 going to have the children walking all the way down to
8 either B or F.

9 And another issue is that if the children
10 have just a pedestrian crossing there, there's not going
11 to be adult supervision at that crossing, where if there
12 is a vehicle going across it, they have adult
13 supervision. There's usually going to be a vehicle
14 stopped there, and there's going to be an adult in it,
15 and everybody knows everybody in this town, and if a
16 child goes to cross that crossing with those gates down,
17 that child will probably get a whooping when we gets
18 home. So I mean at least there's a little bit of safety
19 there if you have adult supervision, and there would be
20 adult supervision at a crossing, there's more likely to
21 be adult supervision at a crossing when you have a
22 vehicle sitting there with a parent in it versus where
23 you have a pedestrian crossing. The kids are probably
24 going to be playing on it, because they know no cars are
25 going to come over here, so the children will probably

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1 use it as a toy.

2 And I feel that if there was a closure of the
3 D Street crossing, I feel that the building that the
4 grange is in now will have a declining value as far as
5 potentially selling it to somebody that would be running
6 trucks through there. Right now they have the best
7 access with it opened, where if the D Street crossing
8 was closed, then they don't have that access or the
9 accessibility to get those trucks in and out of there
10 like they do at this point. And I think that that would
11 devalue the potential of selling that to a purchaser
12 that would be running trucks in here. And our community
13 is basically a trucking community. We get truck grains
14 and cattle through here. They run fuel through here.
15 They run fertilizers through here, chemicals,
16 everything. And all of those consist of traveling in a
17 truck. Our deliveries, of course, come in a truck. So
18 we've got five major things that are all going to be in
19 that area that will be using diesel trucks or large
20 trucking trailers.

21 I think I pretty much covered everything.

22 JUDGE MACE: Thank you very much.

23 Well, thank you all for your presentations.

24 Without commenting on the merits of your
25 position, Mayor Fox, I want to compliment you for doing

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1 the job that you have done representing the City. I
2 think you responded extraordinarily well to my
3 direction, and I think you have done a good job
4 presenting your case.

5 What will happen is we will have a transcript
6 prepared, and, Ms. Kinn, when do you think that will be
7 ready?

8 (Discussion off the record.)

9 JUDGE MACE: Very well, two weeks, and then I
10 will be preparing after that, after I have had a chance
11 to review the transcript and all of the evidence and the
12 comments that I understand Mr. Thompson is going to
13 gather and present as an exhibit, and that exhibit --
14 did I assign that exhibit a number? I'm not sure that I
15 did. We will assign that Number 30. After all of that
16 review, I will prepare an initial decision, and that
17 will be distributed to the parties and to interested
18 people who signed up here. And after that point, the
19 parties have an option to request administrative review
20 if they disagree with the decision, and then the
21 Commission after that will issue a final decision.
22 That's the process that will occur after we leave the
23 hearing room today.

24 I wanted to remind you, and this is
25 particularly for Mayor Fox, that those individuals who

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1 may not have been able to come to the public hearing
2 yesterday evening are still able to submit written
3 comments to the Commission, and I gave you the address
4 yesterday and an E-mail address, and you have that; is
5 that correct?

6 MS. FOX: Yes.

7 JUDGE MACE: And those comments must be to
8 the Commission by October 3rd. That's approximately two
9 weeks. And at that point, then they can be prepared as
10 an exhibit and submitted, and then I will incorporate
11 that into my consideration of the initial order. I
12 don't think there is anything else that I need to
13 address as far as housekeeping concerns. Does anyone
14 else have anything to add before we close the record?

15 MR. KINERK: Nothing further, thank you, Your
16 Honor.

17 MR. THOMPSON: Nothing, thank you.

18 MS. FOX: No, thank you.

19 JUDGE MACE: All right, then the record is
20 closed, and I thank you again.

21 (Hearing adjourned at 1:40 p.m.)

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