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

2 JUDGE CAILLE: Good afternoon. My name is
3 Karen Caille, and I've been assigned to take over this
4 case from Judge Wallis. Today is June 2nd, 2005, and
5 we are convened in a hearing room in the Commission's
6 offices in Olympia, Washington, for a prehearing
7 conference in the matter captioned City of Kennewick
8 versus Union Pacific Railroad, Docket Number TR-040664.

9 This is a petition by the City of Kennewick
10 for approval of a proposed silent at-grade crossing of
11 Center Parkway with the Union Pacific Railroad's
12 dead-end spur west of Richland Junction.

13 As our first order of business, I will take
14 appearances of the parties. Since you have entered
15 your full appearances in a prior prehearing
16 conference -- I think that would be you too,
17 Mr. Thompson -- then would you just do an abbreviated
18 appearance stating your name and who you represent, and
19 let's begin with the City.

20 MR. MORRIS: Tyler Morris. I'm an assistant
21 city attorney with the City of Kennewick, and I'm
22 representing the City for this pretrial hearing upon
23 behalf of the City and John Ziobro, who is on vacation.

24 MS. LARSON: Carolyn Larson. I'm
25 representing Union Pacific Railroad Company.

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1 JUDGE CAILLE: Let me remind both of you to
2 speak a little more loudly. For Commission staff?

3 MR. THOMPSON: I'm Jonathan Thompson,
4 assistant attorney general, representing the Commission
5 staff.

6 JUDGE CAILLE: Let the record reflect there
7 are no other appearances. I'm just going to go through
8 a brief history of where we've come from and where we
9 are today for the benefit of the record.

10 The City of Kennewick filed this petition
11 over a year ago on April 9th, 2004. A prehearing
12 conference was scheduled for June 28th, 2004, and was
13 subsequently continued at the parties' request several
14 times to July 26th, 2004, to August 26th, 2004, and
15 then to October 19th, 2004. This was to allow the
16 parties to continue discussions in furtherance of a
17 settlement.

18 On October 19th of 2004, the Commission
19 convened a prehearing conference during which, among
20 other things, it set a schedule for the filing of
21 prefiled testimony and a hearing date of May 9th, 2005.
22 Due to scheduling conflicts, the schedule was revised
23 as stipulated by the parties with a hearing date of
24 June 6th, 2005.

25 On February 22nd, 2005, the City of Kennewick

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1 and Union Pacific Railroad filed a joint stipulation
2 and order continuing the scheduling order. The
3 Commission entered an order granting the request on
4 February 23rd, 2005. In the Commission's order, it
5 required the parties to report back to the Commission
6 by April 22nd, 2005, with either an agreed upon joint
7 settlement agreement or a new proposed hearing
8 schedule.

9 On April 25th, 2005, the City and UP informed
10 the Commission by filing a join motion for continuance
11 that the City and Union Pacific had agreed to the terms
12 for moving Union Pacific's interchange operation with
13 the Tri-City and Olympia Railway from Kennewick to
14 Wallula Junction. However, Union Pacific needs BNSF
15 Railway's permission to allow the Tri-City and Olympia
16 Railway to operate over joint UP/BNSF tracks to reach
17 Wallula and does not yet have that permission.

18 The Commission entered an order on April
19 26th, 2005, extending the deadline for reporting in
20 writing with an agreed settlement or recommendations
21 for further process to June 1st, 2005. In addition,
22 the Commission set a prehearing conference for today,
23 June 2nd, 2005, to discuss the procedural status of the
24 docket.

25 On June 1st, 2005, Union Pacific filed a

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1 Report on Status and its recommendation for process.
2 Union Pacific reports that BNSF told Union Pacific
3 several months ago that it would likely consent to
4 allowing Tri-City and Olympia to operate over the joint
5 UP/BNSF tracks to reach Wallula, but it has not yet
6 given its written consent.

7 Union Pacific requests additional time of 35
8 days to assess whether or not a relocation to Wallula
9 is likely and that the parties agree to a new schedule
10 following the 4th of July weekend if no progress is
11 shown on moving forward.

12 Does that accurately reflect your Report on
13 Status?

14 MS. LARSON: Yes, it does.

15 MR. MORRIS: Yes, it does.

16 JUDGE CAILLE: Do any of the parties have any
17 comments on that procedural history that I just
18 recited? Is there anything that you would like to add
19 or correct?

20 MR. MORRIS: No additions or deletions.

21 MS. LARSON: That's a good summary.

22 JUDGE CAILLE: Since this matter is now over
23 a year old, I believe the Commission would like to move
24 forward with this, and it is my intention today to set
25 a schedule.

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1 I do acknowledge your requests, Ms. Larson,
2 but I really believe we need to move forward, and the
3 only way we are going to do that is by setting a
4 schedule. That does not eliminate the possibility that
5 BNSF will consent to the proposal, but I think we need
6 to move forward for the sake of the City and its
7 funding, and also perhaps we can light a fire under
8 BNSF and hopefully get them to respond.

9 So with that, would you like to stay on the
10 record and discuss the schedule?

11 MR. MORRIS: Certainly. To go ahead and
12 begin, I will point out that Ms. Larson contacted me at
13 my office yesterday informing me about some of her
14 concerns about the stipulated hearing schedule, and
15 we've taken those concerns that she had regarding the
16 hearing schedule and incorporated them into a proposal
17 at this time. If Ms. Larson and the Commission staff
18 and yourself would like to hear the proposed hearing
19 schedule that we've incorporated, I can do so at this
20 time.

21 JUDGE CAILLE: That would be fine. Go ahead.

22 MR. MORRIS: Taking into consideration that
23 Union Pacific will need between 30 and 60 additional
24 days to summarize some of their discovery needs, we've
25 agreed to at least continue our original stipulated,

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1 that we've kind of drafted a stipulation for, to begin
2 the time frame for informal discovery on August 22nd of
3 this year.

4 JUDGE CAILLE: Did you say begin or end?

5 MR. MORRIS: I'm sorry. End on August 22nd
6 of 2005. From then, the City of Kennewick would file
7 its testimony by September 19th of 2005; with
8 Commission staff filing testimony October 10th of 2005;
9 with the Railroad filing evidence testimony by October
10 31st of 2005. Any dispositive motions would be filed
11 by December 5th of 2005. Answers, if any, to any
12 dispositive motions by December 12th of 2005.

13 Then due to the holidays, which would occur
14 during that time, to have any prehearing conferences,
15 if necessary, for the purpose of marking exhibits or to
16 hear any objections at that time to be heard on January
17 9th, 2006. We have the hearings to begin January 19th
18 of 2006, which I believe is a Thursday. I'm not sure
19 if that's a correct date, but that's my understanding
20 of what we recommended.

21 JUDGE CAILLE: Are you still anticipating
22 that this will take just one day of hearing?

23 MS. LARSON: I think so because we are all to
24 be prefilng our testimony, and that should just
25 provide for perhaps cross-examination of witnesses,

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1 which shouldn't take as long as a hearing normally
2 would.

3 MR. MORRIS: I don't anticipate any surprises
4 of any of the expert testimony the Railroad may
5 incorporate.

6 JUDGE CAILLE: I know in the prior prehearing
7 conference, there did not seem to be a need for a
8 public hearing on this matter. Does that still remain
9 the same?

10 MR. MORRIS: I can't answer that question.
11 Carolyn?

12 MR. THOMPSON: From Staff's standpoint, I
13 don't think anything has changed in that regard.

14 MS. LARSON: My only concern with setting
15 this schedule right at this moment is that if, in fact,
16 we come much closer to -- let's say we get an agreement
17 with BNSF.

18 JUDGE CAILLE: Could you please speak just a
19 little more loudly?

20 MS. LARSON: My principle concern with
21 setting the schedule is that if within, say, 30 days we
22 find that Burlington Northern does consent, but in fact
23 getting the actual written agreement looks like it will
24 take a few weeks, it would be unfortunate at that point
25 to still have to be working with a traffic consultant,

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1 coming forward with all the reasons why this particular
2 crossing is not needed by the City or why it's in a
3 poor place as proposed by the City.

4 I would still like to have the opportunity to
5 revisit these dates if something material takes place
6 within the next 30 to 35 days that let's us know we
7 have a very, very good chance we are going to be able
8 to settle this.

9 JUDGE CAILLE: Well, Ms. Larson, the
10 Commission is always welcoming of any kind of
11 settlement, and I'm sure that we can revisit these
12 dates. My concern is that this has languished over a
13 year, and the Commission does want to move forward on
14 this, and I believe we need to set a schedule, and I'm
15 hoping that, perhaps, this will also encourage everyone
16 who is involved in any kind of settlement to try to
17 reach an agreement if one is going to occur, but if one
18 is not going to occur, then we have this in place.

19 Are you comfortable with the schedule
20 otherwise?

21 MS. LARSON: I believe so. Although, I'm
22 committing to a traffic consultant being done with the
23 study by August 22nd, and I don't have that consultant
24 in place.

25 JUDGE CAILLE: That was the end of the time

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1 for informal discovery; correct?

2 MS. LARSON: Right, but I was assuming that
3 would also include any information from our expert
4 witnesses. If there could be an exception for such a
5 report or the possibility of an extension there, then
6 the August 22nd date would be acceptable.

7 JUDGE CAILLE: Do any of the parties have an
8 objection to that possibility?

9 MR. MORRIS: The City of Kennewick really
10 does not. We anticipate what the traffic expert is
11 going to include in his report. I don't think there is
12 going to be any surprises, so if that report comes in
13 within a week or two of the August 22nd date, I don't
14 think it will hinder us from filing our testimony by
15 our date.

16 JUDGE CAILLE: All right. Does Staff have
17 any comments to make on the schedule?

18 MR. THOMPSON: It appears that it just moves
19 out roughly what had already existed, just later in
20 time, so I don't see any reason for objection from
21 Staff.

22 JUDGE CAILLE: So you are comfortable with
23 this entire new schedule then?

24 MR. THOMPSON: Yes.

25 JUDGE CAILLE: Let me just check the calendar

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1 to make sure that hearing date is available in January.
2 Let's go off the record for just a moment.

3 (Discussion off the record.)

4 JUDGE CAILLE: We've had an off-record
5 discussion about the schedule offered by Mr. Morris,
6 and the parties have agreed to this schedule.
7 Ms. Larson has asked for a little bit of flexibility on
8 the August 22nd date for the end of informal discovery,
9 and the parties have, at least Mr. Morris has agreed to
10 that flexibility since it will not affect the expected
11 testimony -- Mr. Morris, why don't you state for the
12 record?

13 MR. MORRIS: With the proposed time for
14 informal discovery ending on August 22nd, 2005, we are
15 not anticipating anything in the expert or traffic
16 study report that would preclude us from filing our
17 testimony by September 19th, 2005. So for the purposes
18 of Ms. Larson and Union Pacific introducing that type
19 of discovery, we have no objection.

20 JUDGE CAILLE: Thank you very much. Is there
21 anything further from any of the parties?

22 MS. LARSON: I have nothing further.

23 JUDGE CAILLE: Then I will prepare a
24 prehearing conference order with the schedule and any
25 other matters that I think are important, so with that,

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1 thank you very much, and this hearing is concluded.

2 (Prehearing conference concluded at 1:53 p.m.)

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