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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of:)
)
CHELAN COUNTY)
Petitioner,)
vs.) DOCKET NO. TR-061442
BURLINGTON NORTHERN SANTA FE) Volume IV
RAILWAY COMPANY,) Page 56 - 151
Respondent.)

A hearing in the above matter was held on May 16, 2008, at approximately 9:30 a.m. before Hearing Examiner PATRICIA CLARK.

The parties were present as follows:

CHELAN COUNTY, by Louis N. Chernak, Civil Deputy Prosecuting Attorney, 401 Washington Street, 5th Floor, P.O. Box 2596, Wenatchee, Washington, 98807.

BURLINGTON NORTHERN SANTE FE RAILWAY COMPANY, by Kelsey E. Endres and Bradley Scarp, attorneys at law, 1218 Third Avenue, 27th Floor, Seattle, Washington, 98101.

Margaret Bustos, CCR
Court Reporter

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INDEX OF EXHIBITS

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EXHIBIT: MARKED: ADMITTED: WITHDRAWN:

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(Exhibits 1 - 19 and Exhibits 21 - 29 pre-marked

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and pre-admitted per agreement of counsel.)

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P R O C E E D I N G S

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JUDGE CLARK: Good morning. It's

4

approximately 9:30 a.m., May 16th, 2008 in City Hall,

5

Leavenworth, Washington. This is the time and the place

6

set for hearing in the matter of Chelan County versus

7

BNSF Railway Company Incorporated given Docket No.

8

TR-061442. Patricia Clark Administrative Law Judge for

9

the Commission presiding.

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This matter came before the Commission upon

11

filing of a petition for alteration and relocation of a

12

rail undercrossing in -- on Chumstick Highway in

13

Washington.

14

At this juncture I will take appearances on

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behalf of the parties. Appearing on behalf of Chelan

16

County.

17

MR. CHERNAK: Thank you. My name is Louis

18

N. Chernak, C H E R N A K, Deputy Prosecuting Attorney

19

for Chelan County.

20

JUDGE CLARK: Thank you, Mr. Chernak.

21

And appearing on behalf of BNSF Railway?

22

MR. ENDRES: Good morning. My name is

23

Kelsey Endres, E N D R E S, representing BNSF.

24

MR. SCARP: Good morning, your Honor. My

25

name is Bradley Scarp, S C A R P, also representing BNSF

0060

1 Railway Company.

2 JUDGE CLARK: Thank you. The first
3 preliminary matter we're going to address is immediately
4 preceding the hearing this morning the parties agreed
5 off record to the admission of the prefiled testimony
6 and exhibits that were submitted in this matter.

7 I would like to have you go ahead and
8 confirm on record that it is your intention to allow the
9 admission of these exhibits without objection.

10 Mr. Chernak.

11 MR. CHERNAK: Judge, I agree.

12 JUDGE CLARK: Thank you.

13 MR. SCARP: No objection from BNSF, your
14 Honor.

15 JUDGE CLARK: One further clarification,
16 although the petition of Chelan County is referenced on
17 page 2 of Mr. Pezoldt's testimony, we are going to
18 separately mark the petition as a separate exhibit, and
19 that will be the last direct exhibit put forth on behalf
20 of Chelan County.

21 MR. CHERNAK: Okay. Thank you.

22 JUDGE CLARK: Any objection to that?

23 MR. CHERNAK: No.

24 JUDGE CLARK: Are there any preliminary
25 matters that we need to address?

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1 Mr. Scarp.

2 MR. SCARP: Your Honor, I would just also
3 point out that also present at the hearing are Mr. Paul
4 Curl and Ms. Kathy Hunter on behalf of UTC Commission
5 Staff.

6 JUDGE CLARK: Thank you. My understanding
7 is that the Commission Staff is not entering an
8 appearance at today's hearing. There is no prefiled
9 testimony submitted on behalf of the Commission Staff.
10 My understanding this is for observation purposes only.

11 Any other preliminary matters?

12 Mr. Chernak.

13 MR. CHERNAK: Thank you, your Honor. Two
14 matters that I think can save everybody a little bit of
15 time because these may have been matters of dispute,
16 but, one, that I believe Mr. Pezoldt will be prepared to
17 testify that we agree the bridge was built in 1928 not
18 1932. And that came about because we subsequently --

19 THE COURT REPORTER: I'm sorry. You're
20 going to have to speak up.

21 MR. CHERNAK: We discovered some additional
22 records in the County files which we disclosed to BNSF
23 in their discovery request.

24 Additionally we agree that the speed limit
25 -- I guess the warning speed limit is 25 miles an hour.

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1 So rather than spend a lot of time worrying about that,
2 we'll just stipulate to that.

3 JUDGE CLARK: All right. Mr. Chernak, when
4 your witness takes the stand after he is sworn in and
5 you've done the basic preliminary foundational questions
6 to see if he has any additions, corrections, or
7 deletions to that testimony, it would be helpful if we
8 could go ahead and make those corrections to the
9 pre-file testimony so that the record is clear.

10 MR. CHERNAK: Thank you, your Honor.

11 JUDGE CLARK: Thank you.

12 Are there any further matters?

13 (No audible response.)

14 JUDGE CLARK: All right. In an Email
15 communication with the parties, I did give the parties
16 an opportunity to make brief opening argument if you
17 wish. I will give you that opportunity at this
18 juncture. I will not allow closing argument because the
19 schedule that I inherited permits post hearing briefing.

20 Mr. Chernak, do you wish to make an opening
21 statement?

22 MR. CHERNAK: Very briefly.

23 JUDGE CLARK: Thank you.

24 MR. CHERNAK: Thank you. Chelan County is
25 engaged in a Chumstick Highway project. They have built

0064

1 amply documented in testimony by -- proposed by railroad
2 witnesses, the County has submitted design concepts to
3 BNSF for the proposed alteration and relocation of the
4 trestle.

5 Mr. Pezoldt's testimony is that the County
6 does not have railroad design experience and does not
7 want to impose a railroad trestle design on the BNSF.
8 We think the railroad should have some input in what
9 their trestle looks like and how it operates. That's an
10 important point.

11 BNSF in the testimony of this witness is
12 apparently opposing the alteration of the location of
13 the trestle because it claims there is no railroad
14 safety implicated in this matter. Contrary RCW -- or
15 comparably RCW 81.53.060 relates to public safety, and
16 that's the concern that the County has is public safety
17 at that location.

18 I think we've already had a decision from
19 the Administrative Law Judge about jurisdiction, and I
20 think that we're now clearly talking about the public
21 safety at this site. Thank you.

22 JUDGE CLARK: Thank you.

23 Does the railroad wish to make its opening
24 statement at this juncture or immediately preceding
25 presentation of the witnesses?

0065

1 MR. SCARP: Your Honor, I think very briefly
2 I'll just address those points for the benefit of the
3 tribunal.

4 This matter is really about and I think what
5 the testimony here will show is that the County of
6 Chelan has a highway problem, and they would like the
7 railroad to resolve it for them. And it's really not a
8 question so much of design, which the railroad and
9 you'll hear from the witnesses is involved in with these
10 types of projects with local governments everywhere.
11 And we do get involved with resolving these types of
12 design issues and complications.

13 But what this matter is really about is
14 funding, and that it's a highway project that the County
15 wants to resolve, and what they would really like is for
16 the railroad to pay for it.

17 And I think that the evidence here will show
18 that although the statute referenced by County provides
19 arguably and as this tribunal has found a jurisdictional
20 basis for the Commission to undertake this issue, that
21 the question -- the factual question or the reasonable
22 finding that -- will be that there is not a railway
23 safety issue implicated here.

24 There are arguably highway safety issues,
25 but again that's not something that the railroad

0066

1 resolves. We deal with railroads.

2 The question of the estimate from a 2002
3 Email with a 1.75 million dollar figure thrown out, I
4 think the Email itself will indicate and I think the
5 witnesses will ultimately agree that that was based on
6 -- there's no specifications, there's no design, there
7 are -- there's nothing upon which someone could say this
8 is what that will cost including the Email itself. And
9 I think that will become clear as we get done.

10 And ultimately I think there are probably
11 when the witnesses are through here a clear indication
12 that a change in the highway structure as contained in
13 some of the County's preliminary design drawings don't
14 implicate the railroad trestle itself and that this is
15 really a highway problem.

16 And even if it was implicating rail safety
17 or some basis by which to cause the railroad to take a
18 perfectly capable structurally sound bridge and
19 eliminate it or change it, that that is not what this
20 process and what really is at issue here.

21 And even if it were, there's no design.
22 There's nothing in place to put in front of this council
23 -- or, excuse me, in front of this tribunal and say this
24 is what needs to be done. We're not even to the stage
25 of here's the set of specifications of what needs to be

0067

1 done.

2 That's all I have, your Honor.

3 JUDGE CLARK: Thank you, Mr. Chernak.

4 MR. CHERNAK: Thank you.

5 JUDGE CLARK: Would you call your witness.

6 MR. CHERNAK: Call Mr. Pezoldt, Gregory

7 Pezoldt.

8 THE WITNESS: Do I sit over here?

9 JUDGE CLARK: Yes, please. And I think Mr.

10 Pezoldt is going to need a copy of his prefiled

11 testimony and the exhibits attached thereto.

12 Thank you.

13 Mr. Pezoldt, if you would stand and raise

14 your right hand, please.

15 Whereupon,

16 GREGORY PEZOLDT,

17 having been first duly sworn, was called as a

18 witness and testified as follows:

19 Please be seated. Could you state your full

20 name for the record, please, and spell your last name.

21 THE WITNESS: Gregory James Pezoldt, P E Z

22 O L D T.

23 JUDGE CLARK: Thank you.

24 Mr. Chernak.

25

0068

1 DIRECT EXAMINATION

2 BY MR. CHERNAK:

3 Q. Thank you. Mr. Pezoldt, what is your
4 occupation?

5 A. My occupation? I'm an engineer.

6 Q. And for whom do you work?

7 A. Chelan County Public Works Department.

8 Q. How long have you been in that position?

9 A. How long have I worked for the County?

10 Q. Right, in that position with the County.

11 A. Well, I've worked for the County for just
12 over ten years. The first two years I worked there I
13 was the assistant county engineer. For the next nine
14 years -- no, for the next seven years I was the public
15 works director and the county engineer. And for the
16 last year and a few months I've been the public works
17 director.

18 Q. And so you're very familiar with the project
19 on the Chumstick Highway doing this trestle; is that
20 correct?

21 A. Yes, I am.

22 Q. Okay. Have you -- in preparing your -- in
23 preparing your testimony, have you reviewed all of the
24 exhibits that are attached?

25 A. I've reviewed all of them. Some of them at

0069

1 higher levels than others, but I reviewed all of them at
2 some point.

3 Q. And where did all the records come from that
4 you have in those exhibits?

5 A. All the records have come out of our files
6 that we have stored at the county courthouse.

7 Q. Okay. So for instance these letters in
8 Exhibit No. 1 came out of the county files?

9 A. Correct.

10 Q. Okay. And likewise Exhibit No. 2 is a
11 letter out of the county files?

12 A. Correct.

13 Q. The same with Exhibit No. 3?

14 A. Yes.

15 Q. And Exhibit No. 4 is a warranty deed.
16 That's also out of the county files?

17 A. Yes, it is.

18 MR. CHERNAK: I would ask that those
19 exhibits be admitted?

20 JUDGE CLARK: All right. The parties have
21 stipulated to the admission of all of the prefiled
22 testimony and exhibits, so I'm going to just very
23 briefly kind of quickly run through the identification
24 that I have assigned to those prefiled documents because
25 they are different from the markings that the parties

0070

1 have placed on them.

2 You should have a copy of the exhibit list.
3 The first ten exhibit numbers are reserved for any bench
4 exhibits that I may issue following the hearing. So the
5 prefiled direct testimony of Mr. Pezoldt is 11. And the
6 exhibit numbering continues consecutively through
7 Exhibit 18 as noted on your exhibit list.

8 I have added in conjunction with our
9 discussion relative to preliminary matters as Exhibit
10 No. 19 the petition for alteration and relocation of a
11 highway rail undercrossing. I have not reviewed that
12 testimony -- that petition immediately preceding this
13 hearing so I -- or discussion, so I am not sure if it's
14 paginated. And if there's significant inquiry on that,
15 we'll take a brief recess to ensure that that's done so
16 that we're all on the same sheet of music at the same
17 time.

18 So the parties have stipulated to the
19 admission of Exhibits 11 through 19. All right.

20 Are you ready -- oh, you had corrections I
21 believe that you were going to make to Mr. Pezoldt's
22 testimony relative to the speed limit and I believe the
23 year the bridge was -- I mean the undercrossing was
24 constructed; is that correct, Mr. Chernak?

25 MR. CHERNAK: Correct, your Honor.

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1 JUDGE CLARK: I think the records start on
2 page 3.

3 MR. CHERNAK: And it's also in the petition
4 I think as well, so at those places where it says 25
5 miles an hour, it -- or 30 miles an hour, it should say
6 25. That should be corrected in the petition as well.

7 JUDGE CLARK: Okay. So I have one reference
8 on page 3, line 21, and that 30 should be changed to 25?

9 MR. CHERNAK: 25. I believe there's a
10 reference in the petition of the same thing, and we
11 would ask that that be changed as well. And I'm looking
12 now for the point of where it is. It's correct in the
13 petition, I apologize, on page 2, paragraph 4C.

14 Q. And I would ask, Mr. Pezoldt, you agree that
15 it's 25 miles an hour for the warning speed by the
16 trestle?

17 A. That's correct.

18 JUDGE CLARK: And in the paragraph that
19 carries over -- in his pre-file testimony, Exhibit
20 No. 11, that carries over from page 2 there are a number
21 of date references in that carry-over paragraph. Do you
22 wish to change any of those?

23 Q. The ones we wish to change -- Mr. Pezoldt,
24 you would agree that the ones we wish to change have to
25 do with the bridge having been built about 1928 as

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1 opposed to 1932; is that correct?

2 A. To the best of my understanding I think
3 that's correct, yeah.

4 JUDGE CLARK: All right. But I need to know
5 where those are.

6 MR. CHERNAK: If we start at page 3, we look
7 at the top of the page, line 2 -- between lines 2 and 3
8 it says early 1930's vintage. I guess that would be --
9 early 1930's would be changed to 1928 vintage. And
10 again the line 4 would be 1928. I think that would be
11 the references that we have.

12 JUDGE CLARK: All right. Thank you.

13 Q. And, Mr. Pezoldt, the reason that those
14 changes were made are -- as I understand it are because
15 we now have located some documents with better
16 information; is that correct?

17 A. That's true.

18 Q. And could you just tell the tribunal maybe a
19 little bit about how difficult it was to pull all these
20 really old documents together?

21 JUDGE CLARK: I'm going to interrupt you
22 here, Mr. Chernak, because I'm not sure how familiar you
23 are with the Commission's procedures and process.

24 Ordinarily the witness takes the stand, is
25 sworn in, sponsors the prefiled testimony that they have

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1 prepared basically saying it is their testimony and
2 making any additions, corrections, or deletions to it.
3 And then at that juncture the witness is then tendered
4 for cross-examination. As I indicated in my Email I do
5 not anticipate additional direct testimony at hearing.

6 MR. CHERNAK: Okay. I just wanted to
7 justify why we were making these changes, explaining
8 them.

9 Q. Well, with that I would ask Mr. Pezoldt,
10 sir, is the prefiled testimony that you've got in front
11 of you testimony then with the corrections that you are
12 offering to the Commission?

13 A. Yes.

14 MR. CHERNAK: Thank you. Okay. I would ask
15 them to be admitted at this point.

16 JUDGE CLARK: Exhibits 11 through 19 have
17 already been admitted.

18 Do you tender this witness for
19 cross-examination?

20 MR. CHERNAK: I do, your Honor.

21 JUDGE CLARK: Who will be inquiring on
22 behalf of the railway?

23 MR. SCARP: That will be me, your Honor.

24 JUDGE CLARK: Thank you, Mr. Scarp. You may
25 proceed.

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1 CROSS-EXAMINATION

2 BY MR. SCARP:

3 Q. Good morning, Mr. Pezoldt.

4 A. Good morning.

5 Q. Your testimony indicates and you have it in
6 front of you I'm referring to paragraph five of your
7 pre-filed testimony that the completed sections of the
8 prefiled Highway are designed to bring that to current
9 road standards for a modern county road. Is that what
10 you intended when you said that?

11 A. Yes.

12 Q. Modern county road, I assume that's -- is
13 that a term of art or --

14 A. Well, we try to utilize the Washington State
15 Department of Transportation design manual as much as we
16 can and then maybe document deviations to those
17 standards.

18 Q. Okay. And so when you say that the
19 completed sections, does that also include the portion
20 of the Chumstick Highway that is south of the trestle
21 approaching Leavenworth?

22 A. Yes.

23 Q. Okay. And I think we've established now
24 that at the trestle there is a 25 mile per hour
25 restriction at that curve?

0075

1 A. That's true.

2 Q. And if I look at your -- page 3 of your
3 testimony right in the middle starting at about line 12
4 it indicates subsequent to those upgradings that now --
5 and I quote now the only impediment to the complete
6 modernization of this stretch of the Chumstick Highway
7 is the section of road near or under the BNSF trestle.
8 My question is are you talking about the curve
9 approaching the trestle, or are you talking about some
10 greater distance?

11 A. Well, it's basically the trestle but just a
12 few hundred feet on each side of the trestle.

13 Q. Okay. All right. Mr. Pezoldt, farther
14 south of the trestle along the Chumstick Highway toward
15 Leavenworth there are a series of S curves; aren't
16 there?

17 A. Yes.

18 Q. And that's approximately a mile -- excuse
19 me, approximately a mile south, maybe a little less.
20 Those curves there's -- do you know how many there are?

21 A. No, not off the top of my head.

22 Q. There are 30 mile per hour restrictions on
23 at least some of those curves; aren't there?

24 A. I don't know that off -- I don't know that.
25 I'm not familiar with the signs that are out there right

0076

1 now.

2 Q. Okay. So you don't have any reason to
3 dispute that?

4 A. I don't have any reason to dispute it.

5 Q. Now, would you agree that those curves don't
6 have anything to do with the railroad right of way?

7 A. I would agree to that, yes.

8 Q. And the railroad is nowhere near those
9 curves?

10 A. (Shaking head.)

11 Q. Okay. And just south of those curves, the
12 road -- there's a speed reduction to 25 miles per hour
13 as you're entering Leavenworth; is that right?

14 A. That's true.

15 Q. Okay.

16 A. It's a change in jurisdiction.

17 Q. Okay. Now, I have a question. There's a
18 weight reduction posted on the Chumstick Highway; is
19 that correct?

20 A. I don't know if it's still there. We do
21 that seasonally.

22 Q. Why is that?

23 A. Because there's a phenomenon called frost
24 heat in the winter. If there's I think lenses of ice
25 underneath the road, it will heat the road up, and then

0077

1 as that starts to melt in the spring, the road does
2 haven't that much structure in it, so heavy trucks will
3 break up the pavement.

4 Q. Okay. Cement trucks? Logging trucks?

5 A. Well, we have it restricted based on so many
6 pounds per square area of tire.

7 Q. Okay. And so those restrictions are put in
8 place each year, those weight restrictions?

9 A. That's correct.

10 Q. Okay. Mr. Pezoldt, the trestle that we're
11 talking about that crosses the Chumstick Highway,
12 there's a similar trestle on is it North Road just what
13 would be a few hundred feet maybe more off of the
14 Chumstick Highway?

15 A. Similar, yes.

16 Q. And is that where there's plans for a new
17 depot -- Amtrak depot?

18 A. I believe that's the City's plan, yes.

19 Q. Okay. And the -- if you -- are you familiar
20 with that curve at that trestle?

21 A. I'm familiar with it. I don't know all the
22 design parameters around it at this time.

23 Q. Do you agree that it's a sharper curve than
24 the one that we're talking about here?

25 A. I don't necessarily agree with that but just

0078

1 because I'm not familiar with it.

2 Q. Okay. Let's go back to the trestle that we
3 have here that we're dealing with. The County hasn't
4 performed any inspection on its own to determine the
5 structural integrity of that trestle; have they?

6 A. No.

7 Q. It's basically two enormous concrete
8 abutments on either side with bridge piers just on the
9 sides of the road?

10 A. I think that's an accurate general
11 description of it.

12 Q. So I guess my question is the County hasn't
13 identified any safety concern with the dilapidated
14 condition or anything like that?

15 A. No, we haven't.

16 Q. I want to talk about the design -- or
17 project. Let's call it a project for purposes of our
18 questions. We haven't marked the --

19 MR. SCARP: May I approach, your Honor?

20 JUDGE CLARK: You may.

21 Q. Let me hand you what is one of the pages of
22 an exhibit that is not yet numbered but part of the
23 prefiled testimony of Mr. Gary Norris. And I'm looking
24 at the fourth exhibit which says railroad underpass
25 options, seven pages. And that particular page that I

0079

1 have handed you I believe in my lower right-hand corner
2 -- oh, sorry.

3 JUDGE CLARK: These aren't paginated, so if
4 you can refer to them by the option.

5 MR. SCARP: Sorry about that.

6 Q. It says railroad underpass option D. And is
7 that the one that I gave you, Mr. Pezoldt?

8 A. Yes, it is.

9 Q. All right. These were prepared by whom?

10 A. These were prepared by one of my designers
11 named Mark Sele, S E L E.

12 Q. Okay. All right. Option D -- and as we
13 look at that, if we're looking to the yellow portions
14 over near where it says -- is that pronounced Freund?

15 A. Freund.

16 Q. -- Freund Canyon Road, to the left that's
17 what we're generally considering is more to the south or
18 southwest direction from the trestle?

19 A. Yes.

20 Q. And then the portion to the right would be
21 what we'll refer to as north or northeast of the
22 trestle?

23 A. That sounds fine.

24 Q. All right. In this particular option the
25 yellow part shows what would be a new roadway; is that

0080

1 an accurate description, or a new patch of roadway?

2 A. A concept for a road, yes.

3 Q. Now, to the north of the trestle there are
4 some dotted lines. Is that the existing roadway there
5 as its configured now that is parallel pretty much to
6 the railroad?

7 A. Well, I see a lot of dotted lines.

8 Q. I'm looking directly -- it's written 0260,
9 Richard Schroeder. And just above that lettering in the
10 same alignment there are dotted roads -- excuse me,
11 dotted lines may be a better description. Is that your
12 understanding of --

13 A. Well, I think I know what you're looking at,
14 and, yes, that would represent the existing road.

15 Q. Okay. So is it accurate to say that this
16 design contemplates bringing the roadway out farther to
17 the east if you will and taking a looping turn in order
18 to eliminate the curve under the trestle itself?

19 A. For this concept, yes.

20 Q. All right. Now, does this concept -- that
21 does not include removing the trestle or reconfiguring
22 the trestle; does it?

23 A. I don't believe, no.

24 Q. Okay. And what this design intends to do is
25 have a straight path through what is now the existing

0081

1 trestle; is that an accurate assessment?

2 A. That's true, yes.

3 Q. I would like you to look at the petition if
4 you would. Do you have a copy of that?

5 JUDGE CLARK: Not yet.

6 A. I don't believe so.

7 JUDGE CLARK: Mr. Chernak, do you have an
8 extra one?

9 MR. CHERNAK: I can give him my copy.

10 MR. SCARP: Here.

11 JUDGE CLARK: You have an extra?

12 Q. Well, allow me to -- I'll give you my copy.
13 And there's a bunch of things attached to that, but this
14 is Exhibit 19 for the record, and it's pretty much just
15 talking about the petition itself, Mr. Pezoldt. The
16 paragraph 7.2 of the petition talks about the
17 justification for the project.

18 JUDGE CLARK: 7B?

19 MR. SCARP: I'm sorry, 7 -- I gave the
20 witness the wrong copy.

21 JUDGE CLARK: I understand.

22 MR. SCARP: 7B.

23 JUDGE CLARK: Okay. It's 7B, page 2.

24 MR. SCARP: I have it in my notes
25 incorrectly.

0082

1 JUDGE CLARK: I just want to make sure that
2 we're all referring to the same portion of that
3 petition.

4 Q. At the bottom of page 2, Mr. Pezoldt, and
5 top of page 3 the justification for alteration and
6 relocation of the undercrossing, do you see the various
7 factors listed in the next two paragraphs -- or those
8 two paragraphs -- actually one paragraph I guess?

9 A. Yes, I see those.

10 Q. It -- the County's -- by the way did you
11 have any part in preparing this? I notice that this is
12 not your signature on it.

13 A. I think it was primarily prepared by Gary
14 Owens, who was my assistant county engineer at the time.

15 Q. Okay. It notes that the project is part of
16 the larger ongoing Chelan County project to widen and
17 repave the Chumstick Highway. And all of the factors
18 listed below including, one, a high accident rate,
19 limited site distances, narrow roadway width, roadway
20 sharing the underpass with the creek, and trestle
21 height, those are -- those are all highway traffic
22 improvement factors; aren't they?

23 A. Yes, they are.

24 Q. All right. I've already asked you about the
25 structural integrity of the trestle itself, and I guess

0083

1 my question is you're not aware of any railway safety
2 factors that are implicated by the current configuration
3 of the trestle; are you?

4 A. No.

5 Q. I want to ask you about the funding at page
6 11 of the petition and also in your prefiled testimony
7 -- I'm sorry, paragraph 11, my mistake, and also in your
8 prefiled testimony. Does the source of that -- the
9 source of that estimate to the best of your information
10 come from an Email from a Mr. Mike Cowles back in 2002?

11 A. That's correct.

12 Q. All right.

13 MR. SCARP: Your Honor, I would move that we
14 admit the Email. I believe a copy was given to
15 everyone.

16 JUDGE CLARK: Okay. What I would like you
17 to do is hand the witness a copy of the Email. See if
18 he can identify it.

19 MR. SCARP: My apologies.

20 JUDGE CLARK: That's all right.

21 Q. Mr. Pezoldt, I'm handing you the Email the
22 lower portion of which is dated November 27, 2002, and I
23 believe the upper portion is dated December 2nd, 2002
24 and is copied to you. Do you recognize that document?

25 A. I do.

0084

1 Q. And did you rely on this document in
2 preparing your prefiled testimony?

3 A. Yes.

4 MR. SCARP: Your Honor, we would move to
5 admit the Email.

6 JUDGE CLARK: Is there any objection?

7 MR. CHERNAK: Without objection.

8 JUDGE CLARK: Okay. All right. Exhibit 20
9 is received.

10 (Marked and admitted Hearing Exhibit 20.)

11 Q. Mr. Pezoldt, the Email from Mr. Cowles --
12 and I believe it's addressed to Gary Owen who you said
13 was an associate of yours at that time?

14 A. Yes.

15 Q. And I'll read. It says our preliminary ball
16 park estimate is around 1.75 million dollars. I say
17 ball park because without detailed construction design
18 plans it is difficult to determine the exact cost. It
19 goes on to say if you want us to prepare detailed
20 construction plans for this bridge, you'll need to
21 formalize your request. It goes on to say that more
22 details would be needed.

23 Did you understand at that time that Mr.
24 Cowles was indicating that some specifications would be
25 required in order to provide a more precise or usable

0085

1 estimate?

2 A. That seems reasonable. And I just don't
3 know to what level he went through internally with the
4 BNSF to come up with that number.

5 Q. All right. Fair enough. Have you conducted
6 any separate analysis or cost estimates for a proposal
7 yourself or has the County for replacing the trestle?

8 A. No, we haven't.

9 Q. Okay. All right. Have you seen prefiled
10 testimony indicating from BNSF witnesses a substantially
11 higher estimate for replacing or relocating the trestle?

12 A. My general recollection is I've seen
13 something to that effect, yes.

14 Q. Do you remember what those -- the range of
15 estimates -- preliminary estimates from the BNSF
16 witnesses are?

17 A. My recollection is not that great, but I
18 recall that they were substantially higher than
19 the 1.75.

20 Q. 10 to 15 million dollars?

21 A. I don't believe I saw those numbers. I
22 think I saw a number maybe 4 million and maybe up to 7
23 or 8 million.

24 Q. Okay. But you don't have a basis by which to
25 evaluate those at this point?

0086

1 A. No.

2 Q. Okay. All right. And have you seen any
3 prefiled testimony indicating that the cost of a
4 temporary track or shoofly as its known in the industry
5 may well exceed the estimate on its own of 1.75 million?

6 A. I can't specifically say that I've seen that
7 testimony, but it seems reasonable to me.

8 Q. Okay. Is it accurate to say, Mr. Pezoldt,
9 that Chelan does not have a set of specifications at
10 this point that it could submit for a bid on this
11 project?

12 A. We do not.

13 Q. I just want to finish by asking you about
14 the funding that is available, and I'm referring to
15 paragraph 14 of your testimony. In that testimony --
16 prefiled testimony you've indicated that Chelan has
17 secured a grant of 1.44 million dollars for this
18 project. My question is is that the total amount of the
19 funds that the County has available for this project at
20 the location of the crossing -- excuse me, the
21 undercrossing at Chumstick Highway?

22 A. It's the only guaranteed amount we have for
23 the project at this time. How much money we have
24 available for any project is sort of determined on our
25 year-to-year budget.

0087

1 Q. Okay. How many pieces of road you have to
2 repair and other things?

3 A. Right.

4 Q. Okay. Fair enough. And I guess my question
5 is using that number is that allocated at least at this
6 time for what I'm looking at here, for example option D,
7 I'm back on that design drawing, and what I'm really
8 getting at is the area that is involved?

9 A. I would -- that number is not specifically
10 designated for any of those options A through however
11 many we provided. Those were just conceptual drawings
12 with no real engineering or specifications associated
13 with them. They were generated in basically about one
14 or two days.

15 Q. What I'm asking is that the area shown in
16 yellow for example on option D, is that the area that
17 we're talking about for which that funding would be
18 used, or would that funding be used for something
19 broader?

20 A. I think it's a pretty good representation of
21 what the project limits would be.

22 Q. Okay. And does that amount also include --
23 and I'm talking about the 1.44 million. Does that
24 include what would be used for the highway work as
25 opposed to the trestle work?

0088

1 A. It does.

2 Q. Okay. So there isn't -- there isn't a
3 separate fund somewhere for highway and then a separate
4 one -- they would all have to come from that same amount
5 of money?

6 A. I think our philosophy was that we would pay
7 for all the actual highway work, the rock and the
8 asphalt, and then there would be a cost share for the
9 trestle, and both of those components are included in
10 the 1.44. I would just add that there is a required
11 matching of 10 percent minimum for that 1.44 million
12 dollar grant.

13 Q. Matching by? Requirement by whom?

14 A. The County.

15 Q. Okay. Now, if the bid under specifications
16 for replacing the trestle was in excess of 10 million
17 dollars or thereabouts, would the amount that Chelan
18 County has available to contribute change, or is that
19 what it has?

20 A. I think it's negotiable.

21 Q. Okay. Negotiable in what sense?

22 A. Well, I think we've -- when we talked about
23 this project in the very beginning, we just kind of
24 always figured that we would -- the County and the
25 railroad would sort of be partners. And we thought --

0089

1 just in rough numbers we thought we would be 50 percent
2 partners in the cost of the trestle reconstruction.

3 Q. And my point is you've indicated that there
4 -- this is the amount of money that the County has
5 available at this time. And my question is if the
6 estimate for replacing the trestle and track leading up
7 to it and reconfiguring it is 10 million dollars, does
8 the County have any more money?

9 A. We don't have any guaranteed money at this
10 time, but like I said depending on our budget there may
11 be -- there may or may not be funds available with
12 County funds.

13 Q. All right. Have you sought other funding?

14 A. Not actively. Just pending the results of
15 this action I guess.

16 MR. SCARP: Those are all the questions I
17 have.

18 JUDGE CLARK: Thank you.

19 Before I give you opportunity for redirect,
20 Mr. Chernak, I do have just one clarifying question for
21 you, and that is in conjunction with your examination by
22 Mr. Scarp you were discussing a 10 percent matching
23 requirement. That is -- that's not a State grant
24 requirement; that's a Chelan County requirement?

25 THE WITNESS: That's a requirement of the

0090

1 State grant. It's called the Rural Arterial Program.

2 JUDGE CLARK: I'm sorry. I thought I heard
3 you say County.

4 THE WITNESS: The County will be paying the
5 match, but it's a requirement of the grant program.

6 JUDGE CLARK: Got it. Thank you.

7 Mr. Chernak.

8 MR. CHERNAK: Thank you.

9

10 REDIRECT EXAMINATION

11 BY MR. CHERNAK:

12 Q. Mr. Pezoldt, you were asked about the 30
13 mile per hour curves between the bridge and the city of
14 Leavenworth. Do you recall those questions?

15 A. I recall the question, yes.

16 Q. Okay. Can you describe what the for
17 instance site distances are around those curves compared
18 to the curve underneath the trestle?

19 A. I'm really not that familiar with these
20 curves that we're talking about to really talk about
21 that. It might be that, you know, it's -- as we're
22 bringing the speed limit down as we come into the city
23 of Leavenworth, that might be where those curves are
24 located. I'm just not really sure.

25 Q. Does the County have any involvement in the

0091

1 new Amtrak depot or the trestle on North Road? Do you
2 have any projects involving that?

3 A. We have a project that we've identified and
4 got funding for on the North Road, but it was
5 independent of any knowledge that there was going to be
6 a new train station on the North Road.

7 Q. Looking at Exhibit D, which we seem to have
8 focused on quite a bit, if you look at that, can you
9 describe where the location of the bridge piers are in
10 relationship to the road?

11 A. It looks like as the road goes through
12 there, the bridge piers are on the edge of each side of
13 the road -- well, except for on the south side. It
14 looks like the creek is still between the highway and
15 the pier.

16 Q. Okay. Do you know if those bridge piers are
17 right on the side of the road, or is there something in
18 between them like Jersey barriers, or is there any --
19 I guess the point of the question is there any room
20 between those bridge piers for anything else but road?

21 A. In this concept I believe that there's just
22 the road. But there's not enough -- there's not any
23 real detail in these. These are just concepts that were
24 generated in just a few hours just throwing out ideas to
25 see how we might be able to engineer our way through the

0092

1 problem.

2 Q. Okay. I'm looking at what would be Exhibit
3 8 to the petition, which is -- I have a copy here.

4 MR. SCARP: I don't know if that copy
5 has --

6 JUDGE CLARK: You might want to hand the
7 witness the copy that you have. The duplication is --

8 MR. CHERNAK: Lousy?

9 JUDGE CLARK: Yes. Thank you for that
10 characterization I didn't want to make.

11 Q. Do you know what that picture represents?

12 A. I believe it's a picture looking at the
13 undercrossing of the railroad trestle of the project
14 we're talking about.

15 Q. Okay. The piers -- how close are the piers
16 to the roadway?

17 A. It looks like the pavement goes right up to
18 within several inches of the abutments of the piers.

19 Q. Okay. And in looking at Exhibit D, does
20 that look like that would change that kind of
21 configuration to put the roadway away from those piers?

22 A. No. Well -- well, it looks to me like maybe
23 the piers -- it's not clear to me on Exhibit D if the
24 piers exist in that or not.

25 Q. Okay. Right now as close as the piers are

0093

1 to the roadway, do they present any problems to
2 motorists?

3 A. Well, being 24 feet wide and the fact that
4 you're having a turning movement through there creates a
5 problem, yes.

6 Q. Okay. And as an engineer do you take into
7 account when you're engineering roads some of the
8 psychology of people driving on those roads?

9 A. Yes, we try to. Yes.

10 Q. And when people approach a place like this
11 where there is an abrupt curve and there are piers right
12 up against the road, do they have some kind of reaction
13 that maybe isn't necessarily part of the road design,
14 but it's part of human nature that you have to account
15 for?

16 A. Well, any time you have something like that,
17 there's a tendency to think of the road as being
18 narrower than it actually is. So typically if there is
19 something like that, we would include what we call shy
20 distance where we would actually move those piers out a
21 little bit, so it gives the appearance that there's not
22 a necking-down effect. It's a perception.

23 Q. Is shy distance an engineering term?

24 A. It's used in the engineer profession. I'm
25 not sure if it's an actual definition or not.

0094

1 Q. What experience does the County have in
2 designing railroad bridges?

3 A. None.

4 Q. So you need to rely on the railroad to
5 assist you on that; is that correct?

6 A. That's true.

7 MR. CHERNAK: I don't have any other
8 questions.

9 JUDGE CLARK: Thank you. Thank you for your
10 testimony, Mr. --

11 MR. SCARP: May I --

12 JUDGE CLARK: You have additional --

13 MR. SCARP: Just one question following up
14 if I may.

15 JUDGE CLARK: (Nodding head.)

16

17 RE-CROSS-EXAMINATION

18 BY MR. SCARP:

19 Q. Mr. Pezoldt, you mentioned the dynamic of a
20 24 foot wide roadway with a turning movement as being
21 potentially problematic; is that accurate or --

22 A. Well, I was trying to answer his specific
23 question.

24 Q. Right. And isn't option D designed to
25 eliminate the turning movement at the trestle?

0095

1 A. It is, but we haven't fully developed the
2 design with our engineering standards.

3 MR. SCARP: That's all I have, your Honor.

4 JUDGE CLARK: Do you have additional
5 redirect based on the recross?

6 MR. CHERNAK: No, your Honor.

7 JUDGE CLARK: Thank you for your testimony,
8 Mr. Pezoldt.

9 Why don't we take just a brief recess, ten
10 minutes, and we'll -- I believe that concludes the
11 presentation of Chelan County's direct case; is that
12 correct?

13 MR. CHERNAK: That's right.

14 JUDGE CLARK: We're at recess until
15 approximately 10:40.

16 (Short recess.)

17 JUDGE CLARK: All right. We're back on the
18 record.

19 And is the railroad ready to call its first
20 witness?

21 MR. SCARP: We are, your Honor. We would
22 call Mr. Gary Norris.

23 JUDGE CLARK: Thank you.

24 Mr. Norris, if you would raise your right
25 hand, please.

0096

1 Whereupon,

2 GARY NORRIS,

3 having been first duly sworn, was called as a
4 witness and testified as follows:

5 Thank you. Please be seated. Please state
6 your full name for the record and spell your last name.

7 THE WITNESS: My name is Gary Arthur Norris
8 spelled N O double R I S.

9 JUDGE CLARK: Thank you.

10 And, Mr. Scarp, will you be presenting this
11 witness?

12 MR. SCARP: I will, your Honor. Thank you.

13

14 DIRECT EXAMINATION

15 BY MR. SCARP:

16 Q. Mr. Norris, can you tell us how are you
17 employed?

18 A. I am a senior engineer for Garry Struthers
19 & Associates.

20 Q. Just briefly what is Struthers & Associates?

21 A. It's an integrated management firm offering
22 engineering, construction, and environmental services.

23 Q. And is your curriculum vitae attached to
24 your prefiled testimony?

25 A. Yes, it is.

0097

1 Q. All right. Did you prepare and cause to be
2 filed in this docket the prefiled direct testimony that
3 -- I'm sorry, I can't identify it by number. Did you
4 cause that testify to be filed?

5 A. I did.

6 Q. All right. And is the information contained
7 in that testimony true and correct to the best of your
8 knowledge, or do you have any corrections?

9 A. I do have a correction to question No. 12,
10 line 27, I believe it's page 5. In reference to the
11 curve that was discussed previously today south of
12 milepost 1.0, I had noted that the advisory speed sign
13 was 35 miles per hour, and upon review this morning
14 prior to the hearing it was actually 30 miles an hour.

15 Q. All right. And so for purposes of your
16 prefiled testimony and to correct the record in this
17 matter, am I correct that at page 5, line 27 where you
18 have said a substandard curve with a 35 mile per hour
19 advisory speed sign, it should in fact be corrected to
20 say 30 miles per hour?

21 A. Correct. Yes.

22 Q. Okay. Aside from that is the information
23 contained -- or with that correction is the information
24 contained in your prefiled testimony true and correct?

25 A. To the best of my knowledge.

0098

1 Q. All right. And if I were to ask you those
2 questions here today, would you give the same answers?

3 A. Yes, I would.

4 MR. SCARP: All right. Your Honor, I would
5 offer the prefiled direct testimony of Mr. Norris and
6 attached exhibits.

7 JUDGE CLARK: All right. The parties have
8 stipulated to the admission of all the exhibits, but I
9 will mark for identification and now admission purposes
10 the prefiled testimony and exhibits of Mr. Norris
11 commencing with his prefiled testimony, which is marked
12 as Exhibit 21, through his exhibits which conclude with
13 No. 24.

14 And, Mr. Scarp, I believe you tendered this
15 witness for cross-examination; is that correct?

16 MR. SCARP: That's correct.

17 JUDGE CLARK: All right. Do you have any
18 inquiry of this witness, Mr. Chernak?

19 MR. CHERNAK: I do, your Honor.

20 JUDGE CLARK: Thank you.

21 MR. CHERNAK: Thank you.

22

23 CROSS-EXAMINATION

24 BY MR. CHERNAK:

25 Q. Mr. Norris, having reviewed your curriculum

0099

1 vitae and looking at your background and qualifications
2 that you've stated at paragraph 3 on page 2 -- numbered
3 paragraph 3, I would like to ask you about what
4 experience you have in eastern Washington as opposed to
5 western Washington where it appears most of your work
6 has been?

7 A. I have extensive experience in eastern
8 Washington having worked for the City of Pullman, for
9 the City of East Wenatchee, for the City of Omak, for
10 the Kittitas County, for the City of Cle Elum, and I've
11 done work for private concerns in Douglas County and
12 also in the Tri-Cities and Spokane.

13 Q. Okay. Do you have a copy of -- you have
14 your testimony in front of you?

15 A. I do.

16 Q. All right. If you could then turn your
17 attention to paragraph 5 on page -- it's cut off. I
18 believe it's page 3 of your testimony. At that point
19 you say I was asked to determine whether alternative
20 options exist to increase the public traffic safety on
21 the Chumstick Highway underpass without altering,
22 relocating, or rebuilding the BNSF trestle. And I
23 believe later on you stated, correct me if I'm wrong,
24 that you don't have any alternative options to increase
25 public traffic safety; is that right?

0100

1 A. That's not correct.

2 Q. Okay. What options then do you offer?

3 Maybe I misunderstood. I apologize.

4 A. I believe on page 9, question No. 20 I
5 offered things which could enhance better compliance
6 with the advisory speed; although, as I stated here that
7 most drivers are reducing the speed as they approach the
8 curve and are certainly comfortable with driving into
9 that curve at a speed faster than 25 miles an hour.

10 Such improvements to enhance the bridge
11 could be a better center line and edge of roadway
12 delineation. I noticed even today as I was driving
13 through the curve that the center line and edge line
14 markings are very faint.

15 Buttons could be installed across the lane
16 at each warning sign to provide better notice or enhance
17 the warning sign that's in place there.

18 THE COURT REPORTER: I'm sorry. I'm having
19 trouble hearing you.

20 A. What I said was a row of buttons could be
21 installed across the lane at each warning sign to
22 enhance the driver's attention to that sign. It's a
23 common practice to alert drivers to notices that are
24 posted. Flashing beacons could be mounted on the
25 chevrons through the curve and the number of chevrons

0101

1 increased to draw attention to the angle of the curve.

2 Those are just some of the initial
3 suggestions that we came up with in a site visit. I
4 believe there's probably other things that I didn't
5 really go into without some major study of this.

6 Q. One of the reasons I ask about familiarity
7 with eastern Washington was you mentioned in here that
8 you could put a row of buttons to be installed across
9 the lane at each I guess warning sign location. Okay.
10 And what kind of buttons would you be talking about?

11 A. The type one four inch round buttons.

12 Q. Okay. So they would stick up from the
13 roadway surface; is that right?

14 A. That's correct.

15 Q. Do they have a reflective surface or
16 coloring?

17 A. No, they do not have a reflective surface.

18 Q. So what purpose would the buttons serve
19 then?

20 A. The button serves to when the motorist
21 drives across the button, it catches their attention to
22 something in the roadway that they need to pay attention
23 to.

24 Q. And do you know if it snows in this area?

25 A. Yes, it does snow in this area, and, yes,

0102

1 you would be replacing the buttons.

2 Q. All the time?

3 A. (Nodding head.)

4 JUDGE CLARK: You need to answer out loud.

5 A. Yes, I know that.

6 Q. Okay. So it would a lot of then replacing
7 those buttons?

8 A. Yes. But that's similar to maintaining the
9 pavement striping too, which also needs to be done.

10 Q. Okay. Thank you. Now, again I refer you
11 next to paragraph 10 of your prefiled testimony.
12 Specifically you talk about I observed other places on
13 the Chumstick Highway that were worse in terms of the
14 concerns the County raised in their petition. Were
15 those places located in the -- I think Mr. Pezoldt in
16 his testimony says 1.47 miles from Highway 2 to the
17 trestle or 1.72 miles north of the trestle, in other
18 words the vicinity of the trestle a mile and a half or
19 so on each side, or were they more up the Chumstick?

20 A. Well, in terms of substandard curves I think
21 as you come out of the trestle heading south there's a
22 -- immediately a posting for a 35 mile an hour curve
23 warning. You know, and all through the section between
24 the trestle and the city you have these substandard
25 curves. Obviously as you go further to the north out of

0103

1 that section that was improved you get into a lot lower
2 standard road.

3 Q. Okay. Did you in looking at this have the
4 impression that the County is incrementally improving
5 this road up through the canyon? Is that --

6 A. Actually the only real appearance of
7 improvement was in the section north of the trestle for
8 -- probably between milepost 2 and milepost 3 where
9 they've made some improvement. At milepost 3 again you
10 get down into a lot of deficient conditions. So I
11 wouldn't say overall --

12 THE COURT REPORTER: I'm sorry. I'm having
13 a little trouble hearing you. If you could just face a
14 little bit towards me.

15 A. Between mileposts 2 and 3 there is signs of
16 improvement to the road. As you get north of milepost 3
17 the roadway is pretty much substandard throughout. And
18 I went all the way to milepost 10 and didn't see any
19 other indications of improvements to the road.

20 Q. And one of the observations you made was
21 that there were concerns about other bridge clearances.
22 Where did you see those?

23 A. I don't have the exact milepost. I think it
24 was up about milepost -- I'm not sure exactly. It
25 wasn't too far. It was on the trestle end of the

0104

1 section. But the clearance was 14 feet, 2 inches, and
2 it's signed 14 feet, 2. So just I would say a couple
3 miles, two or three miles north of the trestle.

4 Q. So that's another railroad trestle?

5 A. Right.

6 Q. Were there any other bridge clearances that
7 you noticed were deficient?

8 A. There may have been another one further to
9 the north. I don't have that cited in my review here,
10 but I think the import of what I was saying though is
11 that the roadway is certainly consistently deficient as
12 you go north, and there's nothing peculiar about this
13 trestle that makes it different from those other
14 deficient sections.

15 Q. Okay. In the other sections was there any
16 difference in the width of the roadway between the piers
17 on the trestle?

18 A. There were bridge sections that I actually
19 measured where these separations between the curve on
20 the bridge was about 23 feet as opposed to 24 feet. So
21 in actuality the width of the road through those bridges
22 were actually less than what it is at the trestle.

23 Q. Thank you. Okay. I guess touching on
24 paragraph 12 again, and the paragraph begins at line 21,
25 if you read down it talks again about prevailing road

0105

1 conditions in the vicinity of milepost 1.83. So the
2 geometry of the road you're talking about there is as
3 much of the Chumstick Highway as you visited; is that
4 right?

5 A. Actually from Highway 2 to milepost 10.

6 Q. So the geometry is consistent in your
7 opinion all the way through?

8 A. (Nodding head.)

9 JUDGE CLARK: And you nodded in the
10 affirmative?

11 THE WITNESS: Yes, I did. I'm sorry. I'm
12 sorry.

13 JUDGE CLARK: It just doesn't pick up quite
14 as well.

15 THE WITNESS: Right. Okay.

16 Q. I'm going to apologize. I didn't write down
17 the citation, but I have a place here, and I guess maybe
18 we can locate it -- here it is. At the bottom of page
19 5, the last sentence, and the bottom of -- or the top of
20 page 6 it says it is reasonable to assume that motorists
21 traveling the Chumstick Highway would be familiar with
22 the substandard conditions which exist along the
23 corridor and drive accordingly. And so I'm asking what
24 you base that assumption on? Why would people assume
25 that the road conditions would be substandard along the

0106

1 way?

2 A. Well, I think because of the frequent
3 signing that delineates the substandard curves. I think
4 the perception that we talked about that we mentioned in
5 previous testimony regarding the width of the roadway
6 and the motorists' perception of the width. You know,
7 obviously through the trestle area there's chevrons that
8 delineate the substandard curve as there are in other
9 areas along the highway.

10 In sections to the north there's virtually
11 no shoulder, and the road actually drops off pretty
12 extremely on one side or the other, and then you have
13 side hills that are pretty steep that are creating
14 abutments in the roadway cross section that are hazards
15 to the road.

16 So I think that the perception of a motorist
17 as they're driving the corridor as it is in any arterial
18 or highway system, they get a perception of what the
19 road is like, and generally that's how we dictate our
20 speeds and those things based upon how motorists feel
21 comfortable traveling those sections of the road. So I
22 think it's pretty evident in this section that it is a
23 substandard road, and I think they drive it accordingly.

24 Q. I think the word that threw me was familiar.
25 You're saying familiar because they have warning signs?

0107

1 A. They have warnings and prevailing conditions
2 of the road throughout the corridor.

3 Q. And that doesn't imply that you think only
4 local people are using it?

5 A. Right.

6 Q. I guess that's --

7 A. That's correct.

8 Q. Okay. Thank you. Okay. I note at
9 paragraph 13 that this study was done during the week of
10 March 17th. And do you have information about what the
11 weather was at that time, the temperature,
12 precipitation?

13 A. It was actually a clear, sunny day during
14 that week, and there was no snow on the road and no
15 precipitation at least the day I visited on Wednesday,
16 and it was pretty clear and clean.

17 Q. Okay. Do you think that weather would have
18 any impact, snow, road ice, on this particular point at
19 the trestle as far as public safety -- highway safety?

20 A. No more so than it would at any other
21 highway situation where you have snow or icy conditions
22 that as motorists are alert to those tend to slow down.

23 Q. Okay. So you are saying that driver
24 behavior then would be a thing that you would count on
25 to make it a safer place; is that right?

0108

1 A. I didn't quite hear what you said.

2 Q. You're relying on driver behavior to increase
3 the public safety because they'll have warnings, and
4 they'll take into account the weather and all?

5 A. I'm not really understanding that question
6 because I think we're not -- the indication is the
7 County hasn't relied on motorist behavior because they
8 have been pretty extensive in their delineation and
9 signing of the condition to alert motorists to what is
10 going on out there. So it's not a surprise to a
11 motorist what condition exists, and I would anticipate
12 that they would respond accordingly as we expect in all
13 of our highway design.

14 Q. Okay. And you more or less I think gave a
15 litany of things that you had observed as far as I
16 suppose problems or deficiencies with the road, things
17 along the side of the road, narrow road widths, other
18 problems that you described a couple minutes ago. From
19 that I gather you think there's probably a lot of work
20 for the County to do on this road; is that right?

21 A. I think there's a lot of improvements that
22 can be made, yes.

23 Q. Okay. And I am -- now, a few minutes ago
24 Mr. Pezoldt talked about the term shy distance. Does
25 that enter into the equation at this point in your

0109

1 thinking anyway?

2 A. In what way?

3 Q. Well, has that been taken into account in
4 your thinking as far as driver's psychology the shy
5 distance around the abutments that are in the piers that
6 are alongside the road underneath the trestle?

7 A. I think the warning sign that indicates a 25
8 mile an hour speed recognizes the abutments and the
9 clearance issues that are associated with that, and
10 certainly a 25 mile an hour speed through that area is
11 appropriate and satisfactory, so I don't see that
12 there's anything beyond that.

13 Q. Okay. You said at paragraph 22 on page 10
14 that the curve radius is -- sorry. I'll repeat that.
15 All the other options below this value one having
16 occurred a radius of 300p suggests a speed of 30 miles
17 per hour. Do you know what the present curve radius is
18 for that curve?

19 A. I don't know what it is right now, no. I
20 didn't look at that.

21 Q. All right. Would it surprise you to know if
22 it were 193 feet?

23 A. I assume that the County has signed it
24 accordingly to the radius to match the 25 mile an hour
25 warning speed.

0110

1 Q. Okay. Just one more question then. Is a
2 reduction in speed from 50 miles an hour to 25 miles an
3 hour on a curve consistent with modern highway design?

4 A. I think the answer to that is no, but we've
5 got a situation out there where the speed -- a
6 consistent speed of 50 miles an hour is not appropriate
7 anyway as signed throughout that roadway section, so
8 we're not really talking about a highway that is
9 operating at 50 miles an hour.

10 MR. CHERNAK: Thank you.

11 JUDGE CLARK: I have just one clarifying
12 question for Mr. Norris before I offer this witness for
13 redirect examination.

14 I'm just trying to understand your
15 testimony, Mr. Norris. If I look at your testimony at
16 the bottom of page 6 continuing on through the top of
17 page 7 that's with respect to the speed studies that
18 were done that you have in what you've marked as Exhibit
19 GN 3 and I've marked as 23 -- and I'm just trying to
20 make sure I understand this. On page 7 I think you
21 indicated that the -- there were vehicles measured
22 traveling as fast as 58 miles per hour. And if I look
23 at page 19 of that exhibit, I'm looking at numbers --
24 the average minimum and maximum where it appears that
25 the maximum speed is significantly higher than that.

0111

1 THE WITNESS: Well, my understanding in
2 reading that data is that they are -- because of the way
3 of measuring that information, there may be a car that
4 goes across in the opposite direction at the same time
5 so that the counter is picking up two vehicles at the
6 same time, so the actual speed of them appears to be
7 faster than what is actually going across it. So some
8 of the extreme pieces you discard.

9 JUDGE CLARK: So for example if you look at
10 page 19, which would be -- which would be the data that
11 would be, quote, thrown out in this speed calculation.

12 THE WITNESS: I don't have that exhibit
13 labeled that way.

14 JUDGE CLARK: It's GN 3 in your prefiled
15 designation, and I have it as page 19.

16 THE WITNESS: Okay.

17 JUDGE CLARK: And that's data collected on
18 March 17th, Monday.

19 THE WITNESS: Okay.

20 JUDGE CLARK: And it indicates average speed
21 40.8 miles per hour, and of course what caught my
22 attention was the maximum speed of 93.1 miles per hour,
23 which even by my calculation is higher than 58.

24 THE WITNESS: Right. And I don't think we
25 were -- we're trying to use this to get a maximum speed

0112

1 indication because there are questions in the data
2 collection process that would raise issues with that.
3 So when you get into those areas like I would say
4 probably greater than 65 miles an hour, you're throwing
5 that information out because the -- it's an indication
6 where the counter did not read the vehicles as they were
7 tripping the counter in the correct way. In other words
8 vehicles were passing on the highway in opposite
9 directions.

10 So this process is done by sticking a tube
11 -- two tubes across the highway. And as vehicles go
12 across that, the one -- first trip starts the timer, and
13 the second trip ends it. So if you have a vehicle that
14 comes across that at virtually the same time the other
15 one is starting from the opposite direction, you're
16 going to get a much higher speed than what is really
17 occurring for that vehicle crossing in the opposite
18 direction. Am I making -- is that clear?

19 JUDGE CLARK: Yes. Yes, perfectly clear.

20 So the two tubes are measuring northbound and southbound
21 traffic at the same time?

22 THE WITNESS: That's correct.

23 JUDGE CLARK: All right. So if that's the
24 case, how do I read this data that you have in your
25 testimony at the bottom of page 6 and the top of page 7

0113

1 regarding the speed limits, and how do I reconcile those
2 with your exhibit?

3 THE WITNESS: The way that is reconciled is
4 by virtue of throwing out speeds that are obviously not
5 possible through that curve.

6 JUDGE CLARK: Right. And that's what I'm
7 asking. So if I look at Exhibit 23 I believe it's
8 marked, and I'm not looking at the portion of the
9 exhibit -- I'm looking at the speed portion of the
10 exhibit which starts on page 10.

11 THE WITNESS: Okay.

12 JUDGE CLARK: All right. So as I go through
13 this exhibit, how am I supposed to know which speeds you
14 were throwing out?

15 THE WITNESS: Well, I guess what I did there
16 was make an engineering judgment on what speeds were
17 appropriate to evaluate in that and summarized that in
18 my testimony.

19 JUDGE CLARK: All right. Mr. Scarp,
20 redirect?

21 MR. SCARP: I have none, your Honor.

22 JUDGE CLARK: Thank you for your testimony,
23 Mr. Norris.

24 THE WITNESS: Thank you.

25 MR. SCARP: I assume this witness can be

0114

1 excused?

2 JUDGE CLARK: Yes. Are there any objections
3 to the witness being excused?

4 MR. CHERNAK: No, your Honor.

5 JUDGE CLARK: Hearing none the witness is
6 excused.

7 MR. SCARP: Your Honor, a slight departure.
8 Counsel agreed if we could get Mr. John Li who has a
9 shorter prefiled testimony and presumably shorter
10 examination because he has a commitment, and I just
11 don't know how long we're going to run this morning. He
12 has a commitment for a conference call this afternoon.

13 JUDGE CLARK: And Mr. Chernak is shaking his
14 head affirmatively, so I'm assuming you do not object to
15 this witness being called at this juncture?

16 MR. CHERNAK: No, we don't. We in fact had
17 notice ahead of time that he had a conflict and said
18 that we would try to accommodate that.

19 JUDGE CLARK: Thank you. I appreciate that.

20 MR. SCARP: We call Mr. John Li.

21 JUDGE CLARK: Would you raise your right
22 hand, please.

23 Whereupon,

24 JOHN LI,

25 having been first duly sworn, was called as a

0115

1 witness and testified as follows:

2 Thank you. Please be seated. Please state
3 your full name for the record and spell your last name.

4 THE WITNESS: My name is John Li. Last name
5 is spelled as L I.

6 JUDGE CLARK: Thank you.

7 Mr. Scarp.

8

9 DIRECT EXAMINATION

10 BY MR. SCARP:

11 Q. Mr. Li, you have in front of you your
12 prefiled testimony. Let me ask you first by whom are
13 you employed, and what is your job?

14 A. I was employed by the BNSF Railway Company,
15 and my job title is manager public projects.

16 Q. All right. Have you ever testified before
17 in a hearing like this?

18 A. No, it's my first time.

19 Q. Okay. If you could -- as you've heard, the
20 court reporter, just sort of give her an opportunity.
21 She's going to need to transcribe everything so keep
22 that in mind.

23 Did you prepare and cause to be filed in
24 this docket prefiled direct testimony that you have in
25 front of you?

0116

1 A. Yes. Yes, I reviewed it and prepared this
2 testimony. Yes.

3 Q. Okay. And is the information contained in
4 your prefiled testimony true and correct to the best of
5 your knowledge?

6 A. Yes, it is correct to the best of my
7 knowledge.

8 Q. All right. If I were to ask you those same
9 questions today, would your answers be the same?

10 A. Yes.

11 Q. All right. And you've had a chance to
12 review it before you came today?

13 A. Yes.

14 Q. Okay. All right.

15 MR. SCARP: Your Honor, I believe that's
16 already been admitted. I just don't know what number
17 it is.

18 JUDGE CLARK: All right. I have marked that
19 prefiled testimony of Mr. Li as Exhibit 25.

20 MR. SCARP: Thank you, your Honor.

21 If there's no objection, I would tender the
22 witness for cross-examination.

23 JUDGE CLARK: The parties have stipulated to
24 the admission of the prefiled testimony.

25 And you may inquire, Mr. Chernak.

0117

1 CROSS-EXAMINATION

2 BY MR. CHERNAK:

3 Q. Mr. Li, your prefiled testimony does not
4 talk about your education or what your area of expertise
5 is, so I would like to start by asking if you could tell
6 us what your education is in relation to the job that
7 you do?

8 A. I have mixed education with electrical
9 engineering background plus the business side. I got an
10 MBA in Texas with Southern Methodist University. And my
11 job really is more like administrative project
12 management type of expertise I brought to this job with
13 my background.

14 Q. Okay. Before you worked at BNSF, did you
15 work for somebody else?

16 A. Yeah, I work for telecom companies, Ericson
17 and Motorola. With Motorola I have about four years
18 project management experience and account management
19 experience.

20 Q. So in your current position as I understand
21 it, it looks -- are you doing an accounting type
22 position, or is it something more involved than that?

23 A. With this position my responsibility is more
24 related to negotiating the construction and amending the
25 agreement related to the project. I also acting as a

0118

1 liaison between the public agencies and our internal
2 department, it's the internal department of BNSF, for
3 coordinating the projects, providing distributing the
4 plan provided by the agencies to different department of
5 BNSF, collect reviews and comments.

6 Q. Are you a decision maker for BNSF?

7 A. To some extent.

8 Q. Okay. When you're negotiating -- I mean
9 specifically when you're negotiating with the -- on
10 these projects with the public entities to make
11 decisions?

12 A. We have guidelines and policies of the
13 company. My decisions -- basically if I make any
14 decisions, it's basically based on the guidelines of
15 BNSF policies.

16 Q. Okay. So if you were for instance to decide
17 to commit to a project like the County proposed or not
18 commit to it, would that be your decision, or is it
19 subject to review by somebody higher up than you in the
20 company?

21 A. Like I said I'm acting as liaison.

22 Q. Okay.

23 A. I distribute the County's plan to different
24 department. That also include my upper management as
25 well. We collect the comments before I make any

0119

1 decisions.

2 Q. Okay. Mr. MacDonald is here also, so can
3 you explain how your job differs from what he does?

4 A. He's in engineering department.

5 Q. Okay.

6 A. Basically he is one of those -- one of those
7 departments that I will distribute County plan to
8 collect their input and their comment.

9 Q. Okay. You have a copy of your prefiled
10 testimony in front of you?

11 A. Yes, I do.

12 Q. And if I could draw your attention then to
13 paragraph 4 on page 2. In that paragraph 4 you talk
14 about I guess what you think is necessary for the
15 project, but you say it is still too early to tell for
16 certain what the actual cost of the project would be
17 because there are no definite plans or drawings for the
18 project. BNSF has seen only some design concepts, but
19 costs cannot be estimated from that. Within your job
20 duties do you do any cost estimating?

21 A. No, I don't.

22 Q. Do you have any staff who would work with
23 you to look at say design concepts and do cost
24 estimating?

25 A. Yes, we have -- yes, we do have different

0120

1 department do the plan review and the cost estimate.

2 Q. Okay. Have you had anybody with your
3 direction look at any of these design concepts and come
4 up with any cost estimates?

5 A. Of that concept design or two preliminary
6 doesn't include enough information for us to come up
7 with a good cost estimate. It's hard for them to do
8 that. I did ask them about the cost, but I got answer
9 is it's too hard to get the cost estimate based on the
10 design --

11 Q. Okay.

12 A. -- the preliminary plan basically.

13 Q. And that would be from somebody you were
14 consulting with within the company?

15 A. I don't quite --

16 Q. The answer you got was that the cost design
17 was too preliminary, and you said somebody apparently
18 told you that they couldn't up with a cost estimate.
19 Who would that have been?

20 A. That is our engineering department.

21 Q. At paragraph No. 5 on page 3, I don't know
22 if I understood exactly what you were getting at there,
23 so I need to have you clarify. The question is in the
24 initial order denying the petition Judge Macey noted how
25 the commission has resolved jurisdictional issues over

0121

1 allocated costs is that Chelan will have the opportunity
2 to identify its own proposed costs, and you say to your
3 knowledge -- to the best of your knowledge Chelan County
4 has never identified its proposed cost.

5 So looking at Mr. Pezoldt's testimony, and
6 he's already offered it, and I believe you were here
7 sitting through it, where he said in his prefiled
8 testimony that we have about a million dollars that the
9 County was looking to contribute, and they had
10 apparently a remainder of 1.44 million to spend on the
11 roadway and something about 440,000, is that what you're
12 trying to get at there that we haven't identified what
13 the County costs were? I guess I didn't understand the
14 response he has in there.

15 MR. SCARP: I guess I just would object to
16 the extent it's very confusing the way he's posed that
17 question.

18 JUDGE CLARK: I think possibly the record
19 would be better if you were to clarify -- if you want to
20 inquire of this witness regarding Mr. Pezoldt's
21 testimony, you're going to have to lay some foundation.

22 MR. CHERNAK: Okay.

23 JUDGE CLARK: If you want to simply get
24 clarification of what he means, I think you can do that
25 on the basis of his pre-filed testimony. But you'll

0122

1 need to restate the question in any event.

2 MR. CHERNAK: Thank you for your
3 instruction, your Honor.

4 Q. In question No. 5, what is it you were
5 trying to tell us that the County didn't provide you?

6 A. My understanding is the previous discussion
7 the County said the cost estimate is 1.75 million
8 dollars. And we have provided a response to the County
9 that says the cost would be substantially higher than
10 that. And my understanding is after that we're
11 expecting the County to do some homework, to hire some
12 consultant and do some preliminary design to better
13 figure out what actually the County wants to do what's
14 the expected cost from the County side. So with that --
15 so I haven't got anything from the County at all after
16 we're expecting the County to do some more homework on
17 that.

18 Q. At paragraph No. 6 you talk about a grade
19 crossing. And I think -- is that -- that's not what you
20 meant in that first sentence at line 10? Is that
21 intended to be more like a grade separated crossing just
22 for clarification?

23 A. Yes, a grade separated crossing.

24 Q. Okay. Thank you. You made a statement
25 there apparently that your concern is that even if

0123

1 there's nothing structurally wrong with the railroad
2 bridge, local entities, cities and counties, could ask
3 tribunals to make BNSF pay for such projects. And I ask
4 you is there anything now that prevents them from asking
5 the tribunal to have BNSF contribute to projects?

6 MR. SCARP: You know, your Honor, I object
7 in so far as it's really calling for a legal conclusion
8 from this witness.

9 JUDGE CLARK: Response?

10 MR. CHERNAK: Well, I think that's what he
11 made there is a legal conclusion. I'm just asking if
12 he's aware of RCW 8153 which allows BNSF to contribute
13 to -- or a railroad to contribute based on the standards
14 in the statute.

15 JUDGE CLARK: The objection is sustained.

16 MR. CHERNAK: Okay.

17 Q. Now, I notice a theme throughout where
18 you're talking about financial implications to BNSF.
19 Does BNSF have concerns about public safety on the roads
20 that cross their railroads?

21 A. Well, we -- the structure itself, it's
22 standing and -- to the best of my knowledge, and with
23 that we don't see any railroad safety issue in this
24 case.

25 Q. Okay. So -- okay. In paragraph 8, the

0124

1 final paragraph -- I'm sorry. Paragraph 7 on page 3 you
2 make a statement that it figures either way to be a
3 disruption of BNSF's operation and it looks like whether
4 they work on the track while the road -- the railroad is
5 operating or with an alternate route. How would BNSF's
6 operations be disrupted if there's an alternate route?
7 I guess you say it would be a shoofly if I'm not
8 mistaken. How would that disrupt operations?

9 A. Well, by building a shoofly, that will
10 mitigate the interruption. But when you're -- during
11 the time when you're building the shoofly, when you cut
12 over the operation from the main line to the shoofly,
13 that is going to incur some interruption. And sometimes
14 -- again I'm not to the engineering but just based on my
15 past experience by working on this job and to the best
16 of my knowledge, sometimes when you build a shoofly, the
17 shoofly have lower speed design sometimes than the main
18 line. And that is also considered as interruption to
19 the normal operation.

20 Q. Okay. I think you said you've been working
21 on this particular job that you have with BNSF for
22 several years now?

23 A. It's about a year and a half, close to two
24 years.

25 Q. Okay. Does BNSF ever upgrade its trestles

0125

1 early and before their useful life is expired?

2 MR. SCARP: I'm going to just object to the
3 lack of foundation on the part of this witness, your
4 Honor.

5 JUDGE CLARK: Mr. Chernak, response?

6 MR. CHERNAK: Okay. Well, this is I think
7 one of these area that he's working on. He works as a
8 liaison. I'm just asking if BNSF upgrades trestles
9 before their useful life is done.

10 JUDGE CLARK: I'm going to sustain the
11 objection. This particular topic is one that is
12 addressed by another BNSF witness who is yet to take the
13 stand.

14 Q. Okay. You said at paragraph 8 on page 4
15 that there's no immediately ascertainable benefit to
16 BNSF from reconfiguring this bridge. And is there any
17 long-term benefits to BNSF in reconfiguring the bridge?

18 A. Well, the bridge itself doesn't have any
19 defect, and to my knowledge with that the bridge can
20 last a very, very, very long time. It's not necessary
21 for BNSF to replace the bridge. With that I don't see
22 any immediate benefit to BNSF.

23 MR. CHERNAK: Thank you. Nothing further.

24 JUDGE CLARK: Does that conclude your --

25 MR. CHERNAK: Yes.

0126

1 JUDGE CLARK: Redirect?

2

3 REDIRECT EXAMINATION

4 BY MR. SCARP:

5 Q. I have one clarification just for the
6 record's sake just to make sure that our capable court
7 reporter got it.

8 Mr. Li, did you say that the shoofly was
9 designed to mitigate the interruption?

10 A. That's right.

11 MR. SCARP: That's all I have.

12 JUDGE CLARK: All right. Thank you for your
13 testimony, Mr. Li.

14 Is there any objection to this witness being
15 excused?

16 MR. CHERNAK: No, your Honor.

17 JUDGE CLARK: Thank you. You are excused,
18 Mr. Li.

19 THE COURT REPORTER: Can we just take a
20 quick break, so I can add paper?

21 JUDGE CLARK: Yeah. We're going to take a
22 recess for approximately five minutes.

23 (Short recess.)

24 JUDGE CLARK: Would the railway call their
25 next witness, please?

0127

1 MR. SCARP: Your Honor, we would call Mr.
2 Bruce Roper.

3 JUDGE CLARK: Thank you.

4 Raise your right hand, please, Mr. Roper.
5 Whereupon,

6 BRUCE ROPER,
7 having been first duly sworn, was called as a
8 witness and testified as follows:

9 Please be seated, and if you could state
10 your full name for the record, please, and spell your
11 last name.

12 THE WITNESS: Richard Bruce Roper, R O P E R.

13 JUDGE CLARK: Thank you, Mr. Roper.

14 Mr. Scarp.

15 MR. SCARP: Thank you, your Honor.

16

17 DIRECT EXAMINATION

18 BY MR. SCARP:

19 Q. Mr. Roper, how are you employed?

20 A. I'm employed by Burlington Northern Sante Fe
21 Railroad.

22 Q. Okay. In what capacity?

23 A. I'm a structure supervisor.

24 Q. Just briefly can you explain to the court
25 what is a structure supervisor?

0128

1 A. Structure supervisor, my duties are I'm in
2 charge of the tunnels, culverts, buildings, bridges, so
3 on.

4 Q. And can you just clarify what does the
5 supervisor part mean with regard to your job as opposed
6 to just supervising in general? What do you do?

7 A. Well, I'm responsible for the maintenance
8 and construction in a certain area, and I have people
9 that work for me that I supervise to do the work, and I
10 coordinate and plan and try to get the work done.

11 Q. Very well. Did you prepare and cause to be
12 filed in this matter the prefiled direct testimony that
13 you have in front of you and which I think will be
14 marked Exhibit 26.

15 JUDGE CLARK: 26 through 28.

16 Q. And did you cause that to be created and
17 filed in this matter?

18 A. Yes.

19 Q. Okay. And have you had an opportunity to
20 review it before your testimony here today?

21 A. Yes.

22 Q. All right. And is the information contained
23 in that prefiled testimony true and correct to the best
24 of your knowledge?

25 A. Yes.

0129

1 Q. If I were to ask you those questions again
2 here today, would your answers be the same?

3 A. Yes.

4 MR. SCARP: Your Honor, I would tender this
5 witness for cross-examination.

6 JUDGE CLARK: All right. Exhibits 26
7 through 28 have been received by prior stipulation of
8 the parties.

9 Mr. Chernak.

10 MR. CHERNAK: Thank you, your Honor.

11

12 CROSS-EXAMINATION

13 BY MR. CHERNAK:

14 Q. Mr. Roper, on page 2, paragraphs 4 and 5 you
15 talk about an inspection -- or inspections. Do you
16 personally do the inspections?

17 A. Yes.

18 Q. So you're familiar with the bridge in
19 question?

20 A. Yes.

21 Q. Okay. And I'm looking back at the -- it
22 says page 1 of 1 printed 3/25, which would be -- well,
23 in fact any of the pages really as attachments that have
24 the inspection -- apparently INSP inspection type on
25 there, just to help us out can you tell us what those

0130

1 abbreviations stand for AN, RT, and SP?

2 A. Where are you at on this?

3 Q. I'm on the exhibits that you attached to
4 your prefiled testimony. It would be about the eighth
5 page that you have there, the inspections active
6 railroad bridges.

7 JUDGE CLARK: Eighth line or eighth column?

8 MR. CHERNAK: Eighth column that says
9 inspection type.

10 JUDGE CLARK: Do you see the reference? I
11 think he's referring to the exhibit that is attached to
12 your testimony, Mr. Roper, that was marked as BR2.
13 There's two pages. The first of those pages is
14 entitled --

15 THE WITNESS: I'm not sure I have that here.

16 MR. SCARP: Your Honor, allow me. I think
17 that's stated --

18 JUDGE CLARK: It's called inspections active
19 railroad bridges.

20 THE WITNESS: Okay. I'm on board now.

21 JUDGE CLARK: It's the next to the last
22 column where it says inspection type, and then there are
23 initials underneath that.

24 THE WITNESS: Okay. AN stands for annual,
25 and RT stands for routine.

0131

1 Q. And SP is?

2 A. Special.

3 Q. Okay. So annual would be a required
4 inspection every year?

5 A. Annual is done by myself and my bridge
6 inspector.

7 Q. And routine is then done?

8 A. By my bridge inspector.

9 Q. And then the special, when are those done?

10 A. Specials is done in circumstances -- certain
11 circumstances like if we get a call about a bridge hit,
12 or we may have high water issues. Just -- it's just
13 whenever we're called to go do an inspection.

14 And with the special inspection we may not
15 do a complete inspection of the bridge. It could be
16 just a partial inspection, so we always document it as a
17 special inspection.

18 Q. Okay. It looks like you named a number of
19 factors having to do with the substructure,
20 superstructure on this bridge, and apparently all those
21 factors that you have listed on page 2 paragraph 5 you
22 find that the bridge is in satisfactory condition; is
23 that correct?

24 A. Yes, I do.

25 Q. And another place not too far beyond that

0132

1 you talk about where bridges move up into the five year
2 plan. It's on page 3, the first full paragraph. What
3 would make you determine that a bridge would move into
4 the five year plan for a useful life?

5 A. Well, a five year plan is what we use in our
6 planning of our bridge rebuilds. And when we see the
7 useful life of our bridge starting to get towards the
8 end of it, we put it in what we call our five year plan.
9 And then what that does is that goes into our office in
10 Kansas City, and they start looking at it too.

11 And then we -- we monitor the bridge for
12 that five years. And we may -- we may move it up. If
13 we see the bridge is deteriorating faster than what we
14 anticipate, we may move it up in that five year plan and
15 try to get it done in a couple years. Or we may keep
16 moving it back depending on the -- how the bridge is
17 degrading.

18 Q. Okay. If you look at paragraph 6, it talks
19 about a general ill condition. Do you know where that
20 term came from?

21 A. No, that's -- general ill condition is not a
22 term that I use on a daily basis.

23 Q. Okay. I just wondered. I couldn't find it
24 anywhere, and I thought maybe you knew where that term
25 came from.

0133

1 A. No, I couldn't help you.

2 Q. Okay. When you say at paragraph 6t at the
3 last sentence on page 3 BNSF is very careful to make
4 sure its bridges are structurally sound, we do not want
5 to risk any harm to the train crews or the public, okay,
6 and you're talking about say for instance a bridge
7 having a failure or some other problem with the bridge;
8 is that correct?

9 A. Yes.

10 Q. Okay. You're not talking there about
11 roadway conditions?

12 A. No, I'm strictly on rail -- on rail issues
13 there.

14 Q. Okay. In paragraph No. 7 on page 4 you say
15 that limited sight distance does not automatically
16 create unsafe bridge conditions. So are there
17 circumstances where limited sight distances do create an
18 unsafe bridge condition?

19 MR. SCARP: Sorry. Where is that?

20 MR. CHERNAK: Page -- paragraph 7 on page 4.

21 MR. SCARP: Thank you.

22 A. You know, as far as -- as far as the rail,
23 sight distance doesn't really have an effect on our
24 bridges so --

25 Q. Okay. So same thing with narrow roadways

0134

1 down below?

2 A. Well, I don't get involved in the roadway
3 issues. I strictly deal with the railroad side of it.

4 Q. Sounds like if the roadway is involved, the
5 only thing you would worry about is people that might
6 damage the bridge itself; is that correct, with --

7 A. Right.

8 Q. -- vehicles?

9 A. Yeah. Well, and conditions where people
10 might maybe hit the bridge with their trucks or be
11 oversized loads or, you know, whatever.

12 Q. Okay. In that case you do a special
13 inspection?

14 A. Yes.

15 Q. Now, this bridge is I think we found built
16 in 1928. And is this bridge still built in the same way
17 railroads build bridges, or is there something different
18 about it?

19 A. Could you say that again? With the
20 background noise --

21 Q. I understand. The acoustics here are pretty
22 hard to hear. This bridge was built in 1928. Does the
23 railroad still pretty much build bridges this way?

24 A. Yes.

25 Q. So this is a pretty standard design?

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1 A. Yes.

2 Q. And it's time tested I guess you would say?

3 A. Yeah, it's massive concrete piers. That's
4 considered a deck plate girder bridge. And that's
5 pretty common in the building industry today --

6 Q. Okay.

7 A. -- as far as steel.

8 Q. So if you built this bridge again, it would
9 be almost the same bridge; is that right?

10 A. It could possibly be a concrete structure if
11 it was built today possibly depending on how the
12 engineers designed it. It would depend on span, length,
13 and so on but --

14 MR. CHERNAK: Thank you. I don't have any
15 further questions.

16 JUDGE CLARK: I just have one clarifying
17 question for you. I thought I got it until the end
18 here. And you said this is called a deck plate girder
19 bridge?

20 THE WITNESS: That's correct.

21 JUDGE CLARK: Well, on page 2, line 18 you
22 designate this as a ballast deck bridge. Is there a
23 difference between the two kinds of bridges? If there
24 is, can you explain it to me?

25 THE WITNESS: Well, we're talking about two

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1 different aspects of the bridge here. You have what you
2 call the substructure of the bridge. And part of the
3 substructure of the bridge is massive concrete piers.
4 And then you have the steel part of the structure that
5 runs from pier to pier.

6 JUDGE CLARK: In between the two piers?

7 THE WITNESS: Yes. That is considered the
8 deck plate girder part of the bridge, the steel
9 structure. And then you also have the top of the bridge
10 which is -- which was built in 1988. And it's a wood
11 tub that is filled with ballast.

12 JUDGE CLARK: Did you say wood tub?

13 THE WITNESS: Yeah, we call them wood tubs.

14 JUDGE CLARK: Thank you.

15 THE WITNESS: And they're filled with
16 ballast. And then they lay the ties across it, and it
17 looks just like normal railroad track if you're looking
18 at it from the top side.

19 JUDGE CLARK: And the ballast is rock?

20 THE WITNESS: The ballast is rock.

21 JUDGE CLARK: Thank you. I appreciate that
22 clarification, Mr. Roper.

23 Do you have redirect, Mr. Scarp?

24 MR. SCARP: I do not, your Honor.

25 JUDGE CLARK: Thank you for your testimony,

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1 Mr. Roper.

2 Is there any objection to this witness being
3 excused?

4 MR. CHERNAK: No, your Honor.

5 JUDGE CLARK: Hearing none, you're excused.

6 MR. SCARP: You can stay or sit around, or
7 if you want to go, go.

8 JUDGE CLARK: Mr. Scarp, I believe you have
9 one more witness; is that correct?

10 MR. SCARP: Correct. Our final witness is
11 Mr. Dan MacDonald.

12 JUDGE CLARK: Thank you.

13 Whereupon,

14 DANIEL MacDONALD,

15 having been first duly sworn, was called as a

16 witness and testified as follows:

17 Thank you. Please be seated. And, Mr.

18 MacDonald, I need to have you spell both your first and
19 your last name for the record, please.

20 THE WITNESS: Yes, your Honor. Daniel, D A

21 N N I E L, Jerome MacDonald, M A C D O N A L D.

22 JUDGE CLARK: Thank you.

23 Mr. Scarp.

24 MR. SCARP: Thank you, your Honor.

25

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1 DIRECT EXAMINATION

2 BY MR. SCARP:

3 Q. Mr. MacDonald, can you tell the Court how
4 you are employed?

5 A. I'm currently employed by the BNSF Railway
6 Company as a manager engineering in Seattle, Washington.

7 Q. And as a manager engineering in Seattle,
8 Washington just geographically what areas does that
9 involve for you in terms of your work?

10 A. I cover from Klamath, California to
11 Vancouver, British Columbia and from the Puget Sound to
12 White Fish, Montana on our system.

13 Q. And if there are further questions, I'll
14 leave those with regard to your job, but did you prepare
15 and cause to be filed in this matter I believe it will
16 be Exhibit No. 29 --

17 JUDGE CLARK: 29.

18 Q. -- your prefiled direct testimony?

19 A. Yes, I did.

20 Q. Okay. All right. And have you had an
21 opportunity to review that testimony prior to this
22 hearing?

23 A. Yes, I did.

24 Q. All right. And is the information contained
25 in your direct prefiled testimony true and correct to

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1 the best of your knowledge?

2 A. It is.

3 Q. All right. And if I were to ask you those
4 questions again here, would your answers be the same?

5 A. Yes, they would.

6 MR. SCARP: Your Honor, I would tender this
7 witness for cross-examination.

8 JUDGE CLARK: Yes. Exhibit 29 having
9 previously been received by stipulation, this witness is
10 available for exam.

11 Mr. Chernak.

12 MR. CHERNAK: Thank you, your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. CHERNAK:

16 Q. Mr. MacDonald, how does your job differ from
17 that of Mr. Li?

18 A. I'm the manager engineering in Seattle. I'm
19 responsible for delivery of our capital projects and
20 large program projects for the company. Mr. Li is our
21 manager public projects. He's responsible as he stated
22 in his testimony for what his job functions were.

23 Q. When you say delivery, what do you mean by
24 delivery?

25 A. We are responsible for design and

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1 construction of division capital. And in my case I'm
2 responsible for the delivery of the WSDOT Office of Rail
3 Program that we have with the State of Washington.

4 Q. You said you worked as a senior crossing
5 safety specialist for the Oregon Department of
6 Transportation. How long were you in that position?

7 A. Two years.

8 Q. And did you deal with the types of petitions
9 you have here where they're asking -- a County is asking
10 or a municipality is asking to alter or relocate an
11 undercrossing or overcrossing?

12 A. I did. Likewise as manager of the crossing
13 safety section, I dealt with that same issue for the
14 Department of Transportation.

15 Q. Okay. These issues come up from time to
16 time in state forums?

17 A. We had an entire section that dealt with it,
18 yes, sir.

19 Q. Okay. Do you get involved at all with the
20 BNSF capital improvement program insofar as you have the
21 ability to be aware of what the company's commitment is
22 to capital improvement?

23 A. I'm aware of the projects that I have to
24 deliver once they're put on the list. That's
25 communicated down through my chain of command. Then I

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1 work to deliver those projects as directed.

2 Q. Do they provide you with any kind of
3 information about what the total company commitment is
4 to capital improvement?

5 A. Yes, that's also disclosed through public
6 documents and filings; however, I do not know off the
7 top of my head what those numbers would be.

8 Q. Okay. I'm going to ask you to take a look
9 at this. And I'm going to go ahead and give this to
10 counsel.

11 MR. CHERNAK: May I approach?

12 JUDGE CLARK: You may.

13 MR. CHERNAK: If I may approach, your Honor.

14 JUDGE CLARK: Yes, please. Thank you.

15 MR. CHERNAK: Okay. I apologize. It's cut
16 off at the bottom, and you can't see some of the BNSF
17 website.

18 JUDGE CLARK: Now, you can go ahead and
19 identify this and lay the foundation with the witness,
20 Mr. Chernak.

21 MR. CHERNAK: Okay.

22 Q. This is from BNSF.Com media news articles.
23 It's apparently an article -- a news release dated
24 January 29, 2008. And are you familiar with the BNSF
25 website?

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1 A. Yes.

2 Q. Okay. So this would be the kind of thing
3 that we could find on the website?

4 A. Judging by the document tag at the bottom it
5 appears that's correct.

6 Q. Okay. And Mr. Matthew K. Rose would be the
7 BNSF chairman, president, and CEO?

8 A. That is what is indicated, yes.

9 Q. And if you could look at the third line --
10 or third full paragraph.

11 MR. SCARP: Well, your Honor, I guess I
12 would -- I would object to the use of this at this
13 point.

14 JUDGE CLARK: Yes, I was going to say you're
15 going to need to lay a foundation and move the admission
16 of this document before I will permit examination on it.

17 MR. CHERNAK: Okay.

18 Q. Does BNSF -- well, does BNSF issue news
19 releases through its website?

20 A. BNSF does release news releases. That would
21 be our public affairs department. I would have to defer
22 to them on the exact methods to which they send out news
23 releases.

24 Q. Do you ever visit the BNSF website to view
25 their news releases?

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1 A. I do not recall that -- yes, I have gone to
2 our own website to find news releases. Yes, I have.

3 Q. Okay. Do you have any reason to believe
4 this is not a news release from BNSF?

5 A. No.

6 MR. CHERNAK: I would ask that it be
7 admitted.

8 MR. SCARP: Well, your Honor, lack of
9 foundation on the part of this witness for beginners and
10 based on looking at the document relevance but lack of
11 foundation here.

12 JUDGE CLARK: And the objection is
13 sustained. But I'm going to give you an opportunity to
14 cure this if you can lay an appropriate foundation for
15 the document. I'm somewhat loath to not allow this
16 document in the record simply for lack of foundation, so
17 I would like to have you take another shot at trying to
18 lay a foundation for this document so that there can be
19 inquiry on it.

20 MR. CHERNAK: Okay.

21 Q. Well, I guess what I'm looking at is just
22 authenticating this document to show that it comes BNSF
23 headquarters which is in Fort Worth, Texas and
24 apparently -- is that where the headquarters is?

25 A. Yes, we are headquartered in Fort Worth,

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1 Texas.

2 Q. BNSF has a website at BNSF.Com; is that
3 correct?

4 A. Correct.

5 Q. So if we go to that website, and we look at
6 the address below, any person inquiring could find a
7 document such as this at that website?

8 MR. SCARP: Well, I guess there's a lack of
9 foundation in that question, your Honor. I would
10 object.

11 JUDGE CLARK: Right. What I'm interested in
12 for a foundation is some familiarity of this witness to
13 testify regarding this particular topic or on this
14 particular document.

15 MR. CHERNAK: Well, I think what I've run
16 into is he's aware of what's coming his way, but he's
17 not aware of this particular dollar amount, and that's
18 the problem.

19 JUDGE CLARK: That's correct.

20 Q. And that would be correct that you don't
21 know about there being any particular dollar amount
22 commitment to any of the structures?

23 A. I can't say that anymore. I've read the
24 document now. I apologize. I don't mean to be --

25 Q. I'm talking about independently before you

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1 read this document.

2 A. Independently there's a vague -- I'm aware
3 that we have a capital program. I believe my testimony
4 was I couldn't comment to how much that capital program
5 was, and I am aware of the projects as they are assigned
6 to me, so I guess that's --

7 Q. There is a capital program?

8 A. There is a capital program, yes, sir.

9 Q. I think that's the best I can do.

10 JUDGE CLARK: All right.

11 Q. Do you know who built this bridge?

12 A. I do not. I do not know.

13 Q. Because BNSF didn't exist in 1928; is that
14 correct?

15 A. That's correct. It may have been one of the
16 predecessor railroads that built this bridge.

17 Q. Do you have any personal knowledge of any of
18 the railroading history of this area, Tumwater or
19 Chumstick Canyon?

20 A. Through conversations I am aware that we
21 relocated the rail line is my understanding. And that
22 would be the extent of it is through casual
23 conversations and no independent research on my own to
24 verify that.

25 Q. Okay. What is your understanding of where

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1 the rail line was relocated from?

2 A. My understanding through conversations was
3 directly out of town -- or out of Leavenworth proper
4 from what I recall.

5 Q. That would be the Tumwater Canyon --

6 A. Correct.

7 Q. -- that is up north?

8 A. Correct.

9 Q. So when you talk about BNSF not controlling
10 the design -- I guess this is at paragraph 7, page 3 --
11 design or speed of the highway or other geometric or
12 operating requirements of the roadway, are you speaking
13 in the present tense? Is that right?

14 A. Correct.

15 Q. Okay.

16 A. At this point in time that roadway and the
17 geometrics on that roadway are controlled by the County.

18 Q. So you don't have any direct knowledge of
19 when the bridge was originally built how the geometrics
20 or any of the alignments occurred; is that right?

21 A. I do not -- again through secondhand I
22 believe I may have reviewed testimony or other
23 information that stated it was jointly done. It might
24 have been Mr. Pezoldt's own testimony. I would -- I do
25 not recall exactly. I have a vague recollection that

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1 there was a joint relocation, and the decisions were
2 made in 1928 or thereabouts by the agency and the
3 railroad what to do with that roadway and highway, but I
4 don't have documents or any other proof that I could set
5 before you, sir.

6 Q. Okay. So you haven't been through the
7 railroad archives?

8 A. No, sir, I do not --

9 Q. You said at page -- or paragraph No. 8 that
10 there appear to be highway safety issues here to be
11 addressed by the responsible authority, but the road
12 authority does not want to incur the full cost of the
13 project. I guess we're beating a dead horse with this,
14 but the railroad apparently doesn't want to incur that;
15 is that correct, the cost of the project?

16 A. As a matter of -- I guess I would defer to
17 Mr. Li. As a matter of policy in the company we work
18 with agencies to address the highway issues, but, no, in
19 this case there is no railway safety issue; therefore,
20 the highway issue would be addressed by the highway
21 authority -- or the road authority, excuse me, and we
22 would work with them to accomplish their goal.

23 Q. Paragraph 15 that's located on page 6, at
24 that paragraph you're talking about funding costs, and
25 in particular you're talking about 23 CFR section 646,

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1 and it looks like you're interpreting it there. Are you
2 trying to interpret that statute?

3 A. No. I believe what my testimony is is that
4 that statute would apply. My knowledge and
5 understanding from reading that regulation is that it
6 would apply. I'm not interpreting it.

7 Q. Okay. And it looks like the contingency
8 you're saying that makes it apply is that if there are
9 Federal funds involved?

10 A. That is my understanding of how that
11 regulation does apply.

12 Q. And so far no Federal funds that anybody has
13 testified to?

14 A. That is correct, to the best of my knowledge
15 and belief there have not been Federal funds identified
16 for this project.

17 Q. If ordered by the tribunal, BNSF would work
18 with the County on the design; is that right?

19 A. If ordered we would comply with any
20 regulation -- or any order set forth by the State, that
21 is correct. So there may be -- I can't answer that in
22 the affirmative or the negative, because I would not
23 know what the conditions of that would be or how that
24 would be set forth. But we would be bound by law and by
25 -- and that would be a question for our attorneys as to

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1 the application of any resulting document or decree from
2 this.

3 MR. CHERNAK: Thank you. I don't have any
4 other questions, your Honor.

5 JUDGE CLARK: Redirect.

6 MR. SCARP: Just briefly, your Honor.

7

8 REDIRECT EXAMINATION

9 BY MR. SCARP:

10 Q. I just want to clarify your basis for your
11 testimony, Mr. MacDonald, that counsel asked you about
12 at paragraph 15 where you cited the code of Federal
13 regulations specifically 23 CFR 646. Is that based on
14 your experience, your knowledge, and understanding of
15 that in delivering projects?

16 A. Yes, sir, both for the State of Oregon and
17 as a public projects manager prior before BNSF.

18 Q. So is that something you came in contact
19 with and became aware of how the processing of Federal
20 funding works and affects the projects?

21 A. Yes, sir.

22 Q. Okay. So that's the extent of what it is
23 that you're trying to indicate here by your testimony;
24 you're not trying to make a legal argument?

25 A. No, sir.

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1 Q. Okay. Do you have any understanding with
2 regard to this project -- we've referred to it as a
3 project whether any Federal funding has been sought by
4 any entity?

5 A. My understanding is no, and from testimony
6 this morning I understand no further funding than that
7 which was identified by the County previously has been
8 sought.

9 MR. SCARP: All right. That's all I have,
10 your Honor.

11 JUDGE CLARK: Thank you for your testimony,
12 Mr. MacDonald. And why don't you go ahead and make
13 yourself comfortable. You don't have to sit at the
14 witness stand.

15 I believe that concludes BNSF's case?

16 MR. SCARP: It does, your Honor.

17 JUDGE CLARK: Is there anything further that
18 should be considered on the record of this proceeding?

19 MR. CHERNAK: No, your Honor.

20 JUDGE CLARK: All right. The record will
21 remain open for the filing of post hearing briefing on
22 June 16 I believe it is. And if there's nothing further
23 to be considered on the record this afternoon, we're
24 adjourned.

25 MR. CHERNAK: Thank you.

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MR. SCARP: Thank you, your honor.

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(Hearing adjourned at 12:13 p.m.)

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