

0022

1

2

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

3

COMMISSION

4

5

BENTON COUNTY, ) DOCKET NO. TR-100572

) Volume II

6

Petitioner, ) Pages 22 - 104

)

7

vs. )

)

8

BNSF RAILWAY COMPANY, )

)

9

Respondent. )

)

10

11

12

A hearing in the above matter was held on December 14,

13

2010, at 9:30 a.m., at 1300 South Evergreen Park Drive

14

Southwest, Olympia, Washington, before Administrative Law

15

Judge DENNIS J. MOSS.

16

17

The parties were present as follows:

18

19

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by Fronda Woods, Assistant Attorney General, 1400 South Evergreen Park Drive Southwest, Olympia, Washington, 98504-0128. Telephone number is (360) 664-1225.

21

22

BNSF RAILWAY COMPANY, by Kelsey E. Endres and Bradley Scarp, Attorneys at Law, 1218 Third Avenue, 27th Floor, Seattle, Washington, 98101. Telephone number is (260) 625-1801.

23

24

BENTON COUNTY, by Reid Hay, Deputy Prosecuting Attorney, 7122 West Okanogan Place, Kennewick, Washington, 99336. Telephone number is (509) 735-3591.

25

0023

1

EXAMINATION

2

3 WINESS

DIRECT

CROSS

REDIRECT

RECROSS

4 ANGELOS

30

5 REGAN

39

46

6 FYALL

48

7 BOWIE

52

70

65, 70

8 THORP

71

9 HUNTER

74

76

91

10

11

12

13

14

15

16

EXHIBITS

17

(None were marked.)

18

19

20

21

22

23

24

25

0024

1

P R O C E E D I N G S

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JUDGE MOSS: Good morning, everyone. My name is Dennis Moss. I'm the administrative law judge for the Washington Utilities and Transportation Commission. We're convened this morning in the evidentiary proceedings in the matter styled "Benton County against BNSF Railway Company, TR-100572. I have distributed an exhibit list which is, of course, at this stage preliminary based on all the pre-filed testimony and exhibits. We'll talk about that a bit more in a few minutes.

As our first order of business why don't we take appearances. We'll start with Benton County.

MR. HAY: Your Honor, my name is Reid Hay, County Prosecutor's Office appearing for Benton County.

JUDGE MOSS: We have your detailed information from previous encounters.

Let's go around the table.

MS. ENDRES: Kelsey Endres for BNSF Railway Company.

MR. SCARP: Bradley Scarp representing BNSF Railway Company.

MS. WOODS: Good morning, Your Honor. I'm Fronda Woods, assistant attorney general for Washington Utilities and Transportation Commission staff.

THE COURT: Do we have any other party representatives, perhaps, on the conference bridge line on the

0025

1 telephone line? Anyone representing a party? I know we have  
2 witnesses on the line but I don't need to hear from you yet.

3           Apparently not.

4           I probably should ask any other counsel in the room.

5           You all are witnesses, I take it, since I don't  
6 recognize you. Thank you.

7           All right. On to the exhibits. We have pre-filed  
8 testimony. The list I have includes direct testimony from  
9 Brian Thorp for Benton County, pre-filed direct testimony and  
10 rebuttal testimony from Malcolm Bowie, also for Benton County.  
11 Adam Fyall for Benton County, pre-filed direct. For BNSF I  
12 have Ward Angelos, pre-filed direct testimony and Megan  
13 MacIntire pre-filed direct testimony. For the staff I have  
14 testimony from Kathy Hunter. Some of these witnesses have  
15 accompanying exhibits.

16           Have I included everyone who's testified or have I  
17 missed anybody?

18           I have not, apparently.

19           You all have the exhibit list and, of course, you had  
20 these materials for some time. Is there going to be a dispute  
21 concerning any of those or can we stipulate all of this in the  
22 record?

23           MR. HAY: I will so stipulate.

24           MS. ENDRES: We'll stipulate.

25           JUDGE MOSS: Parties are prepared to stipulate all the

0026

1 materials listed on the preliminary exhibit list into the  
2 record, and to the extent there are any cross-examination  
3 exhibits today we'll identify those, give them a number and  
4 deal with them as needed.

5 MR. HAY: Actually, on exhibit list we have a blowup  
6 of what I believe would be the presently MB-9, an aerial photo.  
7 It is identical with the exception of the blowup has added a  
8 Union Pacific Line here for additional clarity, otherwise, it's  
9 a large version.

10 JUDGE MOSS: Do you want to substitute a page size  
11 copy of this what is now marked as nine with the additional  
12 information?

13 MR. HAY: I can certainly do that.

14 JUDGE MOSS: We're not accustomed to keeping oversized  
15 exhibits. I'd like to have a reduced version of that and we'll  
16 use that.

17 MR. HAY: Certainly.

18 JUDGE MOSS: I don't see that to be a problem. That  
19 will be fine. You'll just give that to me when you can in the  
20 next few days sometime.

21 MR. HAY: Certainly.

22 JUDGE MOSS: Very good.

23 With that, we had a little exchange concerning the  
24 witnesses some of whom desired to appear by telephone.  
25 Ultimately, I agreed to that when I received the joint motions

0027

1 suggesting that there would be limited cross for those  
2 witnesses, perhaps none, and that is the question I want to  
3 raise now with you all. What do we need to do today? To be  
4 blunt about it, I think the record seems to be fairly complete  
5 and uncontroversial. The only matters appearing to be in  
6 dispute factually are the number of trains that arrive at this  
7 facility. I don't know if there's any lingering dispute  
8 concerning that. We have additional information on that that  
9 came in through the rebuttal phase, perhaps something to do  
10 with the speeds, but, other than that, it doesn't seem to be a  
11 lot in controversy in terms of fact.

12 I'll put it to the party's representatives: What do  
13 we need to do?

14 Maybe I should start with Benton County: Do you need  
15 to cross any of the BNSF witnesses or the staff?

16 MR. HAY: I did have some questions for Mr. Angelos  
17 but they're not especially pressing. I have more questions to  
18 Ms. Hunter.

19 JUDGE MOSS: Fairly limited, if any, witnesses?

20 MR. HAY: Yes.

21 JUDGE MOSS: How about for the Railroad?

22 MS. ENDRES: Your Honor, the Railroad does have some  
23 cross-examination in terms of some future use we felt wasn't  
24 explored or addressed the extent that we would like as well as  
25 some general safety-related questions and questions of

0028

1 Ms. Hunter and the County about some of the conditions that  
2 have been proposed. So, certainly, for one of the County  
3 witnesses, who I believe is on the phone, that  
4 cross-examination could be covered with a different witness.  
5 There was some overlap there. That's Mr. Fyall, I believe. We  
6 do have some questions for Mr. Regan from Agrium on the phone.

7 JUDGE MOSS: Mr. Regan, are you there?

8 MR. REGAN: I am.

9 JUDGE MOSS: Mr. Fyall?

10 MR. FYALL: Yes.

11 JUDGE MOSS: You can hear me, apparently, and we can  
12 hear both of you well. Thank you for being present this  
13 morning.

14 Will you be doing all the questioning for BNSF?

15 MS. ENDRES: Yes.

16 JUDGE MOSS: How about you, Ms. Woods, do you have  
17 questions?

18 MS. WOODS: Thank you, Your Honor. I have a few  
19 questions for Mr. Bowie, one of the County's witnesses.

20 JUDGE MOSS: Is he present?

21 MR. HAY: Yes.

22 JUDGE MOSS: Welcome, Mr. Bowie.

23 All right. I think at this juncture, then, what we  
24 should do is proceed with our witnesses and our questions. I  
25 don't have any particular preference as to the order. We would

0029

1 typically hear from the applicant's witnesses first. I suppose  
2 we should have Mr. Bowie first.

3 MR. HAY: I'll certainly be happy to do that,  
4 Your Honor. There have been a bit of discussion with Counsel  
5 for BNSF and should suggest the possibility we start with  
6 Mr. Regan and Mr. Fyall. It makes less sense in terms of their  
7 testimony is narrow and the other testimony is more  
8 broad-based, the might permit them to drop off the line.

9 JUDGE MOSS: Sure. What would you prefer in terms of  
10 the order of your witnesses?

11 MS. ENDRES: I think it depends if our witnesses on  
12 the phone would like to be able to drop off after they're done  
13 testifying or if they plan on staying on the phone, in any  
14 event.

15 JUDGE MOSS: To save time let's go ahead with your  
16 witnesses. Who would we prefer to have first?

17 MS. ENDRES: Do you mean who would I like to  
18 cross-examine first?

19 JUDGE MOSS: Which of your witnesses would you like to  
20 present first, that was my understanding that --

21 MS. ENDRES: We'll present Mr. Angelos for  
22 Cross-Examination.

23 JUDGE MOSS: Mr. Angelos is on the phone?

24 MS. ENDRES: Yes.

25 JUDGE MOSS: Mr. Angelos, you can hear me?



0030

1 MR. ANGELOS: Yes.

2 JUDGE MOSS: It seems strange to do so, of course,  
3 this is sworn testimony and though you are not present here in  
4 the room I will go through the formality of asking you wherever  
5 you are to stand and raise your right hand.

6

7 WARD ANGELOS, having been duly sworn to tell the  
8 truth, the whole truth and nothing but the truth, testified on  
9 his oath as follows:

10

11 CROSS EXAMINATION

12 BY MR. HAY:

13 Q Mr. Angelos, you mentioned in your testimony that BNSF  
14 sends switcher trains on a regular basis to the Agrium facility  
15 located near the proposed crossing. Is a switcher train  
16 essentially a smaller train? It's my impression a switcher  
17 train is somewhat smaller than a locomotive, essentially, like  
18 a tugboat, if you will, for the railway industry for larger  
19 trains or for moving a small number of cars short distances.  
20 Is that accurate?

21 A It's not technically accurate, but in the case of  
22 Finley that's reasonably accurate, but the train that goes to  
23 Finley is not particularly large. Freight cars is usually  
24 about the biggest train.

25 Q Where is your office that you work at located?

0031

1           A     I have an office in Pasco, Yakima and Ellensburg, all  
2 three locations, but, generally, I work out of Pasco.

3           Q     The trains that Burlington Northern dispatchers, where  
4 are they coming from?

5           A     The crew is based out of Pasco and the train is built  
6 in Pasco and then it's switched out on the return trip at  
7 Pasco.

8           Q     In preparing for your testimony, what records did you  
9 consult?

10          A     Really, not a lot. I looked at -- I didn't look at  
11 any historical record. I looked at current cars coming towards  
12 Finley for this particular location but I haven't met -- that  
13 was probably a week or so ago.

14          Q     What was your testimony? If I understand your  
15 testimony correctly it was a daily, every weekday a train going  
16 along that track to the Agrium facility, what are you basing  
17 that number on?

18          A     The train is scheduled to run Monday through Friday.  
19 Comes on duty at 14:00 hours at Pasco, goes to [unintelligible]  
20 and Finley, then switches in Finley. The service that it is  
21 scheduled to provide to that facility is five days per week,  
22 Monday through Friday.

23          Q     Do you know if it actually provides that service or if  
24 it's scheduled to provide that service?

25          A     It's scheduled to provide that service. The service

0032

1 is sporadic and based upon the demands of the customer. I  
2 believe the witness for Agrium pretty accurately describe it  
3 but it's probably not as -- to say it's three times per week is  
4 probably not accurate. I would say it's more sporadic than  
5 that, maybe once a week, sometimes not at all, sometimes, and  
6 then sometimes four or five days a week, depending upon the  
7 demands of the customer.

8 Q What would you estimate it averaging out?

9 A I would be venturing a guess. I don't know.

10 Q What time of day is the switcher trains moving back  
11 and forth?

12 A Dependent upon various other variables. The crews on  
13 duty between 14:00 and 8:00 and they expire on the hours of  
14 service of 02:00, roughly between 16:00 and midnight, but it's  
15 dependent upon quite a few other variables.

16 MR. HAY: Thank you. I have no further questions.

17 JUDGE MOSS: Thank you.

18 Do you have anything for this witness, Ms. Woods?

19 MS. WOODS: No, I do not, Your Honor.

20 JUDGE MOSS: Any Redirect?

21 MS. ENDRES: Yes.

22 REDIRECT

23 BY MS. ENDRES:

24 Q Mr. Angelos, you testified that the traffic to the  
25 Agrium facility can range from once a week to sometimes four to

0033

1 five times a week; is that correct?

2 A That's correct.

3 Q What is the basis for your statement that sometimes  
4 the train traffic to the Agrium facility can reach four to  
5 five times a week?

6 A Well, it's based upon Agrium's demand for service,  
7 whether or not they're ordering cars to be spotted or releasing  
8 cars to be pulled. So, Agrium controls the amount of service  
9 that goes across that track. If they don't have any cars to be  
10 spotted or none to be pulled then we don't go.

11 Q Are you aware of whether the actual level of service  
12 the Agrium facility has ever reached four to five times per  
13 week?

14 A Could you say that again?

15 Q To the best of your knowledge, are you aware of any  
16 period where the level of train traffic to the Agrium facility  
17 reached four to five times a week?

18 A Yes, it has in the past.

19 Q When you are discussing a level of traffic to the  
20 Agrium facility, whether it's one time a week or four to five  
21 times a week, does that -- and I apologize if I'm imprecise in  
22 my wording -- does that involve a one-way trip one time per  
23 week or is it a round trip one time per week?

24 A In the crossing in question it would be across that  
25 crossing twice in a service day, so they would go in across

0034

1 that crossing and then come back out across that crossing.

2 Q Just to clarify for the record, then, am I correct in  
3 understanding your testimony that the traffic to the Agrium  
4 facility, if it's once a week, that's two train trips across  
5 the crossing?

6 A Right. Two in that service day they go across to  
7 either spot or pull and then come back across either light  
8 engine or with a car that they pulled or both, a car to spot  
9 and a car to pull.

10 Q Am I understanding your testimony correctly that if  
11 the train traffic approaches four to five times per week that  
12 would be eight to ten trips across the crossing per week?

13 A That would be correct, yes.

14 Q You also testified that the time of day that the  
15 Agrium facility can expect BNSF train depends on quite a few  
16 other variables, I believe that was your testimony; is that  
17 correct?

18 A That's correct.

19 Q Can you explain what those variables are that can  
20 affect the time of day the trains may be arriving at the Agrium  
21 facility?

22 A Well, it's basically dependent upon the service  
23 required by the other customers in Finley and the size of the  
24 train that we're switching that day. Finley doesn't have a  
25 very big yard. If we have a big train that requires a lot of

0035

1 switching sometimes we have to take the customer that has the  
2 most amount of cars to spot their cars first just to give us  
3 room in the yard to continue their switching but, normally,  
4 what we try to do is try to service, basically, in this order,  
5 we would try and go to [unintelligible] Lowcurley and then to  
6 Airlaquad and Agrium Finley plant and then Cold Store and then  
7 Agrium Kennewick plant and then Agrium [unintelligible] plant  
8 or Simplot, basically, in that order, and then also there's a  
9 railcar repair facility, Greenbriar Gunderson. That would be  
10 the instance when they had multiple cars to spot where we'd  
11 have to take them their cars to get room in the yard.

12 Q Is there ever a situation where trains are delivered  
13 outside of the hours from 14:00, 02:00 that you testified to  
14 earlier?

15 A Sometimes we will call a relief crew if the regular  
16 assigned crew doesn't have the time to complete their work and  
17 we have people available that can refill the job. It's  
18 possible that they could be out there after midnight working,  
19 probably, up until 4:00 in the morning before they would make  
20 the return trip from Pasco.

21 Q Do you have any knowledge about any future projection  
22 for train traffic servicing the Agrium facility?

23 A I don't. That's, basically, in the control of Agrium.  
24 Nothing has been communicated to me that would indicate any  
25 change, increase or decrease, in the traffic.

0036

1           Q     Is there any limit to the amount of traffic that BNSF  
2     could provide to the Agrium facility if their demands should  
3     increase?

4           A     Probably not. The limit would probably be dictated by  
5     the room available in the plant, that Agrium Finley plant,  
6     rather than dictated by the capacity of BNSF to handle it.

7           MS. ENDRES: I believe those are all the questions  
8     that I have.

9           JUDGE MOSS: Thank you.

10          MR. HAY: I have no Recross.

11          JUDGE MOSS: All right. Very good. I don't have any  
12     questions either.

13          Mr. Angelos, we appreciate having you present today to  
14     testify. It appears that this will complete the questions that  
15     counsel have for you. You're welcome to stay on the line and  
16     listen to the proceeding or you are welcome to go about your  
17     other business if you choose.

18          MR. ANGELOS: All right. I believe I'll drop off, if  
19     that's fine.

20          JUDGE MOSS: That's fine. Thank you, sir.

21          Did you have anything for Ms. MacIntire?

22          MR. HAY: I do.

23          Actually, no.

24          JUDGE MOSS: No. No, you do not.

25          Ms. Woods, do you have anything for Ms. MacIntire?

0037

1 MS. WOODS: No, I do not. Ms. MacIntire is in the  
2 room.

3 JUDGE MOSS: Very good. If we don't have any  
4 Cross-Examination for her then we won't have an opportunity for  
5 other examination unless Counsel wants to ask me to leave for  
6 additional Direct.

7 Counsel, your witness is relieved. We don't need her.

8 MR. SCARP: I think as a party representative she'd  
9 like to stay and listen to some other proceedings.

10 JUDGE MOSS: Absolutely.

11 Ms. MacIntire, we stipulated your pre-filed testimony  
12 into the record. I don't need to have you take the stand and  
13 be sworn and so forth because that is presented as sworn  
14 testimony.

15 Thank you for being here. Of course, you're welcome  
16 to stay.

17 Did you have anything for staff witnesses?

18 MR. HAY: I do have questions for Ms. Hunter.

19 JUDGE MOSS: You have questions for the County and  
20 questions for staff?

21 MS. ENDRES: I do. I have questions for each of the  
22 County witnesses as well as Ms. Hunter.

23 JUDGE MOSS: Do we want to have the County witnesses  
24 next, then? Is that agreeable?

25 MR. HAY: That would be agreeable.



0038

1 JUDGE MOSS: Let's do that. Any particular order?

2 MR. HAY: As we discussed before, it's somewhat  
3 curious order dictating more to dropping off the line how we  
4 normally present things but, of course, the Court read the  
5 pre-filed testimony, I guess the general shape is already clear  
6 regardless of the order in which they're called. I would like  
7 to begin with Josh Regan.

8 JUDGE MOSS: Mr. Regan, are you on the phone?

9 MR. REGAN: Yes.

10 JUDGE MOSS: Thank you.

11 I don't have that on the exhibit list, do I? I think  
12 I may have overlooked that.

13 I don't see it.

14 It was pre-filed testimony?

15 MR. HAY: Yes. And there's also one exhibit attached  
16 to its pre-filed testimony, not attached, but there are two.

17 Would you like my copy?

18 JUDGE MOSS: I have a recollection of the testimony  
19 but I don't seem to have it in my file for some reason.

20 In any event, we'll need to get that added.

21 I assume the testimony is marked JR-1T?

22 MR. HAY: Yes.

23 JUDGE MOSS: The exhibit would be marked JR-2?

24 MR. HAY: That's correct.

25 JUDGE MOSS: Since all of us thought that that was in

0039

1 the exhibit list I assume there will be no issue in terms of  
2 stipulating that into the record either.

3 Hearing nothing, those will be admitted as marked.

4 Thank you.

5 MR. SCARP: What was the number?

6 JUDGE MOSS: JR-1T for the testimony and JR-2 for the  
7 exhibit.

8 I did have it. I apologize to everyone. I had it  
9 under one cover letter and so flipping through simply missed it  
10 in the exhibit list.

11 All right. So, Mr. Regan, you are on the phone before  
12 so you know the convention. If you would rise and raise your  
13 right hand.

14

15 JOSH REGAN, having been duly sworn to tell the truth,  
16 the whole truth and nothing but the truth, testified on his  
17 oath as follows:

18

DIRECT EXAMINATION

19 BY MS. ENDRES:

20 Q Good morning, Mr. Regan. I'm Kelsey Endres. I'm an  
21 attorney for BNSF Railway Company.

22 A Good morning.

23 Q Could you spell that for the record?

24 A R-E-G-A-N.

25 Q Thank you, Mr. Regan.

0040

1           Am I correct that you have been plant manager at  
2   Agrium for the past two years?

3           A     That is correct.

4           Q     You have been employed with the company for  
5   seven years?

6           A     Nine years total.

7           Q     For the seven years that you were not employed as  
8   plant manager what position or positions did you hold with  
9   Agrium?

10          A     Various roles in different locations with the  
11   organization; marketing, marketing role, engineering and  
12   supervisory role.

13          Q     In your non-plant manager roles did you have any  
14   reason to track or be aware of the level of train traffic to  
15   and from the Agrium facility?

16          A     No, I do not.

17          Q     Is it fair to say that your understanding or knowledge  
18   of the level of train traffic to and from the Agrium facility  
19   is from either your personal observation over the two years as  
20   plant manager and/or the exhibit that we marked as JR-2 to the  
21   Agrium business records?

22          A     That is correct.

23          Q     For the record, how far did the business records that  
24   have been marked JR-2 go back?

25          A     They go back a year's time.

0041

1 Q Does that data include data from 2009?

2 A It does.

3 Q Can you tell from the exhibit how far back 2009 it  
4 goes?

5 A It goes to September 8th of 2009.

6 Q Did you say "September?"

7 A December 8th, 2009.

8 Q Is it fair to say that your testimony regarding the  
9 level of train traffic to and from the Agrium facility is  
10 limited to the period of time over the past two years?

11 A Yes, it is.

12 Q You had the opportunity to hear Mr. Angelos'  
13 examination today?

14 A I did.

15 Q Is there anything that Mr. Angelos testified to today  
16 that you disagreed with?

17 A No, there's not. The traffic is intermittent from one  
18 trip a week to four to five trips on an average. It is  
19 three trips a week. I agree with his testimony.

20 Q Is it fair to say that you do not have any information  
21 to disagree that at some point in the past the level of train  
22 traffic to the Agrium facility may be as frequent as four to  
23 five trains per week?

24 A I do not.

25 Q Do you have any knowledge about the future projection

0042

1 for the train traffic to or from Agrium?

2 A I do. In my position we do forecasting and strategic  
3 planning up to five years. At this point in time there would  
4 be no indication of any growth or diminishing traffic. It's  
5 pretty much status quo that was reflective in the exhibit.

6 Q What types of commodities do you ship on the BNSF  
7 trains?

8 A Mostly nitrogen solution fertilizer and hydrous  
9 ammonia.

10 Q Am I correct in understanding that the commodities you  
11 just described are considered hazmat or hazardous materials.

12 MR. HAY: I'll jump in here with an objection as to  
13 we're going well beyond the scope of Mr. Regan's Direct.

14 JUDGE MOSS: I'll overrule that. He's familiar with  
15 these facts. There is testimony or evidence in the record  
16 concerning hazardous material and I'd like to be confident on  
17 that so let's go ahead with this.

18 MR. HAY: Thank you, Your Honor.

19 JUDGE MOSS: Mr. Regan, the question to you was  
20 whether the nitrogen fertilizer and hydrous ammonia you  
21 described are considered to be hazardous material.

22 THE WITNESS: I believe under DOT classification --  
23 I'm sure that the nitrogen solutions are not. The hydrous  
24 ammonia, I would have to double-check that. I believe it's  
25 classified DOT as non-hazardous as a flammable or -- but it's

0043

1 not a hazardous material under DOT. I can't speak to that  
2 material directly.

3 JUDGE MOSS: Okay. Thank you.

4 BY MS. ENDRES:

5 Q I'm assuming that you have seen the trains come into  
6 Agrium on a regular basis?

7 A I have.

8 Q Do you recall seeing any sort of indicator or graphic  
9 on the side of the train indicating whether or not it carried  
10 hazmat?

11 A I am familiar with the placards. I know hydrous  
12 ammonia is a green placard and the solutions cars are standard  
13 black.

14 Q Am I understanding you correctly to say that the  
15 trains that service Agrium do have some sort of depiction or  
16 placard indicating that they do or may contain hazmat?

17 A They do. All of our cars are placarded in and out of  
18 the facility. That's their requirements, the compliance  
19 requirement.

20 Q Are you familiar with the proposed Piert Road  
21 extension?

22 A I am.

23 Q Do you have any knowledge as to the potential impact  
24 that may have on Agrium's business?

25 A I would not see a potential -- a dramatic increase in

0044

1 business. I think it'll help serve our customers, just a  
2 better transportation.

3 Q What do you mean help service your customers with  
4 better transportation?

5 A Ease of access into our facility.

6 Q How do your customers currently access your facility?

7 A The truck traffic comes down Highway 397, either north  
8 or southbound on 397, and into the facility via Chemical Drive  
9 and Bowles and Game Farm Road.

10 Q The truck traffic going in and out of your facility,  
11 do you know whether those trucks carry or may carry hazmat?

12 A The trucks that are in and out of the facility are the  
13 same as the railcars, the nitro solution fertilizer and hydrous  
14 ammonia, along with various other materials, goods and  
15 materials that come in and out of our facility.

16 Q Are you familiar with the location of the proposed  
17 public crossing that we're here to discuss today in the  
18 hearing?

19 A I am.

20 Q Is it your understanding that Agrium owns the railroad  
21 tracks that that public crossing would cross?

22 A Yes. The crossing in question, Agrium owns that.

23 Q Do you know how far the proposed crossing would be  
24 from the end of the tracks servicing Agrium that go into the  
25 Agrium facility?

0045

1           A     To clarify, how far is the crossing from the plant  
2 gate or from the end of the spur?

3           Q     From the end of the spur.

4           A     I'd have to look that up.  It's quite a distance.

5           Q     Can you give us a ballpark at all?

6           A     Quarter of a mile.

7           Q     You just mentioned a gate into the facility.  Do  
8 trains that service the facility have to stop at a gate?

9           A     We try to time it so the gate is open when BNSF  
10 services the facility but, yes, the gate has to be open to get  
11 the train through the gate.

12          Q     Are you aware of any situation where a train had to  
13 stop in order to get the closed gate open?

14          A     No --

15                JUDGE MOSS:  Mr. Regan, we lost you.  Can you say that  
16 again?

17                THE WITNESS:  No.  I haven't heard of that situation.

18                MS. ENDRES:  Mr. Regan, I think those are the only  
19 questions I have for now.  I will pass you off to our next  
20 attorney that would like to ask you questions.

21                JUDGE MOSS:  All right.  Ms. Woods, do you have any  
22 questions?

23                MS. WOODS:  I have none, Your Honor.

24                JUDGE MOSS:  Mr. Hay, do you have any Recross?

25                MR. HAY:  A bit, Your Honor.



CROSS EXAMINATION

1

2 BY MR. HAY:

3 Q Mr. Regan, in the records that you provided has a very  
4 large number of lines. Are those showing individual cars or  
5 are those showing separate trains, locomotives and cars?

6 A Those are individual cars. So you see a large number  
7 of lines you're not looking at separate train trips, you're  
8 looking at tracking for individual cars, correct?

9 A Correct.

10 Q You mentioned earlier when being questioned by  
11 Ms. Endres that the existing situation is that trucks are  
12 coming down accessing your facility down Game Farm Road?

13 A Correct. That's the road that ends at the facility.

14 Q Okay.

15 Was there another route or is it mostly down Game Farm  
16 Road?

17 A Game Farm Road is the only access into the Finley  
18 facility.

19 Q The present situation has trucks going down  
20 Game Farm Road. Do they have to pass at-grade railroad  
21 crossings in front of your facility presently?

22 A Yes, they do.

23 Q If this is your understanding that that crossing is  
24 going to be closed as part of the Piert Road extension project?

25 A I would believe so based on the drawings I've seen.

0047

1 Q Would it be your view that approving the at-grade  
2 public crossing would change the situation from trains going  
3 over an at-grade public crossing at Game Farm Road that they're  
4 presently doing to a future situation that could also be  
5 crossing an at-grade crossing on Piert Road?

6 A Correct.

7 Q If this project were not approved it would not  
8 increase or reduce the number of vehicles accessing your  
9 facility over at at-grade crossing?

10 A No.

11 MR. HAY: Thank you. I have no further questions.

12 JUDGE MOSS: Anything else for this witness?

13 Apparently not.

14 Mr. Regan, we appreciate you being here and giving  
15 your testimony today. That completes questions from Counsel  
16 and I have none for you. If you wish, you may stay on the line  
17 and listen to the proceedings or you may get back to the  
18 business of Agrium.

19 THE WITNESS: I will take the latter and sign off.

20 JUDGE MOSS: Most witnesses do.

21 All right. Thank you very much again.

22 Who's next?

23 MR. HAY: Since Mr. Fyall is also the remaining person  
24 on the line.

25 JUDGE MOSS: Mr. Fyall, are you there?

0048

1 MR. FYALL: Yes, sir.

2 JUDGE MOSS: Very good. We may have a few questions  
3 or counsel may have a few questions for you so let me ask you  
4 to follow the convention we've been following, rise and raise  
5 your right hand.

6

7 ADAM FYALL, having been duly sworn to tell the truth,  
8 the whole truth and nothing but the truth, testified on his  
9 oath as follows:

10

11 JUDGE MOSS: Ms. Endres, you may proceed.

12

DIRECT EXAMINATION

13 BY MS. ENDRES:

14 Q Good morning, Mr. Fyall.

15 I am looking at your pre-filed testimony. You are the  
16 Benton County Community Development Coordinator; is that  
17 correct?

18 A That's right.

19 Q How long have you been in that position?

20 A About ten years.

21 Q You're familiar with the proposed extension of  
22 Piert Road?

23 A Well, I am familiar in a more general way, not as  
24 intimately as a lot of people there today. It's been more of a  
25 public works project than in the Commissioner's office but I am

0049

1 somewhat familiar with it.

2 Q Are you familiar with the anticipated future  
3 development that the Piert Road extension project is designed  
4 to accommodate?

5 A Somewhat. That whole Finley area has been anticipated  
6 to have different industrial uses for a long time, probably  
7 40 years or more, and, for various reasons, transportation,  
8 market, geography, what have you, a lot of that has not been  
9 realized but a lot of it has. One of the hopes is that  
10 extension of Piert Road in kind of completing the SR 397  
11 project will help bring a lot of that to fruition.

12 Q Do you know of the type of anticipated industries that  
13 may, I guess, move their growth, for lack of a better word off  
14 my head, once the Piert Road expansion is complete, if it,  
15 indeed, is complete?

16 A The question is, what types of things would happen?

17 Q Correct.

18 A I have heard just casually over the years any number  
19 of different types of things mentioned, everything from  
20 shipping to chemical plant to new sources of green energy going  
21 into that area. There's been a wide swath of different types  
22 of light, medium and heavy industry talked about a need in  
23 Finley for a long time. I can't say of anything specifically  
24 anything was targeted. One thing I would add, a lot of the  
25 economic development functions for that area specifically is

0050

1 handled more from the Port of Kennewick and what we call the  
2 Tri-State Development Counsel. The County does a lot of those  
3 things more by proxy and, so, I don't know if those folks would  
4 be able to add more to this discussion or not. A lot of that  
5 property is not privately held as Port of Kennewick held and  
6 they certainly have an interest in marketing to any kind of  
7 industry that would want to relocate to them.

8 Q You just testified that your understanding is that  
9 some of the future development may include chemical plants; is  
10 that correct?

11 A Yeah. I certainly heard of kind of chemical things  
12 related to agriculture or even other types of agricultural  
13 processes.

14 Q Can you explain that a little bit more for that, what  
15 your understanding is?

16 A Well, I don't have any recollection of, say, a  
17 specific proposal. Again, any kind of industries and  
18 agricultural chemical folks could be on that list, things I've  
19 heard of in the past, those folks looking for rail access, road  
20 access, possibly even barge slip access near to agricultural  
21 areas like Benton County, also possibly near other shipping or  
22 municipal areas like the Tri-City certainly has been talked  
23 about the location where those types of industries could  
24 locate --

25 Q I didn't mean to cut you off.

0051

1           A     My closing point was that over these last decades, for  
2 whatever reason, a lot of that hasn't seemed to be realized in  
3 Finley.

4           Q     Is it your understanding that if the proposed future  
5 development does include chemical plants that vehicular traffic  
6 to and from those chemical plants would be along Piert Road  
7 include across the proposed crossing we're here to discuss  
8 today?

9           A     That's probably a little beyond what I'm able to  
10 discuss.

11          Q     Fair enough.

12                 MS. ENDRES: I think those are the only questions that  
13 I have for you.

14                 JUDGE MOSS: Ms. Woods, do you have anything?

15                 MS. WOODS: I have no questions, Your Honor.

16                 JUDGE MOSS: Mr. Hay, any Redirect?

17                 MR. HAY: No.

18                 JUDGE MOSS: All right. Mr. Fyall, we appreciate you  
19 being here today. That exists the questions from counsel and I  
20 have none for you. As with the other witnesses you're welcome  
21 to stay on the line or you are welcome to drop off and do the  
22 business of the County Commissioners?

23                 THE WITNESS: I'm also going to drop off, sir.

24                 JUDGE MOSS: Thank you very much.

25                 Who's next?

0052

1 MR. HAY: County would like to call Malcolm Bowie.

2

3 MALCOLM BOWIE, having been duly sworn to tell the  
4 truth, the whole truth and nothing but the truth, testified on  
5 his oath as follows:

6

7 JUDGE MOSS: Your pre-filed materials have been  
8 stipulated in and we can proceed with the Cross-Examination.

9

CROSS EXAMINATION

10 BY MS. ENDRES:

11 MS. ENDRES: Good morning, Mr. Bowie.

12 We did receive your pre-filed testimony and you had an  
13 opportunity to look through that. I just have some clarifying  
14 questions that maybe weren't addressed or needs clarification  
15 from our end.

16 First of all, you are the Benton County engineer,  
17 correct?

18 A Yes.

19 Q You've been with the Benton County Public Works  
20 Department for 14 months or 15 or 16 now, I suppose?

21 A Yes.

22 Q Before you were the Benton County engineer what  
23 position did you hold?

24 A Prior to that I was public works director down in  
25 Oregon for a city called "Molalla."

0053

1 Q How long were you a public works director for Molalla,  
2 Oregon?

3 A I was there for a couple of years. I was city  
4 engineer prior to that.

5 You want me to keep going?

6 Q Maybe just a brief framework.

7 A City engineer in Lebanon, Oregon, for four years prior  
8 to that, and then in Spokane for 20 years.

9 Q Is it fair to say as a city engineer, project  
10 engineer, in the various places you've worked you've been  
11 involved in projects involving railroad crossings whether it's  
12 to open a crossing, close a closing, change warning devices at  
13 a crossing?

14 A Correct.

15 Q Have you ever been involved in a petition to close a  
16 railroad crossing?

17 A No.

18 Q Are you familiar with general safety concerns at  
19 at-grade railroad crossing?

20 A Yes.

21 Q What are some of those general safety concerns that  
22 you find at at-grade railroad crossings?

23 A You want to pay attention, like I said in my pre-filed  
24 testimony, you're very interested in what your traffic  
25 crossing, the crossing is, your truck, your vehicle traffic



0054

1 and, of course, your number of trains, your geometrics of it  
2 are very important.

3 Q The reason --

4 A You're very interested in what you're signing is. You  
5 want to make sure you have the proper signing at crossings.  
6 One factor which isn't really mentioned too often is, how is it  
7 functioning? How is it functioning today? That's something I  
8 always pay attention to as well.

9 Q Those various factors you just discussed when you're  
10 looking at a particular grade crossing, are those meant to  
11 reduce the chance of ever having any sort of collision or  
12 incident at a railroad crossing?

13 A Those are factors that come in to play when you're  
14 trying to analyze whether or not a crossing is or will be safe.  
15 In this instance, they don't have an existing so we're doing a  
16 lot of projection.

17 Q We'll talk about this proposed crossing in just a  
18 minute. For now I'd like to still talk a little bit about  
19 general concerns and issues at at-grade railroad crossings. We  
20 discussed the factors you look and and want to reduce the  
21 chance of having a collision or incident at a railroad  
22 crossing.

23 When you're considering what devices to have at a  
24 railroad crossing do you consider whether or not pedestrians or  
25 motorists actually follow the laws at that crossing? I guess

0055

1 what I'm getting to is: Do you ever factor in whether people  
2 in what situations may disregard warning devices?

3 A No. It's nearly impossible to predict. Let me back  
4 up. We do predict based on numbers but you can't know what  
5 people are going to do. There's always going to be situations  
6 that occur that are non-predictive. Many times there is  
7 impaired driving that come into play and you just can't really  
8 predict that. We don't have a high degree of impaired  
9 accidents in our County but that's an unpredictable. The  
10 numbers we do know we predict off of those. Those, again, are  
11 projections based on our models that we have so we don't know  
12 exactly what our traffic count is going to be up there. We  
13 know what Cold Store chips out in terms of trucks about 150 a  
14 day. They're going to be a big user of that road. We don't  
15 know what the future holds. We don't know what development  
16 holds. We're not sure. But, if we do get any development in  
17 we'll have them do a traffic impact analysis and we'll be able  
18 to predict very closely based on traffic engineer's manual what  
19 their traffic counts will be. So, that's the best you can do.  
20 The discussions we had with the UTC and diagnostic team  
21 meetings we've had, the feeling is we're trying to put the best  
22 face on this so we can understand what's going to be happening out  
23 there. We'll certainly know a lot more in a year, two years,  
24 three years and certainly as development occurs then things  
25 will change and we're perfectly willing and able to adapt with

0056

1 that occurs.

2 Q Let me take you on that path that you just started.

3 Do you agree with me that the traffic -- assuming that  
4 this petition is granted and that a public crossing is opened  
5 across Agrium spur track -- do you agree with me that there may  
6 reach a level of traffic where the proposed passive crossing  
7 devices even with the conditions proposed by Ms. Hunter may no  
8 longer be adequate?

9 A Yeah. I think that definitely could happen and we're  
10 also going to be paying attention to what kind of safety issues  
11 may occur up there. We may have some incidents and that's a  
12 factor as well.

13 Q Do you know off your head what the level of traffic  
14 across that crossing would be to trigger unnecessary upgrade of  
15 devices at that crossing?

16 A Well, we have some numbers in mind. Again, it's  
17 actually -- the exposure factor is a number that we've been  
18 using is just a product of your train traffic and your highway  
19 traffic. We do have some numbers in mind, but as the prior  
20 testimony stated, we're not sure what the Agrium traffic will  
21 be in the future. We know what it has been. We're not sure  
22 what it'll be in the future. We'll monitor that. To put a  
23 number on it for you, I believe the number out -- and we use  
24 it -- I had that in my pre-filed testimony -- we pulled a sheet  
25 out of Washington DOT Design Manual 2004 and it just gives you

0057

1 an idea of what kind of device you might want to have given the  
2 kind of train line you have and the highway you have. Based on  
3 that, I believe the number is, like, 1,500. With the numbers  
4 that we were generating we were very low because our ADT was  
5 projected to be 400 and with the numbers that we just heard  
6 from Agrium, that number would be, probably, one, roughly. So,  
7 your product of those two numbers is 400. This is just kind of  
8 a general idea to give you an idea where we think it should be.  
9 With the 1,500 we could have quite a bit of increase in both  
10 vehicular traffic and train traffic and still be below the  
11 1,500. But, again, watching it is key. And UTC, I'm sure  
12 they'll testify to this more than myself, they keep pretty good  
13 records, and we do too. We know when there's accidents out  
14 there. We pay attention to that.

15 Q I want to make sure where we're getting the numbers  
16 you discussed. You said a number 400. So 400 now, am I  
17 correct, that's the estimated average daily traffic projected?

18 A Yes. It comes from a county-wide traffic command  
19 model that is maintained by Ben Franklin Counsel  
20 [unintelligible.] It's a 2005 model and it's updated every  
21 five years. They're in the process of updating it now. It  
22 wouldn't be any different than the numbers that I put in there  
23 for the projected ADT.

24 Q What's your basis for your understanding that the 2010  
25 version of the projected ADT wouldn't be any different?

0058

1 A I went in and looked at it with them.

2 Q Was it exactly 400?

3 A It's more complicated than that. Their numbers are  
4 not in that format. They're in a little different format. So  
5 you have to make an adjustment. They're in PMP numbers. So  
6 you make an adjustment. Actually, their numbers is a little  
7 less than what we were showing, less than 400, I think. Their  
8 number would probably -- if you were to, based on what I saw,  
9 it would probably come in a little lower than 400. But that  
10 400 -- again, I'm probably talking too much -- but the 400  
11 actually is our best engineering judgment. We have traffic  
12 counts in the area, as well, so we looked around to see what  
13 the counts were in the area and then kind of melted it with the  
14 traffic demand model shows came to 400.

15 Q The 1,500 number you mentioned, is that the average  
16 daily traffic times the projected number of trains or is that  
17 just 1,500 average daily traffic?

18 A Average daily. Your number of trains per day. With  
19 the number that was -- I think your trains per day would be,  
20 roughly, one with the number three. Three times two, divided  
21 by seven is about one, so puts you at about 400.

22 Q Let's assume that the train traffic is ten trains per  
23 week. How would that affect the projected number?

24 A It still wouldn't be a big -- it wouldn't be a big  
25 factor because it would be -- if it was ten it would be 20,

0059

1 divided by seven, three. So it would be three times 400. If  
2 400 is still accurate it would still be below 1,500. It's not  
3 that sensitive to the number at this point, as far as I can  
4 tell.

5 Q Am I correct in understanding, then, if the average  
6 daily traffic were 500 and there were three trains per day that  
7 would put us at the 1,500 number?

8 A Yeah.

9 Q Is it the County's testimony that if the 1,500 number,  
10 if that's reached or there's a diagnostic team, the County and  
11 BNSF and the UTC, that says the actual level of vehicular  
12 traffic or train traffic, or combination of both, that the  
13 passive warning devices are no longer adequate does the County  
14 have a plan in that event to fund the upgrade?

15 A No, we don't have a plan to fund it. What we would  
16 do -- I think we have a plan to pull a diagnostic together.  
17 Funding it beyond that, we'd have to see what we would end up  
18 doing. If the diagnostic team -- my feeling is, if the  
19 diagnostic team would recommend something I'm sure it would be  
20 part of the order. I don't have any slush fund out there to  
21 fund new railroad crossings. There's federal money available  
22 to in their safety crossing problem, we could apply for that.  
23 That would be a possibility. Depends on how fast you have to  
24 respond. That's also a factor. You can't apply for federal  
25 funds if we have to do it next week.

0060

1           Q     What would happen, then, in a situation where you're  
2 tracking the vehicular traffic, I guess, once per year or  
3 whatever, conditional order would require, and a diagnostic  
4 team went out there and said, "Based on these numbers this is  
5 no longer adequate," and the County didn't have funding to  
6 upgrade the devices, what would be the County's proposal in  
7 that situation?

8           A     To comply with the order.

9           Q     Are you suggesting that the order should require the  
10 County to secure funding in that situation?

11           MR. HAY: I think I'm going to have to object.  
12 Mr. Bowie isn't a member of Benton County Commissioners. He's  
13 not a finance person. I think we're going outside of Direct,  
14 as well.

15 BY MS. ENDRES:

16           Q     What I'm trying to understand, there's been a lot of  
17 talk about future use and that's why we're here for this  
18 proposed road. What I'm trying to understand is, in the event  
19 that "X" happens, what will happen to this crossing if that's  
20 been considered by the County?

21           A     That's a good question. If development occurred out  
22 there we would likely have to do a TIA, and if that identifies  
23 that there's likely an increase traffic at the crossing that  
24 might create a safety concern, for example, exceeds the 1,500,  
25 if we're going to hold strictly to that, we could potentially

0061

1 have development fund that. That's a real good possibility.

2 Q Is there any concern that if the Commission grants  
3 this petition in a public crossing is open, is there any  
4 concern of trains blocking the crossing for an extended amount  
5 of time, if you know?

6 A Well, I would be concerned with that at any time but  
7 I'm not concerned in this location.

8 Q What's the basis for that?

9 A Well, from the research I've done it doesn't appear  
10 that it's necessary for anybody to do any blocking of that. If  
11 there's any switching to occur it's my understanding it occurs  
12 south of 395. My understanding is that down in this area here  
13 would be -- this being down in there is where any switching  
14 would occur. There's no area for real switching in this area.  
15 They may be doing some switching back in here on the Agrium  
16 site. That's a possibility. I think they have parallel tracks  
17 there. There's no parallel tracks here. There's no switch up  
18 in the area of where the crossing would occur.

19 Q Just for the record, you're using Exhibit MB-9, aerial  
20 photo?

21 A Yes. It's probably hard for you to see. This is our  
22 industrial spur that's in question. This is our existing Game  
23 Farm and this is our Lechelt crossing that is so similar to the  
24 one that we're proposing.

25 Q Are you familiar with the location of the proposed



0062

1 crossing in relation to the location of the Agrium plant?

2 A Yes.

3 Q Do you agree with Mr. Regan's estimate that it's  
4 approximately a quarter mile between the end of the spur track  
5 and the location of the proposed crossing?

6 A No. It's about 400 feet.

7 To make sure we're talking the same distance, you're  
8 talking this being -- let's say this line is the Agrium  
9 plant --

10 Q For the record, you're pointing to the yellow line  
11 surrounding the Agrium plant in the lower right-hand corner on  
12 Exhibit MB-9?

13 A Yes.

14 Q You're pointing to the red line?

15 A Yes. That's about 400 feet. If that's what you're  
16 talking about. I didn't understand the question you gave to  
17 Josh directly. It's not a quarter mile. It's more like 400 --

18 MR. HAY: I don't know if it's appropriate to jump in  
19 here. It wasn't clear which end of the spur line.

20 MS. ENDRES: That's a fair question.

21 Q Does the spur track terminate inside the Agrium plant?

22 A Yes.

23 Q The very end of the termination of the spur track  
24 inside the Agrium plant, can you tell us how far that end of  
25 the spur line is from the location of the proposed crossing?

0063

1           A     I've never measured that.  I don't know how far it  
2 goes into the Agrium plant.

3           Q     Do you think that a quarter mile is a fair ballpark?

4           A     I don't know.

5           Q     Can you say whether --

6           A     I haven't been in there.

7           Q     Can you say whether or not it's less than a mile?  I'm  
8 only asking if you know.

9           A     Yes, I can say it's less than a mile because if you  
10 went a mile you'd be a quarter mile into the Columbia River.

11          Q     Fair enough.

12                   Is it accurate to say that the distance between the  
13 end of the spur track within the Agrium plant and the proposed  
14 crossing is less than half a mile?

15          A     We have it on our drawing here.

16                   MR. HAY:  I'm going to object.  He already said he  
17 hasn't measured the distance.  If we end up playing a game it's  
18 a quarter of a mile, three-eighths of a mile, we're starting to  
19 get into specifics that he doesn't feel comfortable giving a  
20 definitive answer.

21                   JUDGE MOSS:  I'll sustained the objection.

22                   BY MS. ENDRES:

23          Q     Is it fair to say that your understanding that trains  
24 would not block the proposed public crossing, is that just that  
25 the length of the train would be able to fit between the public

0064

1 crossing and the spur line?

2 A No. It's based on my discussion with Agrium and their  
3 knowledge of the operations out there.

4 Q The 400 AADT that you mentioned, is that projected to  
5 be the immediate count if a crossing were to open?

6 A Yeah, it would.

7 Q And the County has agreed to monitor the traffic  
8 levels; is that correct?

9 A Correct.

10 Q How often would that be monitored?

11 A Annually.

12 Q I think I'm just about finished but I'm going to read  
13 through my notes before I let you off the hook.

14 A Okay.

15 Q Did the County consider the types of commodities  
16 passing through the crossing whether on trains or in trucks  
17 when recommending what types of warning devices should be  
18 secured at the crossing?

19 A We knew what the commodities were. We also know that  
20 produce is going to be a big crosser, probably the biggest. We  
21 did provide that information about that hydrous ammonia in our  
22 diagnostic. We're aware of that, the factors for the crossing  
23 itself strictly based on usage. A lot of trucks will be using  
24 that that will not have any hydrous ammonia. I guess the  
25 answer to that was, "No."



0066

1 this?

2 JUDGE MOSS: If he needs to we'll give him a chance.

3 MR. HAY: Thank you.

4 BY MS. WOODS:

5 Q As I understand your testimony, Mr. Bowie, you  
6 disagree with Kathy Hunter's recollection for installation of  
7 additional lighting at the crossing; is that right?

8 A Yes.

9 Q In your rebuttal testimony you point out that the  
10 Lechelt Road crossing does not have illumination; is that  
11 right?

12 A Correct.

13 Q I think you testified a little bit earlier this  
14 morning that in your view the Lechelt Road crossing is similar  
15 to the one we're talking about in this case?

16 A Yes. I think it's pretty similar. It's on the same  
17 spur and it has roughly the same amount of traffic.

18 Q I'd like to take a closer look at the Lechelt Road  
19 crossing and how it compares with the Piert Road crossing. So,  
20 I'd like first to focus on exhibit MB-9. That's the aerial  
21 map, I believe.

22 Is the Lechelt Road crossing shown on that map?

23 A The location of it is right here.

24 Q Lechelt Road intersects the railroad tracks at a  
25 90-degree angle, doesn't it?

0067

1 A Correct.

2 Q Now, let's take a look at Exhibit MB-2.

3 I think your counsel has got that.

4 A Okay.

5 Q Your copy is in color. I think the rest of us have a  
6 black and white version. I think on both of them Piert Road is  
7 a large gray line going horizontally across the page; is that  
8 right?

9 A Yes.

10 Q The proposed crossing involved in this case is a  
11 little to the right of the center of the diagram; is that  
12 correct?

13 A Yes.

14 Q Piert Road would intersect the railroad tracks in a  
15 skewed angle, would it not?

16 A Yes.

17 Q That makes it different from the Lechelt Road  
18 crossing, doesn't it?

19 A Yes.

20 Q Let's go back to MB-9, the aerial photo, large map.  
21 Looking, again, at Lechelt Road, besides the spot  
22 shown on the map are there any other places where Lechelt Road  
23 crosses railroad tracks, as far as you know?

24 A No.

25 Q As far as you know, the crossing that's shown on MB-9

0068

1 is the only railroad crossing on Lechelt Road?

2 A As far as I know.

3 Q Let's look again at Exhibit MB-2.

4 The proposed crossing involved in this case is not the  
5 only railroad crossing depicted on Exhibit MB-2, is it?

6 A No.

7 Q In fact, the diagram shows another proposed crossing  
8 to the left of the crossing involved in this case, doesn't it?

9 A Yes.

10 Q That second crossing would be within about 125 feet of  
11 the crossing in this case; is that about right?

12 A Yes.

13 Q So that's different from the situation at  
14 Lechelt Road, isn't it?

15 A Yes.

16 MS. WOODS: That's all the questions I have.

17 Thank you.

18 JUDGE MOSS: Let me jump in here, Mr. Bowie, and ask  
19 you: I'm looking at this diagram here in the pre-filed version  
20 of MB-9, which, by the way, I find useful with the red railroad  
21 tracks relative to the other map, and I notice there are  
22 currently in existence, apparently, crossings at Bowles Road,  
23 Cochran Road, Game Farm Road and 397. I guess that's State  
24 Road 397 because the railroad tracks intersect the road. Do  
25 you know, are those at grade crossings?

0069

1 THE WITNESS: Yes.

2 JUDGE MOSS: Are they passive in terms of the railroad  
3 warning mechanisms?

4 THE WITNESS: No.

5 JUDGE MOSS: They're all active?

6 THE WITNESS: Yes.

7 JUDGE MOSS: What do they consist of? Flashing lights  
8 or do we have gates?

9 THE WITNESS: Varying. They are varying. They all  
10 have some lights or gates. They're on a different line there  
11 as well. Lechelt is passive. The one at Bowles here is  
12 active.

13 JUDGE MOSS: This one at Bowles Road is passive?

14 THE WITNESS: This one is passive. This main line  
15 here -- I don't know if it's considered a main line. I take  
16 that back. This line coming down BN is active there. I  
17 believe Cochran is active. I believe Game Farm is, too.

18 JUDGE MOSS: Thank you very much. That clears things  
19 for me a bit.

20 I don't have any other questions. We'll ask if your  
21 counsel has any Direct.

22 MR. HAY: Redirect along the same line.

23 JUDGE MOSS: I should clarify, too. For purposes of  
24 the record, Mr. Bowie was pointing to my copy of MB-9. He was  
25 talking about the red railroad line that runs down the middle



0070

1 of the exhibit on the pre-filed version and we see it crosses  
2 the various intersections that we were discussing. That's to  
3 orient everyone, that's what he was just talking about and he  
4 was clarifying for me the nature of those crossings of those  
5 indicated crossings.

6 REDIRECT EXAMINATION

7 BY MR. HAY:

8 Q Mr. Bowie, was it your testimony, then, that that  
9 railway line is a main line?

10 A Yeah, but then I had to backtrack from that. I'm not  
11 sure how BN classifies that line. I know it's not an  
12 industrial spur, which is what our line that we're asking for  
13 the crossing. I don't know if they classified as a main line  
14 or something a little less.

15 MR. HAY: I have no further questions.

16 JUDGE MOSS: Thank you.

17 Anything else for this witness?

18 MS. ENDRES: I have one more, Your Honor.

19 JUDGE MOSS: Go ahead.

20 CROSS EXAMINATION

21 BY MS. ENDRES:

22 Q Mr. Bowie, do you know what the AADT counts are for  
23 Bowles, Cochran and/or Game Farm where they cross the railroad  
24 tracks --

25 A It's up around 1,100 around Bowles.

0071

1 Q What about Cochran?

2 A It's in the area of 500.

3 Q What about Game Farm?

4 A Game Farm is an area of 300.

5 MS. ENDRES: That's all I have. Thank you.

6 JUDGE MOSS: Thank you very much for appearing today.

7 You can retire to your seat or do whatever you wish, as far as  
8 that's concerned.

9 That would bring us to Mr. Thorp.

10 I have tortured everyone here for a couple of hours.

11 Should we take a break?

12 Heads nodding in the affirmative.

13 Let's break until 11 o'clock.

14 (Short break was taken in the proceedings.)

15 JUDGE MOSS: Back to order.

16 Mr. Thorp, I guess we could use you over here, please.

17

18 MR. THORP, having been duly sworn to tell the truth,  
19 the whole truth and nothing but the truth, testified on his  
20 oath as follows:

21

22 DIRECT EXAMINATION

23 BY MS. ENDRES:

24 Q Good morning, Mr. Thorp. I don't have a ton of  
25 questions for you, for better or worse.

0072

1 A Good.

2 Q You are the project engineer for the Benton County  
3 Public Works Department; is that correct?

4 A That's correct.

5 Q How long have you held that position?

6 A Since 1992.

7 Q Do you have any information or knowledge about the  
8 future development that is generating the proposed public  
9 crossing?

10 A Not directly, no.

11 Q Have you been involved with or party to any  
12 discussions about the types of --

13 A No.

14 JUDGE MOSS: Let her finish her question, Mr. Thorp.

15 MS. ENDRES: I feel bad for somebody reading this out  
16 of context down the road. They'll have no idea what we're  
17 talking about.

18 Q For clarification sake, have you been party to any  
19 discussions about the types of businesses or industries that  
20 may sprout of up in the industrial area where this road is  
21 meant to service?

22 A No.

23 Q So it's fair to say you don't have any information  
24 about future traffic projections across the crossing?

25 A No, just the studies we did which is now SR 397. When

0073

1 we did that project we had some studies done and came up with  
2 some projected numbers.

3 Q That's the 400 we've been discussing?

4 A That is since then, so our numbers are out of date.  
5 The numbers we had in our study are now out of date and what  
6 Mr. Bowie came up with is more up to date.

7 Q That was the number that was just a little under 400  
8 than what Mr. Bowie was talking about?

9 A Yes.

10 Q When you were involved in the traffic count projection  
11 did that break down into the types of vehicles that would be  
12 using the crossing?

13 A It only broke it between trucks and cars.

14 Q Is it fair to say that of the trucks there's no  
15 further breakdown between trucks carrying groceries and trucks  
16 carrying chemicals?

17 A No.

18 Q That's accurate?

19 A That's accurate.

20 MS. ENDRES: Again, one of those things for  
21 clarification reading down the road.

22 I think those are the only questions I have for you.

23 JUDGE MOSS: Ms. Woods.

24 MS. WOODS: I have no questions, Your Honor.

25 JUDGE MOSS: I have no questions for you, Mr. Thorp,

0074

1 but your counsel may have.

2 MR. HAY: No, Your Honor.

3 JUDGE MOSS: Apparently not. That was painfully  
4 brief.

5 That concludes the Benton County witnesses.

6 So, I think that leaves us only with you, Ms. Hunter.  
7 If you'll take the hot seat, I believe Ms. Hunter has some  
8 corrections.

9 JUDGE MOSS: We'll take care of that after we get her  
10 sworn.

11 KATHY HUNTER, having been duly sworn to tell the  
12 truth, the whole truth and nothing but the truth, testified on  
13 her oath as follows:

14 DIRECT EXAMINATION

15 BY MS. WOODS:

16 Q Good morning, Ms. Hunter.

17 A Good morning.

18 Q Have you previously submitted pre-filed testimony in  
19 this matter?

20 A Yes, I have.

21 Q Would that be exhibit KH-1T?

22 A Yes.

23 Q Have you had an opportunity to review that testimony  
24 since it was filed?

25 A Yes.

0075

1 Q Do you have any corrections?

2 A I do.

3 Q Would you like to list them, please?

4 A Certainly.

5 Page four, line six, and page four, line 22, my  
6 testimony states that BNSF is the track owner and actually that  
7 track is owned by Agrium.

8 The second correction is on page five, line three and  
9 line 20. In this instance UP is noted as the track owner and  
10 that should also be Agrium.

11 The next correction is on page 17, line 13. In this  
12 instance the percent needs to be removed from the numeric  
13 figure of zero point zero zero zero six eight seven. The  
14 number should not be stated as a percent.

15 The next correction is on page 21, line six. Same  
16 correction, the percent sign needs to be removed.

17 The next correction I have is on page 22, line 19.  
18 The figure of zero point two nine should be replaced with zero  
19 point five eight, has to do with the roundtrip train -- the  
20 calculation. I originally calculated as one trip not a round  
21 trip.

22 The last correction is on page 24 --

23 JUDGE MOSS: Before we move on, wouldn't we need to  
24 change the calculation there on 21 to point 58 times 400, which  
25 would be what? Two thirty two?

0076

1 THE WITNESS: That's correct. Instead of 116 it  
2 should be 232. Thank you.

3 JUDGE MOSS: Thank you.

4 What was the last page?

5 THE WITNESS: Page 24, line one. We're going to  
6 remove the percent from the zero point one per year.

7 MS. ENDRES: Which page?

8 THE WITNESS: Page 24, line one.

9 JUDGE MOSS: Does that complete your corrections?

10 THE WITNESS: Yes, it does.

11 JUDGE MOSS: Do you have anything else before we  
12 proceed to Cross-Examination?

13 MS. WOODS: That's it, Your Honor. Thank you.

14 JUDGE MOSS: Thank you.

15 Let's go ahead and allow the railroad to go first.

16 Mr. Hay may also have questions.

17 MR. HAY: I do. Yes.

18 JUDGE MOSS: Ms. Endres, go ahead.

19 CROSS-EXAMINATION

20 BY MS. ENDRES:

21 Q Good morning, Ms. Hunter.

22 A Good morning.

23 Q We made correction to your pre-filed testimony. I'd  
24 like you to turn to page 22.

25 A (Witness complies.)

0077

1           Q     We just corrected the number of trains per day to be  
2     about point five eight instead of point two nine; is that  
3     correct?

4           A     Is that point five eight number reflect what the  
5     testimony indicating the average of three roundtrip trains per  
6     week?

7           A     It does not. My testimony was filed prior to Malcolm  
8     Bowie's rebuttal testimony and Mr. Regan's. That actually  
9     states that it's on an average of three trips per week. So, I  
10    corrected from the one trip over twice a week. Actually, the  
11    calculation I have done now, based on the most recent  
12    information we have, which is three trains per week, which is a  
13    total of six trips over the crossing, and using the 400 ADT is  
14    actually going to take us at 344, up from the 232 as the  
15    exposure factor.

16          Q     What do we change the point five eight number to?

17          A     Point eight six.

18          Q     Does changing the exposure factor to 344 change any of  
19    your opinions in this case?

20          A     It does not. It is still below the 1,500 minimum that  
21    we discussed by other witnesses.

22          Q     I don't want to put you on the spot because I'm not  
23    good at math, but we heard testimony that in the past the level  
24    of train traffic has reached four to five roundtrips per week  
25    across the crossing. Are you able to tell us what these



0078

1 numbers would become in that event?

2 A I did calculate that because Megan had mentioned  
3 that -- Megan MacIntire -- and her testimony, so I did a  
4 calculation if there were five trains per week, so one daily,  
5 for a total of ten roundtrips, so the number of trains per day  
6 would be one point four, times the ADT, which gets us to 560.

7 Q I'm assuming that even in that event your opinion  
8 would remain the same because that's below the 1,500?

9 A That's correct.

10 Q Are there any other factors that you consider, other  
11 than the 1,500 number, when opining whether or not passive  
12 devices are adequate for crossing?

13 A Yes. Staff looks at other guidelines, national  
14 guidelines like the Gray Crust Safety Manual. Wash DOT puts  
15 out several publications as well. We look at those  
16 publications and apply those standards when we evaluate them.

17 Q In your evaluation in this case as to whether passive  
18 devices are appropriate, did you consider the types of  
19 commodities that will be traversing the crossing, either via  
20 train or via truck traffic?

21 A We did. I had to leave -- sorry -- earlier. I think  
22 Mr. Bowie was just talking about the diagnostic, meaning that  
23 we had on site, and that was discussed at the meeting via train  
24 traffic and vehicle traffic. As I recall, the commercial motor  
25 vehicle traffic is about 75 percent of that 400, so, definitely

0079

1 as a diagnostic team we looked at that.

2 Q Did you consider whether or not hazmat or hazardous  
3 materials would be traversing the crossing?

4 A We did not have a specific breakdown that I recall.  
5 From my perspective, knowing that Agrium is a fertilizer  
6 manufacturer, I guess I assumed that some of that material  
7 would be hazardous in nature. Although, I do recall hearing at  
8 the diagnostic that there wasn't 100 percent certainty around  
9 that issue, but, yes, we did consider it.

10 Q Is it accurate to state that even considering that  
11 some of the train traffic through the proposed crossing may  
12 carry hazmat it's still your opinion that passive devices, with  
13 the conditions you proposed, are appropriate?

14 A Absolutely. We did look at the other factors as well.  
15 I think we talked about some of them today like the site  
16 distance, the number of travel lanes. All those kind of  
17 characteristics are evaluated, so, certainly, hazardous  
18 materials is considered as part of that review.

19 Q In your position with the UTC are you familiar with  
20 the safety risk and hazards just generally encountered at  
21 at-grade railroad crossing?

22 A The safety and --

23 Q Sure. Maybe I didn't phrase that well. Some of the  
24 safety hazards or concerns that are inherent with at-grade  
25 railroad crossing?

0080

1 A Yes.

2 Q What are some of those safety concerns?

3 A Some of the criteria that we evaluate to get at would  
4 be angle of the crossing, if it's 90 degrees, or if it's not,  
5 what materials are hauled over the crossing, whether it's  
6 at-grade or grade separated. So, I think our policy recognizes  
7 that at-grade crossings are definitely inherently more  
8 dangerous than a grade separation.

9 Q Or no crossing?

10 A Or no crossing at all.

11 Q Does the UTC have a vehicular traffic number in mind  
12 that would trigger a need to consider upgrading passive devices  
13 to active devices in the event that the petition is granted?

14 A Using that exposure factor from the Wash DOT local  
15 agency guidelines, we looked at, if the number of trains stayed  
16 constant at an average of three what would be the vehicle  
17 traffic be to elevate to to reach that threshold it looks like  
18 it's about 1,750 vehicles a day, that would put it at about  
19 1,505. So, definitely, if the vehicle traffic, coupled with  
20 some of the other criteria we would look to for monitoring, I  
21 think that is spelled out in my testimony, we would reevaluate  
22 that crossing via a diagnostic.

23 Q Did I write down the right number that it was about  
24 1,700 vehicles per day?

25 A It's 1,750. That gets us closer to that threshold.

0081

1 Q Remind me what the threshold number is again.

2 A Fifteen hundred.

3 If you use the calculation of three trains per week or  
4 six trips over the crossing you're still at the point eight six  
5 and then multiply that times the 400 -- excuse me -- that gets  
6 you to the 344 but if you multiple the traffic and multiply by  
7 1,750 it gets you to the 1,500.

8 Q Do you know, sitting here, if we assume that there are  
9 five roundtrips per week what that vehicular traffic would be?

10 A It's 1,100.

11 Q For the record, I did not know.

12 A I tried to map out the different scenarios. The last  
13 scenario was definitely the five trips per week, ten  
14 roundtrips, vehicle traffic would rise to 1,100 to get us  
15 there.

16 Q You mentioned that there were other considerations  
17 that may come in to play other than strictly the level of train  
18 traffic and level of vehicular traffic, correct?

19 A Yes.

20 Q Is there a situation where the magic number of 1,500  
21 was not reached, in other words, that calculation amounts to a  
22 lower number but there are other factors that may justify  
23 upgrading the devices to active devices?

24 A Yes. UTC staff receives information from the class  
25 one railroads out their near hit or near misses so we get

0082

1 incident reporting here which we evaluate regularly. We also  
2 are notified if there is a collision or fatality, so that  
3 information we would monitor specifically at this crossing. I  
4 think if we had an incident that was concerning we would not  
5 wait, we would initiate an investigation and/or diagnostic to  
6 address that.

7 Q We had a lot of testimony and discussion today about  
8 monitoring a crossing, Benton County monitoring the traffic  
9 level. Does the UTC do any independent monitoring or analysis  
10 of public crossings in Washington?

11 A We do. Using the data that we see regularly like near  
12 hit and accident data, we have an analyst on staff who looks at  
13 that information yearly and we initiate diagnostics to  
14 railroads and road authorities providing them with the data of  
15 crossings that we identified at a higher risk and then we try  
16 to address those safety concerns. So BNSF has been present at  
17 several of those in the last 12 to 14 months.

18 Q Are there any UTC employees who visit public crossings  
19 just for, sort of, inspection purpose that's not stemming from  
20 an accident or near miss?

21 A Yes. UTC is responsible for managing the State  
22 inventory on public crossings. We inspect all of our public  
23 crossings once every three years. We look at the  
24 characteristics of the crossings, similar to what we're talking  
25 about today. If there's deficiencies we issue a defect to

0083

1 either the road authority or railroad for correction and we  
2 work with the stakeholders to get those resolved. That  
3 information will -- now under a new federal law -- we are now  
4 transmitting that data annually to the FRA to get uploaded into  
5 the federal database.

6 Q When you just testified that you had notified either  
7 the road authority or railroad or both in the situation  
8 involving this proposed crossing, would that involve notifying  
9 BNSF as the company who runs trains over the crossing or the  
10 Agrium as the crossing owner or both?

11 A We would look at what the defect is and likely notify.  
12 If it's ones that we would normally initiate to the Railroad,  
13 knowing that Agrium is the owner, we would also provide them  
14 notice of the defect as well.

15 Q What would an example of that be?

16 A Crossing service. Perhaps there's a large pothole  
17 that's developed on the crossing service. Cross bucket is  
18 missing. Maybe a motorist hit the cross bucket and it was down  
19 in the ditch.

20 Q In your pre-filed testimony we made some corrections  
21 today that indicates that Agrium is the owner of the crossing.

22 A Correct.

23 Q Is it your understanding that maintenance of the  
24 crossing surface would be Agrium's responsibility as the track  
25 owner?

0084

1 A Yes.

2 Q Are you aware of any responsibility that might be  
3 projected to BNSF relating to the warning devices or  
4 maintenance issues in the event that this petition is granted  
5 and a new public crossing is created at that location?

6 A My understanding is that they should be included in  
7 any evaluation of the crossing because they are the operator of  
8 the crossing. But, typically, in a situation like this, my  
9 experience has been the industry who owns the crossing bears  
10 some financial responsibility of an upgrade is necessary, and  
11 it also sounds like Benton County will have some  
12 responsibility, as well as the driver of the project.

13 Q Aside from participation in discussions about the  
14 devices at the crossing or if an event occurred are you aware  
15 of any potential responsibility that BNSF would incur?

16 A I can't think of one.

17 Q Is this crossing, in the event that it's open, going  
18 to be in a rural area or urban area?

19 A I would consider it a rural area.

20 Q I believe that your testimony discusses the U.S. DOT  
21 guidelines.

22 A Guidance and Traffic Control Devices. I think that's  
23 an exhibit here.

24 Q Of course, I didn't write down the page number in your  
25 testimony that explains how that fits into your opinion. If

0085

1 you find it, let me know.

2 Let me ask you this: Is it true that the U.S. DOT  
3 guidance document that you just mentioned states that automatic  
4 devices should be considered when the annual average daily  
5 traffic exceeds 500 in rural areas?

6 A I think that is the threshold.

7 Hold on. I have it in the publication.

8 The publication states that it should be considered as  
9 an option, and one of the criteria is 2000 in urban areas or  
10 500 in rural areas. So, that is correct.

11 MR. HAY: Which exhibit are we looking at?

12 THE WITNESS: Exhibit No. 7.

13 JUDGE MOSS: KH-7.

14 THE WITNESS: Yes. It's on the bottom of 28, top of  
15 29.

16 BY MS. ENDRES:

17 Q Your testimony on page three also states that another  
18 guideline about when to recommend active warning devices is a  
19 high level of heavy trucks or trucks carrying hazardous  
20 material that could travel over the crossing. Is that correct?

21 A I'm sorry.

22 Q Page 23.

23 A Yes, it does.

24 Q You testified, correct me if I'm miss-remembering,  
25 approximately 75 percent of the traffic across the proposed



0086

1 crossing is going to be truck traffic?

2 A As provided by the County, yes.

3 Q The County is not provided you information as to the  
4 proportion of those heavy trucks carrying hazardous materials;  
5 is that correct?

6 A They have not.

7 JUDGE MOSS: I'll jump in here because I have to  
8 clarify a question on that point: The 75 percent, that's about  
9 300 trucks a day?

10 THE WITNESS: That's my calculation as well.

11 JUDGE MOSS: One thing I was curious about in terms of  
12 the criteria, when you say "high level," when I first read that  
13 it struck me that would refer to the absolute number as opposed  
14 to the proportion. Here you say you consider it to be a high  
15 number. Is 300 vehicles a day a high number in the absolute  
16 sense?

17 THE WITNESS: I think in context it's high as far as  
18 there's 400 vehicles per day but when you look at an urban road  
19 that gets 30,000 vehicles and 20,000, you have to keep that in  
20 context. I guess maybe a clarification on my part is, that's  
21 one of eight criteria that is recommended by that publication  
22 that we use as a reference document. So, in context,  
23 400 vehicles, 300 seems high as commercial motor vehicles  
24 traveling over that.

25 JUDGE MOSS: But in another relative sense it might

0087

1 not?

2 THE WITNESS: Correct.

3 JUDGE MOSS: I understand. Thank you.

4 BY MS. ENDRES:

5 Q One of the recommendations that you proposed -- again,  
6 it's been discussed quite a bit this morning -- is future  
7 monitoring of traffic levels. Is the UTC proposing that the  
8 County monitor the level or the number of trucks carrying  
9 hazardous material across the crossing?

10 A That wasn't included as part of my original  
11 recommendation. It was more, recommendation as it stands today  
12 is more focused on total vehicle count. I would imagine that  
13 the County will be tracking that because they were able to  
14 provide that information to us as part of the petition process  
15 so I'd anticipate we would receive that information, if it was  
16 approved, and the recommendations were adopted and included in  
17 Commission order that we would receive that as well.

18 Q Is it your opinion that receipt of that information  
19 would be important in monitoring whether passive devices remain  
20 adequate at the crossing?

21 A I believe so, yes.

22 Q Do you have concern of trucks or other traffic queuing  
23 across the crossing?

24 A One of the staff recommendations was to have installed  
25 a "Do Not Stop On Track" sign. I think that that brings

0088

1 awareness for the commercial motor vehicle driver that there's  
2 that, I guess, potential. The other discussions we had at the  
3 diagnostic meeting indicated that three commercial motor  
4 vehicles with trailers could comfortably park at the Agrium  
5 gate without fowling the proposed UP spur. There was also some  
6 discussion about there's ample room, actually, near the gate,  
7 the guard shack or the gate, for them to actually pull off the  
8 roadway and some signage could be placed there to direct the  
9 drivers to pull their vehicles off. There was a small -- I  
10 mean, I have a very small concern about that. I brief the  
11 remedies we disputed at the diagnostic meeting and the signage  
12 could alleviate that situation.

13 Q Am I visualizing the layout correctly that the  
14 entrance to the Agrium facility is in-between the tracks that  
15 we're discussing today and the trucks within 200 feet the UP  
16 train is on?

17 A Is it helpful to turn to KH-3, which is a visual of  
18 the two crossings and the guard shack as identified on that  
19 exhibit, as well?

20 So it gives a little bit of context of where the  
21 commercial motor vehicles would enter the facility. It's my  
22 understanding from the closest crossing, which is the proposed  
23 Union Pacific spur to the actual location of the guard shack,  
24 the entry point into the Agrium facility, is about 320 feet.  
25 You can see where there's ample land kind of to the right where

0089

1 we kind of -- there's an open space where the commercial motor  
2 vehicles could pull off.

3 Q In an emergency they would, basically, be able to pull  
4 off the road into the dirt?

5 A Or even in a non-emergency. It's just a wide open  
6 space.

7 Q Now, looking at Exhibit KH-3, do you have concern --  
8 let me stop.

9 For the record, there looks like four or five yellow  
10 pinpoint.

11 Do you see that?

12 A Yes.

13 Q One of those points says "Proposed BNSF Crossing."  
14 That's the crossing we're discussing today?

15 A Correct.

16 Q There's one point that's just above it called  
17 "Proposed Union Pacific Crossing?"

18 A Correct.

19 Q In the event that the Piert Road Extension goes  
20 forward, both of those will be public crossing, correct?

21 A Correct.

22 Q Do you have any concern with traffic stopped for the  
23 Union -- what's labeled "Proposed Union Pacific Crossing" --  
24 queuing on to what's labeled the "Proposed BNSF Crossing?"

25 A Vehicle traffic, commercial motor vehicle traffic?

0090

1 Q Correct.

2 A Correct, I do not. Based on my previous answer, I do  
3 not.

4 Q Based on your understanding there's enough space  
5 between those two proposed public crossings to store vehicles  
6 so that a vehicle would not be on top of the other crossing?

7 A Correct. It's about 125 feet between the two spurs  
8 which would be adequate space for one commercial vehicle with a  
9 tractor-trailer attached. And the signage would be on the  
10 approaches to the crossing, the "Do Not Stop On Track" signage  
11 to warn the motorist.

12 Q You may not know: Do you know what the longest length  
13 of one truck using the crossing may be?

14 A I'll only say that it's my understanding, based on  
15 information from the County, that three trucks and trailers  
16 would be able to line up at the guard shack without fouling the  
17 UP traffic. So, that's about 320 feet. So, generally  
18 speaking, they're probably less than 100 feet each. I don't  
19 know that.

20 Q Fair enough.

21 Am I correct in understanding that trains traveling  
22 through the crossing may be traveling up to ten miles per hour?

23 A That's my understanding, yes.

24 Q Are you aware of any train traffic incident that  
25 involved a train traveling at or below ten miles an hour

0091

1 colliding with a vehicle?

2 A Probably in a general course of business that's part  
3 of my job have reviewed information that would support that  
4 statement.

5 Q Do you know whether in that situation the crossing  
6 involved had accurate passenger devices?

7 A I don't recall any specific examples.

8 MS. ENDRES: I believe that those are all that I have  
9 for now, unless Mr. Hay's questions triggers some more. That's  
10 about it.

11 JUDGE MOSS: Mr. Hay, go ahead.

12 MR. HAY: All right.

13 RE CROSS EXAMINATION

14 BY MR. HAY:

15 Q Ms. Hunter, there was some discussion -- let me take a  
16 moment here.

17 We're at page 28 and 29 of KH-7, and there's  
18 discussion on page 29 of sub four, traffic counts versus rural  
19 versus urban areas. On point three it's discussing speeds in  
20 those areas, post highway speeds in excess of 40 miles an hour  
21 in urban areas or exceed 55 miles an hour in rural areas.

22 Would it be accurate that the expectation is that rural speeds  
23 are apt to be higher than urban speeds for vehicular traffic?

24 A Yes, that's how I would interpret that.

25 Q When you interpret subsection four where it seems to

0092

1 be particularly concerned with number in rural areas as  
2 reflecting a concern with typically higher speeds at rural  
3 areas?

4 A You could say that, yes.

5 Q What is the expected posted speed for Piert Road?

6 A Thirty-five miles an hour.

7 Q Would you say it's correct that that's not a high  
8 speed?

9 A I'd say it's significantly lower than the 55 that's in  
10 this publication.

11 Q Now, I imagine you've heard the testimony from  
12 Mr. Regan with respect to the average number of trains per week  
13 been approximately three going into the Agrium facility and  
14 crossing back and forth over the proposed site. It was your  
15 testimony that this would result in exposure factor of 344?

16 A That is correct.

17 Q It was your testimony, at least, with respect to the  
18 exposure factor estimation, that it's over 1,500 that it  
19 becomes a concern that one begins to look at the possibility of  
20 putting in active warning devices?

21 A Yes.

22 Q You also heard the testimony from Mr. Angelos  
23 expressing that there might be up to five trains per week in  
24 certain circumstances?

25 A Yes.

0093

1 Q It was your testimony that this would result if  
2 Commission were to accept five trains a week as being an  
3 average total of ten crossing that that would result in an  
4 exposure factor of 560?

5 A That's correct.

6 Q That's also less than 1,500, I would imagine?

7 A Yes.

8 Q There's a rule in there somewhere saying we're not  
9 supposed to ask complicated mathematical questions but --

10 JUDGE MOSS: Actually, Mr. Hay, we've already covered  
11 this ground.

12 MR. HAY: If I might ask one final question on that  
13 point.

14 JUDGE MOSS: Go ahead.

15 BY MR. HAY:

16 Q Is it your position that regardless of what  
17 determination the Commission might make on factual matter of  
18 whether actual traffic is three trains a week or five trains a  
19 week that would have no affect on your ultimate recommendation?

20 A Correct.

21 Q Your ultimate recommendation is that the Commission  
22 approve the at-grade crossing with certain conditions in your  
23 testimony?

24 A Yes.

25 Q Is the geography and topography of this proposed site



0094

1 favorable in terms of safety reasons?

2 A For an at-grade crossing?

3 Q Yes.

4 A Yes.

5 Q Is it good visibility at that site?

6 A It's my understanding -- and I have been there  
7 three times -- that sight distance is not an issue -- that the  
8 minimum sight distance is 400 feet up to 2,000.

9 Q The expected speeds for train traffic and vehicle  
10 traffic are relatively low?

11 A Yes.

12 Q You're familiar with the Manual on Uniform Traffic  
13 Control Devices?

14 A Yes.

15 Q That's a trustworthy and reliable source of guidance?

16 A Yes.

17 Q Are you familiar with the level of visibility of the  
18 Lechelt crossing?

19 A As I recall it, it has unobstructed sight distance, as  
20 well.

21 Q The trains crossing through have lights; is that  
22 correct?

23 A The locomotives?

24 Q Yes.

25 A Yes, they do.

0095

1 Q Are there unusual characteristics of this particular  
2 proposed crossing that would impede visibility?

3 A There's an angle, a skewed angle at the crossing,  
4 approximately 67 degrees, so it's less than ideal, which is  
5 90 degrees, so that could impair a driver's ability to look  
6 over their shoulder to make eye contact of an oncoming train,  
7 so that is less than ideal, but it is still, my understanding,  
8 acceptable. But sight distance might be impaired slightly by  
9 that versus looking left and right. You would have to turn  
10 your head further to get an unobstructed sight distance.

11 Q Have you been to the site at nighttime?

12 A I have not.

13 MR. HAY: I have no further questions.

14 JUDGE MOSS: You asked one of mine which is whether  
15 you have been there at night.

16 THE WITNESS: Can I respond, Judge Moss?

17 I have been there during the daylight hours only, have  
18 observed the Agrium facility from the proposed location, and my  
19 sight distance, or my eyesight is very good, and it appeared to  
20 me that most of the outdoor lighting I could see at Agrium  
21 facility was more focused on the facility, less on the  
22 perimeter of the facility, so the lighting was angled at a  
23 downward position at the facility. But I have not been there  
24 at night to see what the actual illumination is. But based on  
25 those daytime observations made the staff recommendation.

0096

1           JUDGE MOSS: Okay. I should have asked Mr. Regan but  
2 since you were involved in the diagnostics -- perhaps it came  
3 up -- what time of day do the trucks come and go? Is it a  
4 24-hour operation?

5           THE WITNESS: I know they receive trains in the  
6 evening and through the night, so, I can only generalize they  
7 also receive commercial motor vehicle traffic, too.

8           JUDGE MOSS: To me an interesting question because if  
9 the trains and trucks aren't coming at the same time that might  
10 be a factor in all of this, as well. We won't know. Fine. I  
11 don't feel the need to know that.

12           Anything else?

13           No.

14           Ms. Hunter, thank you for being here today and giving  
15 your testimony.

16           I believe that completes the examination of witnesses.

17           That brings us to the question of whether the parties  
18 wish to have any post-hearing process. We can proceed in one  
19 of three ways, I suppose. The first being, we can all get up  
20 and go to lunch and I'll write an order. Second option would  
21 be for you all to present argument now and let that be it or I  
22 will allow you the opportunity for short briefs, if that is  
23 your preference. So Counsel need to let me know what they want  
24 to do in terms of bringing this process to a conclusion.

25           MR. HAY: I suspect that the Commission has all the

0097

1 testimony before it and there won't be a great deal to add.

2 MS. ENDRES: We're prepared for any of the  
3 three options. I guess we'll defer to you on what would be  
4 helpful.

5 JUDGE MOSS: Ms. Woods, any preferences?

6 MS. WOODS: I don't have a preference, Your Honor.

7 JUDGE MOSS: I'd like to hear a brief summary from  
8 each of you, then, and we'll leave it at that. We won't have  
9 written briefs and I'll be able to, based on what I heard and  
10 seen, reach a decision.

11 Why don't we start with the applicant.

12 MR. HAY: All right.

13 As the Commission is familiar with, this is Piert Road  
14 project was originally involved for crossings being petition  
15 for, two of those involved Union Pacific crossings have  
16 [unintelligible] and Union Pacific has decided not to contest  
17 that. That leaves us with just one crossing sort of between  
18 the County and being able to complete the Piert Road project.

19 By statute, as the commission is familiar, in order to  
20 build an at-grade crossing necessary that the highway authority  
21 is seeking and obtain permission from the UTC to build such an  
22 at-grade crossing, and the legal standard requires the  
23 petitioner to be able to show that separated grade crossing  
24 would not be practicable, and there's also requirements with  
25 respect to demonstrating some sort of public need or public

0098

1 benefit and that that public need and public benefit is not  
2 outweighed by the dangers necessarily inherent in any at-grade  
3 crossing.

4 In this instance, the testimony, the pre-filed  
5 testimony and testimony been presented orally today, has  
6 demonstrated that a separate grade crossing would not be  
7 practical. That's been demonstrated, particularly by  
8 Mr. Bowie's testimony and by the attached exhibits discussing  
9 the engineering and financial difficulties, and this was also  
10 supported by the analysis of Ms. Hunter, specifically, from a  
11 financial standpoint, which is one of the criteria to consider  
12 is that's separated grade crossing would estimate cost of  
13 three point \$8,000,000 which would be in excess of what the  
14 County could potentially bear to build the road where it could  
15 build a separate at-grade crossing but not both.

16 In addition to that, the topography of the area, the  
17 location of two crossing in particular areas, of the Agrium  
18 facility and the access needs for the Agrium facility means it  
19 would be impracticable from an engineering standpoint to build  
20 a separate crossing and still allow the Agrium facility to  
21 function in an efficient fashion. As a result, it's our  
22 position that the County has shown that a separated grade  
23 crossing would be impracticable.

24 The next point being the presence of some sort of  
25 benefit in public need of convenience associated with the

0099

1 project. The first of these we discussed would be that it will  
2 permit additional development, as discussed, I believe, in  
3 Mr. Fyall's testimony and also in Mr. Bowie's and Mr. Thorp's  
4 testimony, in that the area in the vicinity of the crossing and  
5 especially north of the crossing, has been slated for many,  
6 many years for development, but the lack of adequate road  
7 service in that area has inhibited that. But the primary, and  
8 more important advantage to the, as expressed, especially,  
9 clearly in Mr. Thorp's testimony, is that this crossing which  
10 permits the Piert Road project also has a tremendous benefit  
11 for the residents of Finley from a quality of life aspect and  
12 also from a safety aspect because as things stand, it's taking  
13 traffic and, especially, large truck traffic, through Finley  
14 and through the more residential areas of Finley and then  
15 dumping those on to 397 on their way to the main regional  
16 traffic arterial of Interstate 82. What is shown, especially,  
17 in Mr. Thorp's testimony and the attachments going back a  
18 number of years, that the Piert Road project was always seen as  
19 a way to ameliorate those difficulties for the residents of  
20 Finley and provide additional safety for the residents of  
21 Finley for providing a more direct route to, ultimately,  
22 Interstate 8250 those industrial traffic would bypass the  
23 residents of Finley, they wouldn't have truck traffic going  
24 past the middle school, wouldn't have the traffic turning on  
25 the roads, wouldn't have the truck traffic going through past

0100

1 the high school and would instead be going through a different  
2 area without same sort of residential and safety concerns that  
3 are present in a residential area. So, that presents a very  
4 large public benefit and safety advantage which is our third  
5 criteria, which is offsetting the dangers inherent in any sort  
6 of at-grade crossing.

7 In contrast to the rather large benefit to the  
8 residents of Finley, this particular crossing has been seen,  
9 both by the UTC staff and by the Benton County Public Works  
10 Department, as being a particularly good candidate for an  
11 at-grade crossings with passive devices. The geography and  
12 topography of the site it's uncontested, those are excellent as  
13 long as visibility for vehicles approaching the crossing point,  
14 that the speeds are relatively low for both train and vehicles,  
15 but there isn't any particular danger with respect to trains  
16 being backed up on the roadway, as we mentioned, no more than  
17 four cars in each train. There's plenty of room within the  
18 facility and the lead up to the facility, there's not going to  
19 be any difficulty bringing those in. Mr. Regan testified that  
20 there wasn't a circumstance where they didn't have the gate  
21 ready to go when the trains from BNSF arrived. So, the result  
22 of all of these factors together of a tremendous benefit,  
23 relatively low risks, and considering the existing situation  
24 does involve all those same trucks that we would be talking  
25 about already going across at Game Farm Road, private crossing,

0101

1 those are already going across at at-grade crossing presently,  
2 so, ultimately, the benefits here outweigh whatever risks are,  
3 of course, going to be inherent in any at-grade crossing.

4 JUDGE MOSS: That sums it up, Mr. Hay.

5 Is there any last point you want to make?

6 MR. HAY: I will take that clue as indication I can  
7 wrap up.

8 JUDGE MOSS: It was a strong hint.

9 Ms. Woods.

10 MS. WOODS: Thank you, Your Honor.

11 So many years Agrium the Washington Supreme Court laid  
12 out a practical standard for application of RCW 8153020 which  
13 is the statute governing open at-grade crossings. The Court  
14 said that the statute authorizes the UTC to approve a grade  
15 crossing, quote, "If it be determined that under all the  
16 circumstances of the case such a crossing presents the best  
17 solution of an existing problem," closed quote. The citation  
18 for that is State, [unintelligible], Oregon, Washington  
19 Railroad and Navigation Company versus Walla Walla County,  
20 5 Washington 2nd, 95, 1940 case.

21 The record that's been assembled today demonstrates  
22 that the crossing, as proposed by Benton County and as  
23 conditioned in the manner suggested by UTC staff, presents the  
24 best solution of an existing problem.

25 JUDGE MOSS: Thank you very much for your brevity.



0102

1           Go ahead, Ms. Endres.

2           MS. ENDRES: The safest crossing, of course, is one  
3 that does not exist. And while BNSF recognizes the validity of  
4 some of the issues raised by Ms. Hunter and the UTC, I think  
5 our main concern is future development, and you never know  
6 what's going to happen, and certainly some of that concern  
7 stems from the pre-filed testimony by Benton County stating  
8 that one to two trains per week run on this line, that the  
9 trains only travel at three miles per hour, and it really needs  
10 to be accurate information so that we can make sure that if a  
11 crossing exists, if the Commission is going to overrule the  
12 BNSF in its policy against new crossings, that the concerns  
13 that exist at this crossing and may grow in dispute in the  
14 future are addressed. Whether that's, at a minimum, through  
15 trucking, the vehicular traffic, there was discussion about  
16 tracking what level or proportion of that is hazardous  
17 material -- that was raised, I believe for the first time  
18 today, and just making sure that all those are accurately and  
19 fairly considered in that if BNSF is going to be overruled on  
20 this one and that the Commission is not willing to require the  
21 County to install active devices to really maintain the highest  
22 level of safety possible at an existing crossing, that grade,  
23 that the County retain jurisdiction over the matter to make  
24 sure that the conditions proposed and BNSF would suggest the  
25 greater condition of not only monitoring the level of traffic

0103

1 but what's comprising that traffic to make sure that the public  
2 is protected.

3 JUDGE MOSS: Thank you very much.

4 Let me ask: Do either of you, Mr. Thorp or Mr. Bowie,  
5 know what the cost of the lighting that staff has proposed  
6 would be, approximately? Ballpark.

7 MR. BOWIE: No.

8 JUDGE MOSS: Any idea, Mr. Thorp?

9 MR. THORP: No.

10 JUDGE MOSS: Ms. Hunter, do you have any idea what the  
11 additional cost would be associated with your proposal?

12 MS. HUNTER: I do not.

13 JUDGE MOSS: I'm going to oppose that as a bench  
14 request and I'll ask that the County and/or staff to let me  
15 have an answer to what that additional cost would be in  
16 terms -- as I understand it -- and I'm sure you will correct me  
17 if I'm wrong -- the County and staff are in agreement on all of  
18 the proposals that Ms. Hunter has included in her testimony,  
19 with the exception of the lighting, and, so, that's why I'm  
20 focused on that point. I want to have more information about  
21 why the differences might be there on that issue, and the cost,  
22 certainly, might be a factor, so I'll ask that as a bench  
23 request, and whatever your responses are I will include as a  
24 bench exhibit for the record.

25 I think that's the only sort of lingering question

0104

1 that I have in terms of facts.

2 Anything else from the parties? Any last minute  
3 brilliant points you want to woo me with?

4 Okay. I do think we have a good record. I want to  
5 compliment you all in presenting a very good case on all sides,  
6 and I will, in due course, enter an initial order with all the  
7 caveats concerning your rights to pursue the matter further if  
8 you're dissatisfied with the result.

9 With that, we'll bring this proceeding to a close.

10 Thank you very much.

11 (Hearing adjourned at 12:00 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0105

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Certificate

I, LESLEY E. KAY, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing in Olympia, do hereby certify;

That the foregoing proceedings were taken before me and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of said proceedings;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 28th day of December, 2010.

---

LESLEY E. KAY  
WA CCR #3244  
CA CSR #6847  
NV CCR #791