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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

PRAIRIE CENTRAL COOPERATIVE, INC., ) DOCKET NO.  
Petitioner, ) T10-0151  
v. )  
NEVADA TOWNSHIP OF LIVINGSTON )  
COUNTY, ILLINOIS, and NORFOLK )  
SOUTHERN RAILWAY COMPANY, )  
Respondents. )  
Petition for an Order authorizing )  
an at-grade rail spur line )  
crossing with crossing protection )  
of a public highway with railroad )  
tracks. )

Springfield, Illinois  
Tuesday, October 19, 2010

Met, pursuant to notice, at 2:00 p.m.

BEFORE:

MR. TIMOTHY DUGGAN, Administrative Law Judge

APPEARANCES:

MR. JON K. ELLIS  
JON K. ELLIS, P.C.  
1035 South Second Street  
Springfield, Illinois 62704

(Appearing on behalf of  
Petitioner)

SULLIVAN REPORTING COMPANY, by  
Carla J. Boehl, Reporter  
CSR #084-002710

1 APPEARANCES: (Continued)

2 MR. NEIL F. FLYNN  
3 MR. DANIEL M. FLYNN  
4 NEIL F. FLYNN & ASSOCIATES  
5 600 South Second Street, Suite 102  
6 Springfield, Illinois 62704

7 (Appearing on behalf of Norfolk  
8 Southern Railroad)

9 MR. AARON TOLIVER  
10 Rail Safety Specialist  
11 Illinois Commerce Commission  
12 527 East Capitol Avenue  
13 Springfield, Illinois 62701

14 (Appearing on behalf of Staff of  
15 the Illinois Commerce  
16 Commission)

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I N D E X

| <u>WITNESS</u>          | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|-------------------------|---------------|--------------|-----------------|----------------|
| MARK HEIL               |               |              |                 |                |
| By Mr. Ellis            | 10            |              | 32              |                |
| By Judge Duggan         |               | 13           |                 |                |
| DON HUMES               |               |              |                 |                |
| By Mr. Ellis            | 15            |              |                 |                |
| By Mr. Flynn            |               | 26           |                 |                |
| By Mr. Toliver          |               | 30           |                 |                |
| By Judge Duggan         |               | 32           |                 |                |
| PAUL RIBODY             |               |              |                 |                |
| By Mr. Ellis            | 46            |              |                 |                |
| By Judge Duggan         |               | 47           |                 |                |
| MARK HEIL<br>(Recalled) |               |              |                 |                |
| By Mr. Ellis            | 53            |              |                 |                |
| By Judge Duggan         |               | 54           |                 |                |

EXHIBITS

|                      | <u>PRESENTED</u> | <u>ADMITTED</u> |
|----------------------|------------------|-----------------|
| Petitioner's Group 3 | 16               | 45              |
| Petitioner's 4       | 20               | 45              |
| Petitioner's 5       | 22               | 45              |



1 previously given, also appearing on behalf of Norfolk  
2 Southern, Respondent.

3 JUDGE DUGGAN: Okay. Very good. So you  
4 represent Prairie Central then?

5 MR. ELLIS: Correct, Judge.

6 JUDGE DUGGAN: You want to proceed?

7 MR. ELLIS: Thank you, Judge. Judge, I do have  
8 a procedural matter. Attached to the Petition is  
9 Exhibit Number 1 which is the Illinois Commerce  
10 Commission Grade Crossing Inventory and picture dated  
11 May 11, 2000, with aerial road profile. That's a  
12 document that is generated by the Illinois Commerce  
13 Commission. I do not have a witness to lay a  
14 foundation for that document except for Mr. Toliver.  
15 But what I would ask you to do, Judge, is take  
16 administrative notice of that exhibit so that I can  
17 get it into the record.

18 JUDGE DUGGAN: Mr. Toliver, have you looked at  
19 what was attached to Petitioner Exhibit 1?

20 MR. TOLIVER: Yes, I have, Your Honor.

21 JUDGE DUGGAN: And does that appear to you to  
22 be a true and correct copy of a Commission document?

1 MR. TOLIVER: Yes, Your Honor.

2 JUDGE DUGGAN: Is that something that is  
3 produced by the Commission? How is this produced?

4 MR. TOLIVER: It is on the Commission's website  
5 under the Transportation Rail Safety tab that is  
6 public domain, basically a data base where you can  
7 search the grade crossing by the AAR number, and  
8 photographs and different specific information about  
9 the crossing come up.

10 JUDGE DUGGAN: Okay. Who inputs the  
11 information? I don't mean the person. Who provides  
12 this information?

13 MR. TOLIVER: The information is contained in a  
14 data base that is maintained by the Rail Safety  
15 Section which we have outside consultants that do it,  
16 every so often go around and do surveys of the  
17 crossings. That's where the pictures come from. The  
18 information that's in the boxes comes from the FRA  
19 inventory which is supplied by both the railroads and  
20 the Department of Transportation, Illinois Department  
21 of Transportation.

22 JUDGE DUGGAN: Okay. So you believe this is

1 reasonably reliable information for the purposes of  
2 today's hearing?

3 MR. TOLIVER: Yes, Your Honor.

4 JUDGE DUGGAN: Okay. So you are moving for  
5 that admission or just to let me know that you are  
6 asking for notice of this?

7 MR. ELLIS: Simply administrative notice of the  
8 document.

9 JUDGE DUGGAN: Okay. Any objections?

10 MR. FLYNN: No objection, Your Honor.

11 JUDGE DUGGAN: All right. Then administrative  
12 notice will be taken of Petitioner's Exhibit 1 which  
13 is a document produced by the Railroad Safety Section  
14 of the Illinois Commerce Commission.

15 MR. ELLIS: Judge, I have a similar request for  
16 Petitioner's Exhibit Number 2 which is the United  
17 States Department of Transportation Crossing  
18 Inventory Information effective the begin date of  
19 record March 25, 2010. Again, this was a document I  
20 was able to procure through a web page that was  
21 provided by the Illinois Commerce Commission. I  
22 myself do not have a witness available who could lay

1 a proper foundation for this document, but again  
2 would ask you to take administrative notice.

3 JUDGE DUGGAN: Okay. I will ask Mr. Toliver  
4 and anybody else can also volunteer an opinion but,  
5 Mr. Toliver, are you familiar with this document and  
6 the US DOT website?

7 MR. TOLIVER: Yes, Your Honor.

8 JUDGE DUGGAN: Is this the type of information  
9 that you rely upon?

10 MR. TOLIVER: Yes, Your Honor.

11 JUDGE DUGGAN: Okay. And I say the type of  
12 information also means the source of this  
13 information?

14 MR. TOLIVER: Yes.

15 JUDGE DUGGAN: Mr. Flynn?

16 MR. FLYNN: I have no objection, Your Honor.

17 JUDGE DUGGAN: Okay. Then once again  
18 administrative notice will be taken of Exhibit Number  
19 2 which again you say is from -- it doesn't identify  
20 the website but it -- what is it again?

21 MR. TOLIVER: I believe it is the federal  
22 Railroad Administration website. I can get that

1 information. If you need a www web address, I don't  
2 know it off the top of my head.

3 JUDGE DUGGAN: Well, I want to be able to put  
4 it in the Order, what it was. Federal Railroad  
5 Administration?

6 MR. TOLIVER: Yeah.

7 JUDGE DUGGAN: Is that the correct name for the  
8 agency?

9 MR. TOLIVER: Yes.

10 JUDGE DUGGAN: Okay. Yeah, administrative  
11 notice will be taken of Petitioner's Exhibit 2 which  
12 is a document from the website of the Federal  
13 Railroad Administration.

14 MR. ELLIS: Thank you, Judge. At this time I  
15 would call Mark Heil as a witness, please.

16 Mr. Heil?

17 JUDGE DUGGAN: I will swear him in.

18 (Whereupon the witness was duly  
19 sworn by Judge Duggan.)

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MARK HEIL

called as a witness on behalf of Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q. Could you please state your name for the record.

A. My name is Mark Heil.

Q. And, Mark, how do you spell your last name?

A. H-E-I-L.

Q. And where are you employed?

A. I work for Prairie Central Cooperative.

Q. And where is your office located?

A. Our office is located in Weston, Illinois. Mailing address Chenoa.

Q. And, Mr. Heil, exactly what is your job title with Prairie Central?

A. I am a general manager of the company.

Q. And how long have you been in that position?

A. In the position of general manager for two

1 years.

2 Q. Could you briefly describe the Prairie  
3 Central's business operations?

4 A. What our company is, is we handle corn and  
5 soybeans and wheat from the farmers of the area. We  
6 are a grain elevator cooperative owned by those  
7 members.

8 Q. In how many counties in Illinois do you  
9 have operations?

10 A. We have two different counties, McLean and  
11 Livingston County where we have our elevators.

12 Q. What project are you currently supervising  
13 in Livingston County?

14 A. We are working on the railroad spur at our  
15 Sunbury, Illinois, location.

16 Q. And who has assisted you in the development  
17 of that project?

18 A. I had two gentlemen help me, Don Humes and  
19 Dave Laplant. Everybody helped support me on this  
20 project.

21 Q. And what is the current status of the  
22 project?

1           A.    Right now they are just getting some of the  
2 dirt and trees grubbed out in the area and just  
3 waiting to proceed on the project.

4           Q.    And exactly what remains to be done on the  
5 project once you receive approval?

6           A.    Essentially everything else.  We need to  
7 get the fill brought in.  We need to do the rail  
8 track work.  We need to do the tracks themselves.  
9 Need to get the switches brought in.  So essentially  
10 the rest of the project.

11          Q.    And who is the contractor who is going to  
12 be doing this work for Prairie State?

13          A.    We have hired Swanson Contracting to do the  
14 work for us.

15          Q.    Where is Swanson located?

16          A.    Out of Alsip, Illinois.

17          Q.    Do you have a projected completion date for  
18 the project?

19          A.    Our goal is to have it completed by next  
20 spring, spring of 2011.

21          Q.    And what township is the Sunbury project  
22 located in?





1 sworn by Judge Duggan.)

2 DON HUMES

3 called as a witness on behalf of Petitioner, having  
4 been first duly sworn, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. ELLIS:

8 Q. Mr. Humes, could you please state your name  
9 for the record.

10 A. Don Humes.

11 Q. Could you spell your last name, please?

12 A. H-U-M-E-S.

13 Q. And what is your job title, Mr. Humes?

14 A. Consultant.

15 Q. And what type of consultant are you?

16 A. Transportation consultant.

17 Q. And how long have you been employed in that  
18 role?

19 A. Fourteen months.

20 Q. What project are you currently working on  
21 in Livingston County on behalf of Prairie Central?

22 A. We are assisting Prairie Central with the

1 design, development, construction of a rail siding in  
2 Sunbury.

3 Q. Okay. Mr. Humes, I am going to show you  
4 what's been previously marked for identification as  
5 Petitioner's -- this is Group Exhibit Number 3.

6 (Whereupon Petitioner's Group  
7 Exhibit 3 was presented for  
8 purposes of identification as of  
9 this date.)

10 I would ask you, do you recognize that  
11 document?

12 A. Yes, I do.

13 Q. Could you please describe that particular  
14 document?

15 A. This is the construction plans that were  
16 drawn up by Patrick Engineering for the construction  
17 of the rail siding for Prairie State.

18 Q. What is the date that appears on the  
19 document?

20 A. July 2, 2010.

21 Q. And did you receive this document from  
22 Patrick Engineering?

1           A.    Yes, we did.

2           Q.    And does this document appear to be a copy  
3 of an original?

4           A.    Yes, it does.

5           Q.    Okay.  In your role as consultant is it  
6 fair to say that you are familiar with the project  
7 for the Sunbury facility?

8           A.    Yes, it is.

9           Q.    And in your opinion are those drawings in  
10 front of you in Group Exhibit Number 3, are they an  
11 accurate and true depiction of the project?

12          A.    Yes, they are.

13          Q.    Mr. Humes, I would ask you where will the  
14 rail spur line be located in proximity to the Norfolk  
15 Southern main rail line?

16          A.    North of the Norfolk Southern main line.

17          Q.    And in what direction will the rail spur  
18 line run?

19          A.    East and west.

20          Q.    And is it correct to say that the rail spur  
21 line would be parallel to the main line?

22          A.    Yes, it is.

1 Q. And in what direction will the rail spur  
2 line be physically located from the Norfolk Southern  
3 main line? Will it be to the north, to the south?

4 A. To the north.

5 Q. What will be the distance -- let's do it  
6 center to center. What will be the distance between  
7 the Norfolk Southern main line and the Prairie  
8 Central rail spur line?

9 A. Twenty-five feet.

10 Q. How many spur lines are involved in the  
11 Sunbury project?

12 A. One spur line with two sidings.

13 Q. So do you recall what is the length of  
14 Siding Number 1?

15 A. Siding 1 is 6,982.11 feet.

16 Q. What about the Siding Number 2?

17 A. Siding Number 2 is 2,043.84 feet.

18 Q. What is the projected train speed on the  
19 rail spur line?

20 A. Not to exceed ten miles per hour.

21 Q. And who will move rail cars on the spur  
22 line through the crossing?

1           A.    Prairie Central and Norfolk Southern  
2 employees.

3           Q.    What grade crossing currently exists at the  
4 Sunbury location?

5           A.    Township Road 2100E.

6           Q.    Okay.  And what is the -- where the main  
7 line currently intersects the township road, what  
8 type of grade crossing is located there?  Will you  
9 have --

10          A.    Yes, it is an automatic flashing light  
11 system.

12          Q.    Okay.  And is there -- those would be the  
13 lights.  Are there any type of other signals at the  
14 location?

15          A.    Crossbuck signage.

16          Q.    Okay, thank you.  In your work on this  
17 project what grade crossing protection improvements  
18 are planned for this crossing once the rail spur line  
19 has been constructed?

20          A.    I am sorry, can you repeat that?

21          Q.    Sure.  What grade crossing protection  
22 improvements are planned for this crossing once the

1 rail spur has been constructed?

2 A. Automatic flashing light system, gates and  
3 constant warning time circuitry.

4 Q. Who is going to make these grade crossing  
5 improvements?

6 A. Norfolk Southern.

7 Q. And who will be responsible for future  
8 maintenance of the automatic flashing light system,  
9 the gates and the constant warning time circuitry?

10 A. Norfolk Southern.

11 Q. Mr. Humes, I am now going to show you  
12 what's been marked for purposes of identification as  
13 Petitioner's Exhibit Number 4.

14 (Whereupon Petitioner's Exhibit  
15 4 was presented for purposes of  
16 identification as of this date.)

17 Would you take a look at that and let me  
18 know if you recognize that document?

19 A. Yes, I do.

20 Q. Could you tell me what that is?

21 A. It's a cost estimate for the rail  
22 construction project at Sunbury.

1 Q. Okay. Is there a date that appears on the  
2 document?

3 A. Yes, October 1, 2010.

4 Q. And who prepared this?

5 A. I did.

6 Q. Reviewing Petitioner's Exhibit Number 4,  
7 can you tell me what is the projected cost of the  
8 rail spur line?

9 A. The rail spur line is \$1,482,004.30.

10 Q. Okay. And who is going to pay for the  
11 construction of the rail spur line?

12 A. Prairie Central Co-op.

13 Q. Can you tell me what is the projected cost  
14 for the automatic flashing light signals, the gates  
15 and the constant warning time circuitry?

16 A. \$245,690.

17 Q. And who will pay for the lights, the gates  
18 and the circuitry?

19 A. Prairie Central Co-op.

20 Q. Are there any other numbers that appear on  
21 that document?

22 A. Yes.

1 Q. What is that number?

2 A. We have the cost of Norfolk Southern  
3 installing these switches, main line switches, and D  
4 rails in the east and west end of the siding.

5 Q. What is that cost?

6 A. \$589,000.

7 Q. And who will be paying that cost?

8 A. Prairie Central Co-op.

9 Q. So looking at Petitioner's Exhibit Number 4  
10 for purposes of identification, what is the total  
11 cost for the track, the road crossing and the signal  
12 work?

13 A. \$2,316,694.30.

14 Q. Okay. Thank you. Mr. Humes, I am now  
15 going to show you what's been marked for purposes of  
16 identification as Petitioner's Exhibit Number 5.

17 (Whereupon Petitioner's Exhibit  
18 5 was presented for purposes of  
19 identification as of this date.)

20 Do you recognize that document?

21 A. Yes, I do.

22 Q. And could you tell me what is that

1 document?

2 A. This is a revised page of the engineering  
3 plans for the construction of the improvement to the  
4 road crossing at Sunbury.

5 Q. Is there a date that appears on that  
6 document?

7 A. October 6, 2010.

8 Q. And where did this document come from?

9 A. This was produced by Patrick Engineering.

10 Q. And does the document appear to be a copy  
11 of an original?

12 A. Yes, it does.

13 Q. Again, specifically what area is being  
14 depicted in that drawing?

15 A. The rail and highway crossing at Sunbury.

16 Q. And are you personally familiar with this  
17 particular area?

18 A. Yes, I am.

19 Q. And in your opinion is the drawing  
20 generally an accurate and true depiction of that  
21 area?

22 A. Yes, it is.

1 JUDGE DUGGAN: Which exhibit was this?

2 Q. Number 5. What roadway improvements are  
3 planned for the crossing at the Sunbury facility?

4 A. The northern approach will be lengthened.

5 Q. And who will be making the roadway  
6 improvements?

7 A. Swanson Contracting.

8 Q. And who will be paying for the roadway  
9 improvements?

10 A. Prairie Central Co-op.

11 Q. And who will be responsible for the future  
12 maintenance of the rail spur line crossing?

13 A. Prairie Central Co-op.

14 Q. As an estimate or approximation, how long  
15 will it take to load the rail cars at the Sunbury  
16 facility when there is a loading of the 75 cars?

17 A. Fifteen hours.

18 Q. And what will be the status of the township  
19 road during the rail car loading?

20 A. It will be closed.

21 Q. And for how long will the township road be  
22 closed?

1           A.    Fifteen hours.

2           Q.    And have you in your role as a consultant,  
3 have you developed a particular protocol for the  
4 closing of the township road?

5           A.    Yes, we have.

6           Q.    And what exactly will be that protocol?

7           A.    We will contact emergency services agencies  
8 in Livingston and Grundy Counties. We will place  
9 markers and signs on both sides of the crossing to  
10 close the road, and we will have -- we will provide  
11 both of these emergency services with the emergency  
12 contact phone number and we have procedures to either  
13 move or break rail cars in the event of an emergency.

14          Q.    And what alternate routes will be available  
15 with the township roads closed?

16          A.    2000 East which is approximately one mile  
17 to the west of this crossing and 2200 East which is  
18 approximately one mile to the east of this crossing.

19          MR. ELLIS: At this time, Judge, I would have  
20 no further questions of Mr. Humes.

21          JUDGE DUGGAN: Mr. Flynn?

22          MR. FLYNN: Thank you, Your Honor.

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CROSS EXAMINATION

BY MR. FLYNN:

Q. Mr. Humes, I just have a few questions to follow up on the questions Mr. Ellis has just put to you. You mentioned two spur lines. Am I correct that if the Order is entered as requested, that there will just be one of those spur lines that will run through the existing crossing and Township Road 2100 East?

A. That is correct.

Q. So if the Order is entered as requested, at the crossing there will be two tracks, one of the tracks being Norfolk Southern's main line and just to the north of that would be the newly installed spur line for the Sunbury elevator, right?

A. Yes.

Q. I think you said that currently at the crossing the signalization consists of automatic flashing light signals and crossbucks only, is that correct?

A. That is correct.

Q. And again as requested in the petition, the

1 improvements would consist of automatic flashing  
2 light signals and gates with constant warning time  
3 circuitry, correct?

4 A. That is correct.

5 Q. And as such the signalization that would be  
6 installed, the signalization would be activated as a  
7 result of a movement on either one of those two  
8 tracks, is that correct?

9 A. That's correct.

10 Q. So if there was a movement on the spur  
11 track, that would signal -- that would trigger the  
12 activation signals as well as a main line signal?

13 A. Correct.

14 Q. Mr. Humes, you also mentioned in your  
15 testimony some information about costs and  
16 responsibilities. Am I correct that, while you are  
17 asking that Norfolk Southern be charged with the  
18 installation of the automatic flashing light signals  
19 and gates and the attendant circuitry, while it would  
20 be performed by Norfolk Southern, that all of the  
21 cost of those improvements would be borne by the  
22 Prairie Central Cooperative, correct?

1           A.    All of the costs of the installation of the  
2    signal system, yes, will be borne by Prairie Central  
3    Co-op.

4           Q.    And the future maintenance of those signals  
5    once installed will be the responsibility of Norfolk  
6    Southern, correct?

7           A.    Yes.

8           Q.    Mr. Humes, you last talked about the  
9    blocked crossings, if you will.  And I believe you  
10   said that what is anticipated is that at the time of  
11   a loading operation that the township road in  
12   question would be closed for approximately 15  
13   continuous hours?

14          A.    That is correct.

15          Q.    In the event of a loading operation and in  
16   the event that the crossing was blocked, in the event  
17   of an emergency which would require the opening of  
18   the crossing and the splitting of the cars, is that  
19   contemplated by a coordinated effort with the  
20   township?

21          A.    Yes, it is.

22          Q.    And if that were necessary, again in the

1 circumstances of an emergency, do I understand  
2 correctly that the responsibility for the opening and  
3 the splitting of the cars would be that of Prairie  
4 Central Cooperative, is that correct?

5 A. That is correct.

6 Q. All of the coordination that would be  
7 necessary vis-a-vis the closing of the roadway and  
8 the posting of the signs, that would be coordinated  
9 by Prairie Central Cooperative with the Nevada  
10 Township, is that correct?

11 A. Yes, Nevada Township, Livingston County and  
12 Grundy County.

13 Q. Thank you. And, again, that would be the  
14 responsibility of Prairie Central Cooperative, not  
15 the Norfolk Southern?

16 A. Correct.

17 MR. FLYNN: Thank you, Mr. Humes. I appreciate  
18 your answers.

19 JUDGE DUGGAN: Mr. Toliver?

20 MR. TOLIVER: I had a couple of questions.

21

22

1 CROSS EXAMINATION

2 BY MR. TOLIVER:

3 Q. As far as I am looking at Sheet Number 5 of  
4 the plan, it shows that there will be some rail car  
5 storage. I am looking at what would be the northwest  
6 quadrant. It says 25 to 65 rail car capacity on  
7 track one and there is a distance there 300 feet from  
8 the roadway. It is my understanding that the rail  
9 cars will be parked no closer than 300 feet. Is that  
10 what that is saying?

11 A. That's exactly why they added the 300 feet,  
12 was to keep any parked cars 300 feet from the  
13 crossing.

14 Q. And why is that a concern?

15 A. Well, it's my understanding that the law  
16 requires any standing cars to be 300 feet from a  
17 public crossing.

18 Q. The law, what law?

19 A. I can't cite the law. I believe it to be  
20 Norfolk Southern's policy. I also believe it to be  
21 local regulation, but I can't cite to that.

22 Q. And the 300 feet is based upon what? What

1 factors go into determining that number?

2 A. Visibility from approaching traffic to the  
3 closing. It allows motorists to see farther up the  
4 tracks to make sure there is no train coming when  
5 they reach the crossing.

6 Q. Okay. I guess the other question I have is  
7 with reference to the closures. How many residences  
8 are you aware of on the 2100 East road that would be  
9 affected by a monthly closure of the crossing?

10 A. One.

11 Q. And approximately how many vehicles per  
12 day, cars per day, use that crossing?

13 A. We understand 50 cars per day.

14 Q. All right. Do you know of any school buses  
15 or hazardous materials, transport vehicles, that use  
16 the crossing?

17 A. We know of no hazardous materials.  
18 Transporters use the crossing. School busses do not  
19 use 2100E at that location to transport school  
20 children.

21 MR. TOLIVER: I have no further questions.

22 JUDGE DUGGAN: All right.

1 MR. ELLIS: Judge, I do have a follow-up.

2 REDIRECT EXAMINATION

3 BY MR. ELLIS:

4 Q. Mr. Humes, in reference to the number of  
5 vehicles that use the crossing each day, in your  
6 opinion would that include semi trucks that are  
7 entering and leaving the Prairie Central grain  
8 facility?

9 A. Yes.

10 MR. ELLIS: I have nothing further, Judge.

11 EXAMINATION

12 BY JUDGE DUGGAN:

13 Q. Okay. Where did you get this number of 50  
14 vehicles use the crossing a day?

15 A. I believe it came from the Illinois  
16 Commerce Commission.

17 Q. From the Illinois Commerce Commission?

18 A. Yes.

19 Q. From the document marked Petitioner's  
20 Exhibit 1?

21 A. Yes.

22 JUDGE DUGGAN: Mr. Toliver, are you able to

1 verify that?

2 MR. TOLIVER: Yes, Your Honor.

3 JUDGE DUGGAN: That that's correct?

4 MR. TOLIVER: Yes, Your Honor. Yes, the AADT  
5 on the first page of that exhibit, the Exhibit 1,  
6 towards the bottom of the page, AADT 50, that means  
7 50 vehicles per day. AADT is Average Annual Daily  
8 Traffic.

9 BY JUDGE DUGGAN:

10 Q. Thank you. And when you say that school  
11 buses don't use it, your knowledge of that comes from  
12 where?

13 A. Comes from the school district.

14 Q. So you talked with the school district?

15 A. Yes, we have.

16 Q. And your knowledge of hazardous materials,  
17 transporters not using that, what's your source of  
18 that statement?

19 A. We have no knowledge of anyone using it.  
20 We have not seen any hazardous shipment. There is no  
21 businesses or otherwise that are in that area that we  
22 would expect trucks to use that crossing.

1 Q. When you were asked about how many  
2 residences would be affected and you responded one...

3 A. Yes.

4 Q. ..is that a radius of this crossing or more  
5 properly one mile one way or the other?

6 A. The roadway, this 2100E coming from highway  
7 17 to the south of the elevator to Livingstonn Road  
8 about a half mile north of the elevator, is roughly  
9 one -- it is one mile from 17 to Livingston Road.  
10 There is only one resident on that road, excuse me,  
11 on the road and that's up at the northwest quadrant  
12 of the road.

13 Q. I am not sure I followed it. Was that a  
14 half mile on either side?

15 A. It is a half mile -- the existing residence  
16 is a half a mile north of Prairie Central Co-op's  
17 elevators and there are no other houses from that to  
18 the Highway 17 to the south which is a half a mile.

19 Q. And is it your understanding then that  
20 other residences might use the crossings to the west  
21 and the east?

22 A. Yes.

1 Q. Those would be their preferred crossings?

2 A. I wouldn't guess the resident that lives on  
3 that road would always use the existing crossing or  
4 they would go in a different direction, but that's  
5 the only residence on the road between those two  
6 points.

7 Q. Now, I didn't follow at all this 300 feet  
8 distance that Mr. Toliver raised in reference to  
9 Exhibit 5. Can you give me some direction here on  
10 Exhibit 5 what this is reflecting?

11 A. Yes. I know that the railroad has certain  
12 limitations on how close they can park rail cars.

13 Q. Excuse me, I was asking if you could refer  
14 to Exhibit 5.

15 A. Oh, yes, sir.

16 Q. And point out to me what you are referring  
17 to.

18 A. Okay. Exhibit 5 really doesn't cover that  
19 particular issue. It is on the Exhibit 3, the  
20 initial plans, on page 5, sheet 5.

21 Q. That's the last page of Exhibit 3?

22 MR. ELLIS: Judge, I don't think you have them

1 all. There is 19 pages total.

2 Q. That does happen. All right. So it is not  
3 a numbered page, but if you count --

4 A. If you look at the bottom of the sheet, you  
5 will see sheet 5 of 19 sheets on the plan dated July  
6 2, 2010.

7 Q. Okay. So go ahead.

8 A. If you notice the plan just about in the  
9 center, at the elevator location you will see to the  
10 left of the road 2100E, you will see a 300 feet  
11 crossing warning signals to be relocated. That 300  
12 feet from the road is the closest that Prairie  
13 Central and Norfolk Southern would leave cars stored.  
14 They would not have them parked any closer than 300  
15 feet from the 2100E.

16 Q. When you say cars, do you mean railroad  
17 cars?

18 A. Yes.

19 Q. So you are referring to railroad cars...

20 A. On the railroad tracks.

21 Q. ..on the spur?

22 A. Yes, sir.

1 Q. Standing on the spur?

2 A. Yes.

3 Q. They would not be 300 feet from the main  
4 line or what?

5 A. They will not be -- any cars stored in that  
6 area of the spur would not be any closer to 2100E  
7 than 300 feet.

8 Q. Then I also didn't understand again the  
9 reference to two spurs. But then as Mr. Flynn was  
10 pointing out that there is -- I was under the  
11 impression there was only one spur and the second one  
12 is the main line. So can you help me again there?

13 A. There is two sets of tracks. One set of  
14 tracks will be Track Number 1 which will extend  
15 through the crossing. The other set of tracks will  
16 be north of Track Number 1 but it will be east of the  
17 elevator and east of this crossing. There will be  
18 two sets of tracks, private industry tracks, east of  
19 this crossing but only one industry track, set of  
20 tracks, will cross this particular crossing.

21 Q. Okay. Of the two tracks you are talking  
22 about, is one of them the existing main line for

1 Norfolk Southern?

2 A. There will be two sets of tracks crossing  
3 at this crossing, and one will be the Norfolk  
4 Southern main line, the other will be Prairie  
5 Central's Track Number 1.

6 Q. Okay. And you would give us the length of  
7 the second track for some reason?

8 A. I don't know why, but they asked me how  
9 long is the track, yes.

10 Q. So how long is the spur line?

11 A. The Track Number 1?

12 Q. I had a hard time referring to it that way.  
13 Okay. Let's do this. The spur line is Track Number  
14 1? Is the spur line your Track Number 1?

15 A. We are calling the spur line, both tracks,  
16 Track Number 1 is one series of tracks, Track Number  
17 2 are the other series of tracks.

18 Q. Okay. Why are you calling them a series of  
19 tracks then? Because I am getting lost in the  
20 terminology here.

21 A. We are calling the project a spur track for  
22 Prairie Central. This spur track includes two sets

1 of tracks, Track Number 1 and Track Number 2. Track  
2 Number 1 crosses this road crossing. Track Number 2  
3 does not.

4 Q. Now you have me more confused now. Okay.  
5 Is Track Number 1 -- is either Track Number 1 or  
6 Number 2 the track that is presently there for  
7 Norfolk Southern?

8 A. No.

9 Q. So there is the Norfolk Southern track  
10 which exists?

11 A. Yes.

12 Q. And then you are going to build two more  
13 tracks?

14 A. Correct.

15 Q. One of which will cross the road and one of  
16 which will not?

17 A. Correct.

18 Q. And are we here about the one that does not  
19 cross the road?

20 A. No.

21 Q. We are here about the one that crosses the  
22 road?

1           A.    Yes.

2           Q.    Is this railroad right-of-way like 100  
3 feet?  Am I reading this right?

4           A.    The railroad right-of-way west of this  
5 crossing is 100 feet.  The railroad right-of-way east  
6 of this crossing is 90 feet.

7           Q.    And what about at the point of crossing?

8           A.    I am sorry?

9           Q.    What about at the point of crossing?  
10 What's the railroad right-of-way?

11          A.    Well, that's where the railroad  
12 right-of-way runs through the center of the crossing,  
13 50 feet on the west, and then it drops to 40 feet  
14 from the center line of 2100 on the east to 40 feet  
15 north of the center line.  So 90 foot of right-of-way  
16 from the center line of 2100 East, 90 feet, and from  
17 the center line west it is 100 feet.

18          Q.    So it changes there right in the middle of  
19 the road?

20          A.    Right in the middle of the street, sir.

21          Q.    Okay.  Now, the improvements again that you  
22 are talking about, you refer to the fact that there

1 is presently a crossbuck, a crossbar and automatic  
2 flashing lights?

3 A. Yes, sir.

4 Q. Then reference is made to automatic  
5 circuitry. Is that different?

6 A. There is -- to my understanding there is  
7 different circuitry involved because of the  
8 installation of gates at the signals. The existing  
9 signals that are there now do not have gates. So  
10 when they position the north structure for the  
11 signals on the north side, they want to install a  
12 post or a mast that will be able to support the  
13 crossing gates, and it will take different circuitry  
14 because they have to protect both the industrial  
15 track and the main line.

16 Q. Are you using gates and crossbucks as two  
17 different things?

18 A. No, they are two different things.  
19 Crossbucks is a sign. If you see on those crossings,  
20 you will see crossbucks, where the gates actually  
21 lower and raise.

22 Q. So there are no gates there right now?

1           A.    There are no gates there.

2           Q.    All right.  So once again Norfolk Southern  
3   is going to make the upgrades at the crossing.  
4   Prairie is going to pay it and it is going to be  
5   maintained by Norfolk Southern?

6           A.    Correct.

7           Q.    You made a reference in the record early  
8   on, something about 25 to 8?

9           A.    I am sorry?

10          Q.    There was a reference about 25/8.  I don't  
11   know if you meant 25.8, 25 feet 8 inches, 25 feet.

12          A.    Twenty-five feet was the center line.

13          JUDGE DUGGAN:  Okay.  I didn't hear.  Thank  
14   you.

15                    Let me direct this question to  
16   Mr. Flynn first.  I see in the Draft Order a lot of  
17   requirements that Mr. Humes testified to about a  
18   maximum of grade crossing, about people being present  
19   to break the line, etc.  Is there going to be  
20   testimony, further testimony to that?  Do you have  
21   any testimony to that?

22                    I'll tell you what I am real concerned

1 about. My real concern is this, is that I don't see  
2 in the Draft Order that any of those things are  
3 actually ordered. That's just a representation what  
4 it will be. And I don't know, you know, that  
5 those -- the Commission normally orders that type.  
6 We can off the record.

7 (Whereupon there was then had an  
8 off-the-record discussion.)

9 JUDGE DUGGAN: Let's go back on the record  
10 here, and we will let the record show that what we  
11 have been discussing off the record is opinions on  
12 whether the Order should in fact include mandates for  
13 the representations made by Prairie with regard to  
14 notifying emergency management services and the two  
15 applicable counties as well as making arrangements  
16 with the township for road closure and also  
17 addressing the effect of a statute which may limit  
18 the amount of time in which a crossing can be  
19 blocked.

20 And so we will -- I think at this time  
21 we will go ahead and continue with the evidence and  
22 then we will hash those things out first. So do you

1 have -- well, let me see if I am finished with this  
2 witness here.

3 EXAMINATION (Continued)

4 BY JUDGE DUGGAN:

5 Q. Let me ask you this, Mr. Humes. Do you  
6 have any role in stating what the speed of these  
7 trains would be, the spur trains?

8 A. Do I have any role in determining the  
9 speed? Personally, no, I don't have a role in it.  
10 The information ten miles per hour came from the  
11 railroad. They have told me the maximum authorized  
12 speed on a siding is ten miles per hour. That is not  
13 our decision.

14 Q. I am having a hard time hearing you.

15 A. The ten miles per hour came from Norfolk  
16 Southern. They advised me that on a private siding  
17 the maximum authorized speed on that siding is ten  
18 miles per hour.

19 JUDGE DUGGAN: I have no other questions of  
20 this witness.

21 MR. ELLIS: Judge, at this time I would move to  
22 admit into evidence Petitioner's Exhibits 3, 4 and 5.

1 JUDGE DUGGAN: Okay. Any objections?

2 MR. FLYNN: No objection, Your Honor.

3 MR. TOLIVER: No.

4 JUDGE DUGGAN: Showing no objection by either  
5 Staff or Norfolk Southern, the Exhibits 3, 4 and 5  
6 are admitted into evidence.

7 (Whereupon Petitioner's Group  
8 Exhibit 3, 4 and 5 were admitted  
9 into evidence.)

10 MR. ELLIS: And, Judge, I have no further  
11 witnesses. However, I would like the record to  
12 indicate that Paul Ridordy who is Nevada Township  
13 Road Commissioner is present today and also David  
14 Winters who is the Livingston County Superintendent  
15 of Highways. I am under the understanding that  
16 Mr. Bowing may want to put some type of statement on  
17 the record. Do you want to come forward, sir?

18 JUDGE DUGGAN: Why don't we just go ahead and  
19 swear him in. I have got a question for him.

20 (Whereupon the witness was duly  
21 sworn by Judge Duggan.)

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PAUL RIBORDY

called as a witness on behalf of Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q. Would you please state your name for the record.

A. Paul Ribordy, R-I-B-O-R-D-Y.

Q. All right. And, Mr. Ribordy, what is your official job title?

A. Highway Commissioner of Nevada Township.

Q. Nevada?

A. Nevada.

Q. Where is that located?

A. North of Odell, concentrated north of Odell, Illinois.

Q. And in what county?

A. Livingston County.

Q. And in what capacity or understanding are you appearing here today? I would just ask you to sort of proceed in the narrative. Just sort of tell

1 your story.

2 A. I was here on behalf of the township.  
3 Prairie Central wants to open up a rail site.

4 Q. Do you have any opposition to the proposal  
5 of Prairie Central?

6 A. No, no, I don't.

7 Q. And you had discussions with Prairie  
8 Central about their project?

9 A. Yes.

10 Q. You feel that you have been adequately  
11 informed about the project?

12 A. Yeah, we have been working on this for a  
13 year or so, Mark and I, yeah.

14 Q. By Mark you mean Mr. Heil?

15 A. Yes.

16 MR. ELLIS: At this time I have no other  
17 questions.

18 EXAMINATION

19 BY JUDGE DUGGAN:

20 Q. I didn't get the spelling of your last  
21 name. One more time, please?

22 A. R-I-B-O-R-D-Y.

1 Q. The subject crossing, how do you designate  
2 the subject crossing, the area we are talking about?  
3 What is your reference to it? What do you call it?

4 A. Sunbury rail crossing.

5 Q. And is Sunbury railroad crossing in the  
6 jurisdiction of Nevada Township?

7 A. Yes.

8 Q. So to your knowledge the county is not  
9 responsible for that crossing?

10 A. No.

11 Q. You are responsible for that crossing?

12 A. I am responsible, yes. Nevada Township is.

13 Q. Yeah, I am sorry, the township, okay. And  
14 how much of that road north and south of the track do  
15 you have jurisdiction over?

16 A. Half a mile each direction north and south.

17 Q. I heard half a mile each direction going  
18 south?

19 A. North and south.

20 Q. So if the road -- if the rail cars were  
21 going to be sitting on that spur north of the  
22 existing Norfolk Southern crossing, where do you

1 think would be an appropriate point to close that  
2 road if you were to reclose it?

3 A. If I was going to have it closed, it would  
4 be at the very end of each intersection, 3300 North  
5 which is a mile to the north, that crossing there,  
6 and the one south is that Route 17, half a mile  
7 south, at the end of each mile.

8 Q. But that is not in your jurisdiction?

9 A. Yes, on my road there.

10 Q. Okay. I thought that you said your  
11 jurisdiction ended a half mile north and a half mile  
12 south of the road?

13 A. Right, it does.

14 Q. But you just said the road closing should  
15 be a mile north and a mile south?

16 A. Half a mile north and half a mile south of  
17 the crossing, at the end of each half a mile.

18 Q. Okay. And you understand that under this  
19 plan or, excuse me, under what's proposed -- excuse  
20 me, you have been sitting here in the hearing room  
21 today, you have heard all the discussions, correct?

22 A. Yes.

1 Q. And what's been discussed is consistent  
2 with your information ahead of time, right?

3 A. Yes.

4 Q. Do you have other staff or are you just a  
5 sole commission office?

6 A. I have four trustees, a supervisor and a  
7 clerk.

8 Q. As far as people who are going to actually  
9 go out and do work and post signs?

10 A. Just as needed.

11 Q. You mean you hire them as needed?

12 A. Yes. At places like this we are talking  
13 about, this is the agreement now me and Prairie  
14 Central have that it is going to be Prairie Central's  
15 responsibility to close this road. The signing is  
16 then addressed.

17 Q. Yeah. Do you have the personnel to put up  
18 whatever signing may be determined to be the required  
19 signage?

20 A. Yes.

21 Q. You do have. And you are willing to commit  
22 the township, on behalf of the township as the road

1 commissioner, is that right?

2 A. Uh-huh.

3 Q. To commit to post the signage as necessary  
4 to close the road as required?

5 A. Right, yes.

6 Q. Would you consult with your county  
7 engineers on the proper signage?

8 A. Yes.

9 Q. You have access to IDOT for consultation on  
10 proper signage?

11 A. Through the county engineer, yes.

12 Q. What type of notice would you need in order  
13 to take the proper steps to have that road closed?

14 A. At least 24 hours.

15 Q. Is there a contact person in your absence?

16 A. Yeah.

17 Q. I am sorry?

18 A. Yes.

19 Q. Who is the alternative contact person?

20 A. My wife.

21 Q. Oh, okay. I mean, say you were out of  
22 town.

1           A.    Okay.  I do have a person that does all  
2   that.  Edelstein (sp) is the guy's name.

3           Q.    So you would agree to have --

4           A.    Or I could have the supervisor do it also.

5           Q.    You would agree to have some contact  
6   information on file with Prairie that could be relied  
7   upon to conduct their operations?

8           A.    Uh-huh, yes.

9           JUDGE DUGGAN:  I don't have any other  
10   questions.  Do you have anything?

11          MR. FLYNN:  I don't, Your Honor.

12          JUDGE DUGGAN:  Okay.  Do you have another  
13   witness?

14          MR. ELLIS:  I do not.

15          JUDGE DUGGAN:  Was there somebody on behalf of  
16   the County?

17          MR. ELLIS:  Dave Winters is here.  He is the  
18   county superintendent of highways, Livingston County.

19          JUDGE DUGGAN:  All right.  So he is not --

20          MR. ELLIS:  He is not a party to this  
21   proceeding.

22          JUDGE DUGGAN:  Right.  I was just going to ask

1 the same question I might ask emergency people, as to  
2 what type of notice they needed, if 24-hour notice is  
3 good.

4 MR. ELLIS: Again, Mr. Heil has represented  
5 that it would be three or four days advance notice  
6 when they are going do the closing.

7 JUDGE DUGGAN: I didn't hear that. You would  
8 give notice three or four days in advance?

9 MR. ELLIS: I believe that's --

10 JUDGE DUGGAN: I did say, yeah, we should  
11 probably put that on the record.

12 MR. ELLIS: Okay. Recall Mr. Heil.

13 JUDGE DUGGAN: Okay.

14 MARK HEIL

15 recalled as a witness on behalf of Petitioner, having  
16 been previously duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ELLIS:

20 Q. Mr. Heil, I remind you you are still under  
21 oath. You were present; you heard the question about  
22 how much advance notice Prairie Central would have

1 prior to a loading operation. Would you again state  
2 for the record how long that period would be?

3 A. We would expect to notice three or four  
4 days ahead of time that a train would be coming our  
5 direction and then we would give notice to the proper  
6 authorities.

7 Q. And when you talk about the property  
8 authorities, that would be the emergency services  
9 operations for Livingston County?

10 A. Yes.

11 Q. And also for Grundy County?

12 A. Yes.

13 MR. ELLIS: I have no further questions.

14 EXAMINATION

15 BY JUDGE DUGGAN:

16 Q. And you have also indicated that you are  
17 projecting this one train per month, correct?

18 A. That's what we are expecting, one train per  
19 month.

20 Q. Is that on an average throughout the year?

21 A. Yes.

22 Q. Can you foresee it being more than once a

1 month?

2 A. Yes.

3 Q. What's the maximum you can foresee it being  
4 per month?

5 A. We did very well with it, three to four per  
6 month. I would expect it to be a time where when we  
7 are busy, two to three per month and then we will go  
8 months where we won't do anything.

9 Q. What's your busy months?

10 A. It just depends on the year. It could be  
11 any time throughout the year; it just depends on the  
12 way the market goes. But in our budgeting, when we  
13 budgeted for this project, we were projecting about  
14 three to four million bushels per year which would be  
15 about 12 trains. That's how we looked at it. And  
16 that's -- we have a similar facility at our Pontiac,  
17 Illinois, location. That's a similar type. When we  
18 are busy, we are busy. When we are not, we are not.

19 JUDGE DUGGAN: Okay, I don't have any other  
20 questions. We can still let the witnesses go and  
21 mark the record heard or taken or not, depending on  
22 our conversations. So if no one has any other

1 evidence, then let's go -- we will go off the record.

2 (Whereupon there was then had an  
3 off-the-record discussion.)

4 JUDGE DUGGAN: Go back on the record. Okay.

5 Again show that we had an off-the-record discussion  
6 revolving again around the fact that Prairie has  
7 informed the Commission of its intention that as a  
8 practical matter that this crossing or, excuse me,  
9 that they will have railroad cars over Sunbury Road  
10 for as much as 15, 16 hours at a time and as much as  
11 four hours a month. However, we have done some  
12 consulting off the record and determined that as long  
13 as the township road commissioner, whoever has  
14 jurisdiction of the road, his testimony is that it is  
15 the township road commissioner, elects to close that  
16 road, then he can do that on a temporary basis  
17 without seeking permission of the Commission, and at  
18 that point the statute of limiting the time that the  
19 road can be blocked becomes inapplicable. That seems  
20 to be the consensus of the off-the-record discussion.  
21 And that the other matters that Prairie has offered  
22 to do may or may not be Prairie's obligation once the

1 road is closed by the commissioner, but they have  
2 offered to do so and we will get an Order drafted to  
3 properly reflect everybody's concerns.

4 So with that -- oh, everybody is going  
5 to waive ex parte communications with the concept  
6 that any e-mails that are CC'd to everybody, except  
7 communications to me will only come through Aaron.  
8 Is that understood? Is that agreeable?

9 MR. ELLIS: Yes, Your Honor.

10 MR. FLYNN: Yes, sir.

11 JUDGE DUGGAN: Anybody have anything else?

12 MR. FLYNN: Nothing further, Your Honor.

13 JUDGE DUGGAN: Okay, and --

14 MR. FLYNN: Your Honor, the question on the  
15 Proposed Order, so is it contemplated we will come up  
16 with language to communicate that to Aaron? Is that  
17 what the understanding is?

18 JUDGE DUGGAN: Right. I would just as soon  
19 have it come through Aaron. Like I said, you guys  
20 would all be CC'ing everybody and then that way you  
21 will know what Aaron -- and Aaron won't send me  
22 anything that has not been viewed by everybody.

1           MR. FLYNN: I understand. And then if the  
2 parties are in agreement about the language and the  
3 entire revised Proposed Agreed Order that you  
4 anticipate will come out of that, then in that  
5 communication we could also then explicitly waive a  
6 Proposed Order in order to expedite the issuance of  
7 the Order? Is that what's contemplated? I am  
8 asking.

9           JUDGE DUGGAN: I think what's contemplated is  
10 that we are -- okay, I believe we are going to agree  
11 to waive any formal requirement of the Proposed  
12 Order, any formal Proposed Order, and what we are  
13 doing is a joint project to get an Order that we can  
14 all say is agreeable.

15                   Okay. So is that -- is everybody  
16 agreeing to waive any formal requirements of a  
17 Proposed Order?

18           MR. FLYNN: Your Honor, the only reason I am  
19 hesitating is I don't know what the Order says yet.  
20 So before I waive any rights of my client, I don't  
21 know what I am waiving. In the worse sense, if there  
22 was language in this proposal, which I do not

1 anticipate in any way, shape or form, that there  
2 would be objectionable language in there, I certainly  
3 wouldn't want to waive a right to see a Proposed  
4 Order. I don't anticipate that in any way being an  
5 issue because of the cooperation and the direction we  
6 are going and because of the issues we have  
7 discussed.

8 JUDGE DUGGAN: How about this? I don't know  
9 how binding it is, but I don't intend to send  
10 anything to the Commission that is not agreed upon by  
11 all parties. If I get your Order, I may make  
12 changes, suggestions, and you will see if you agree  
13 or not. If we don't agree, maybe we are open, I  
14 don't know. But I don't know if that satisfies your  
15 requirements or satisfies your needs or not.

16 MR. FLYNN: Your Honor, that representation is  
17 more than satisfactory.

18 JUDGE DUGGAN: Okay. And whether it is agreed  
19 or not will I guess be documented by e-mails.

20 MR. FLYNN: Yes, Your Honor.

21 MR. ELLIS: Yes, sir.

22 JUDGE DUGGAN: With that then we are waiving

1 the formal Proposed Order requirement with the  
2 understanding that I will not submit anything to the  
3 Commission that is not agreed by the parties.

4 Now, Nevada is a party but they are  
5 not here. I don't know if they need even put in a  
6 formal appearance.

7 MR. TOLIVER: They didn't have counsel present.

8 JUDGE DUGGAN: So they didn't officially appear  
9 but a witness was presented on their behalf. All  
10 right. Can we waive a Proposed Order if they are not  
11 here? Or they didn't appear so --

12 MR. TOLIVER: I can include the county engineer  
13 via the county engineer and the township on any  
14 discussions or correspondence.

15 JUDGE DUGGAN: Is there not a Proposed Order  
16 requirement in this situation? Okay.

17 MR. FLYNN: I believe the rules are every Order  
18 there is the right to a Proposed Order.

19 JUDGE DUGGAN: The right unless waived.

20 MR. FLYNN: Correct.

21 JUDGE DUGGAN: I know Steve is, as you pointed  
22 out one time, said sometimes he would let townships

1 who can't afford counsel really kind of make  
2 representation on behalf of them. Possibly if we had  
3 Mr. Ribody file something saying he waived a Proposed  
4 Order on behalf of the township, that might satisfy  
5 us, if someone want to contact him and ask him if he  
6 can do that. Is that your ball?

7 MR. ELLIS: I will do that, Your Honor, with  
8 the assistance of Staff.

9 JUDGE DUGGAN: Yeah, because you are going to  
10 have to help him put it on file.

11 MR. TOLIVER: Right, right.

12 JUDGE DUGGAN: You are going to have to help  
13 him draft it, too. Oh, well.

14 Anything else?

15 MR. FLYNN: Nothing further, Your Honor.

16 MR. ELLIS: No, Your Honor.

17 JUDGE DUGGAN: Aaron?

18 MR. TOLIVER: No, Your Honor.

19 JUDGE DUGGAN: Okay, very well, very good. We  
20 will mark the record heard and taken.

21 HEARD AND TAKEN

22