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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)

BNSF RAILWAY COMPANY)

vs.)

VILLAGE OF SUGAR GROVE, SUGAR) No. T15-0054
GROVE TOWNSHIP, AND CITY OF)
AURORA)

Petition for an Order of the)
Illinois Commerce Commission)
authorizing the installation)
of additional railroad track)
at the grade crossings)
inventoried as DOT #069 721U)
(MP 42.91), DOT #069 720M (MP)
42.00), DOT #069 719T (MP)
41.41), DOT #069 718L (MP)
40.24), and DOT #069 717E (MP)
39.36) at what are commonly)
known as Gordon Lane, Barnes)
Road, Prairie Street, Edgelawn)
Drive, and Terry Avenue in or)
near Sugar Grove and Aurora,)
IL and for determination of)
suitable and appropriate)
warning and traffic devices at)
or near the crossings.)

Chicago, Illinois
June 10, 2015

Met pursuant to notice at 10:00 a.m.

BEFORE:

Latrice Kirkland-Montague, Administrative Law Judge

1 APPEARANCES:

2 DALEY MOHAN GROBLE, by
3 MR. ROBERT J. PRENDERGAST
4 55 West Monroe Street, Suite 1600
5 Chicago, Illinois 60603

6 Appearing on behalf of BNSF Railway Company;

7 MR. BRIAN VERCRUYSSSE
8 527 East Capitol Avenue
9 Springfield, Illinois 62701

10 Appearing on behalf of Staff of the
11 Rail Safety Section;

12 HISKES DILLNER O'DONNELL MAROVICH & LAPP LTD., by
13 MR. TIMOTHY C. LAPP
14 16231 Wausau Avenue
15 South Holland, Illinois 60473

16 Appearing on behalf of the City of Aurora.

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21 SULLIVAN REPORTING COMPANY, by
22 Christine L. Kowalski, CSR
License No. 084-004422

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I N D E X

| <u>Witnesses:</u> | <u>Direct</u> | <u>Cross</u> | <u>Re-</u> <u>direct</u> | <u>Re-</u> <u>cross</u> | <u>By</u> <u>Examiner</u> |
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| Calvin Nutt | 6 | 44 | | | |
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E X H I B I T S

| <u>Number</u> | <u>For Identification</u> | <u>In Evidence</u> |
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| Petitioner's Exhibits A through J | | |
| | 4 | 43 |

1 (Whereupon, Petitioner's
2 Exhibits A through J were
3 marked for identification, as
4 of this date.)

5 JUDGE KIRKLAND MONTAQUE: By the power vested
6 in me by the State of Illinois and the Illinois
7 Commerce Commission, I now call Docket No. T15-0054.
8 This is in the matter of BNSF Railway Company versus
9 Village of Sugar Grove, Sugar Grove Township, and the
10 City of Aurora.

11 And the BNSF has filed a Petition for
12 an Order of the Commission authorizing the
13 installation of additional railroad track at the
14 grade crossings commonly known as Gordon Lane, Barnes
15 Road, Prairie Street, Edgelawn Drive, and Terry
16 Avenue in or near Sugar Grove and Aurora, Illinois.

17 May I have appearances, please,
18 starting with the Petitioner.

19 MR. PRENDERGAST: Yes. Good morning, your
20 Honor. Bob Prendergast, P-r-e-n-d-e-r-g-a-s-t, from
21 the law firm of Daley Mohan Groble, 55 West Monroe
22 Street, Suite 1600, Chicago 60603. My phone is

1 (312) 422-0799. And with me today, who will be the
2 witness for BNSF, is Mr. Calvin Nutt.

3 JUDGE KIRKLAND MONTAQUE: What's the last name?

4 MR. PRENDERGAST: Nutt, N-u-t-t.

5 JUDGE KIRKLAND MONTAQUE: And Staff.

6 MR. VERCRUYSSSE: Thank you, your Honor. Good
7 morning. Brian Vercruysse, V-e-r-c-r-u-y-s-s-e,
8 representing Staff of the Rail Safety Section of the
9 Commission, address is 527 Capitol Avenue,
10 Springfield, Illinois 62701. Phone number is
11 (312) 636-7760. Thank you.

12 JUDGE KIRKLAND MONTAQUE: Thank you. And let
13 the record reflect that we do not have -- we do not
14 have representatives from the Village of Sugar Grove,
15 Sugar Grove Township, or the City of Aurora. They
16 may appear at some time; and if so, we will get an
17 appearance then.

18 But in the meantime, I will give you
19 the floor, Mr. Prendergast, to present the Petition.

20 MR. PRENDERGAST: Okay. Your Honor, we
21 would -- I would call BNSF Manager of Public
22 Projects, Mr. Calvin Nutt, to the -- to testify.

1 JUDGE KIRKLAND MONTAQUE: Okay. Could you
2 please raise your right hand.

3 (Witness sworn.)

4 JUDGE KIRKLAND MONTAQUE: Okay. You may
5 proceed.

6 MR. PRENDERGAST: Thank you.

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

10 DIRECT EXAMINATION

11 BY

12 MR. PRENDERGAST:

13 Q Could you state your name for the record
14 and spell your last name, please.

15 A It's Calvin Nutt, last name N-u-t-t.

16 Q Okay. Are you currently employed?

17 A Yes, by BNSF Railway Company.

18 Q Okay. And what's your title with BNSF
19 Railway Company?

20 A I'm the Manager of Public Projects for the
21 states of Illinois, Wisconsin, and Iowa.

22 Q For the record, could you give us a little

1 background information about your education.

2 A Yes. I've got a Bachelor's degree in Civil
3 Engineering -- Bachelor's of Science in Civil
4 Engineering from the University of Illinois and a
5 Master's of Science in Civil Engineering from the
6 University of Illinois.

7 Q Okay. And does the University of Illinois
8 have a rail transportation program?

9 A Yes, they do.

10 Q Okay. And did you participate in that in
11 your studies at the University of Illinois?

12 A Yes, I did, both in undergrad and graduate
13 school.

14 Q When did you begin working for the BNSF?

15 A 2012. I started as a management trainee,
16 working out of Kansas City, focused on new customer
17 projects in the Bakken Oil Shale, North Dakota
18 region.

19 Q Okay. And as part of those
20 responsibilities, did you review and analyze track
21 construction plans on installations of trackage?

22 A Yes, I did.

1 Q And what was your next position with the
2 BNSF?

3 A I was a protect engineer for new
4 construction out of Seattle, Washington. I handled
5 siding and double track projects throughout the state
6 of Washington, Oregon, and part of Idaho.

7 Q Okay. And in the course of your
8 responsibilities in that position, did you become
9 familiar with the education -- or the evaluation and
10 interpretation of project engineering plans?

11 A Yes, I did.

12 Q And did you also have any field experience
13 with regard to that job?

14 A Yes, surveying, construction management,
15 total job management throughout design as well. It
16 went from design through construction.

17 Q And did that involve the handling of
18 problems, adjustments, and other issues that could
19 come up in the course of a construction project?

20 A Yes, it did.

21 Q Okay. And your current position is Manager
22 of Public Projects?

1 A Yes.

2 Q And --

3 JUDGE KIRKLAND MONTAQUE: Why don't we -- off
4 the record.

5 (Whereupon, a discussion was had
6 off the record.)

7 JUDGE KIRKLAND MONTAQUE: Before we get
8 started, we do have a representative from the -- is
9 it Aurora?

10 MR. LAPP: City of Aurora. Timothy Lapp,
11 L-a-p-p.

12 JUDGE KIRKLAND MONTAQUE: Okay. And give us
13 your address, please.

14 MR. LAPP: Sure. 16231 Wausau, South Holland,
15 Illinois. And the firm is Hiskes, H-i-s-k-e-s,
16 Dillner, & O'Donnell.

17 JUDGE KIRKLAND MONTAQUE: Thank you.

18 And, Mr. Prendergast, you may continue
19 with your direct examination.

20 MR. PRENDERGAST: Okay. Thank you, your Honor.

21 BY MR. PRENDERGAST:

22 Q Could you give us an account of what your

1 general duties and responsibilities are as Manager of
2 Public Projects?

3 A Yeah. We perform crossing evaluations with
4 government agencies and road authorities, draft
5 agreements with governmental agencies and road
6 authorities, and stipulated agreements for at-grade
7 crossings, bridge agreements, construction
8 agreements, and we also review FRA quiet zones.

9 Q And how many states do you cover as Manager
10 of Public Projects?

11 A Three states, being Illinois, Wisconsin,
12 and Iowa.

13 Q Okay. And is the project in question, is
14 that within the territory that you're assigned as
15 Manager of Public Projects for BNSF?

16 A Yes, it is.

17 Q Okay. Now, considering these positions, do
18 you have experience in dealing with various crossing
19 designs?

20 A Yes, I do.

21 Q Okay. And do you have -- have you been
22 involved in many crossing projects, including the

1 assessment of engineering plans?

2 A Yes, I have.

3 Q Have you also been involved in the
4 evaluation of grade crossings?

5 A Yes, I have.

6 Q And have you participated in onsite
7 evaluations with the Illinois Commerce Commission?

8 A Yes, I have.

9 Q Okay. And have you, in the course of your
10 experience, evaluated crossings for consideration of
11 operational and safety issues?

12 A Yes, I have.

13 Q Are you familiar with the project that's
14 the subject of the Petition that we're here for
15 today?

16 A Yes, I am.

17 Q Okay. And is that project to build a
18 double track through a certain area near Aurora and
19 Sugar Grove?

20 A Yes, it is.

21 Q And what -- and that additional track,
22 would that be used as a mainline track?

1 A Yes, it will. It will connect two sidings,
2 convert them to mainline, and then they will be
3 mainline, all the new track.

4 Q And if approved, how many different
5 crossings will the track run through?

6 A It will impact five new crossings.

7 Q Okay. And they are at- -- all at-grade
8 crossings?

9 A That's correct.

10 Q Could you give us a rough idea, either
11 geographically or by milepost, how big of an area
12 that we're -- the overall project concerns?

13 A The new track is approximately 5 miles
14 long. It connects two tracks that are about a mile
15 each. So the new double track segment will be a
16 total of about 7 miles long.

17 Q Okay. And the part of the project that is
18 not new track, what's currently there at this point?

19 A There's an existing siding on the east side
20 of Sugar Grove and then an existing siding on the
21 west side of Aurora.

22 Q Okay. And, for the record, are the

1 crossings that are involved with regard to the
2 proposed second mainline track project Gordon Road in
3 Sugar Grove?

4 A Yes.

5 Q Is that the first one?

6 A Correct.

7 Q Okay. And going from -- this is going from
8 west to east?

9 A That's correct.

10 Q And the second grade crossing that's
11 involved is Barnes Road?

12 A That's correct.

13 Q And then the next three crossings that are
14 involved are Prairie Street, Edgelawn, and Terry
15 Avenue in the city of Aurora?

16 A That's correct.

17 Q And as to what currently goes through these
18 crossings, is there just a single mainline at each of
19 these crossings?

20 A That's correct.

21 Q And what direction does the single mainline
22 generally run, you know, by compass?

1 A It's generally east/west.

2 Q Okay. Is there a --

3 A Or northwest/southeast a little bit.

4 Q Okay. At different points?

5 A At different points, correct.

6 Q Okay. Now, the proposed second mainline,
7 where is that going to be related -- located in
8 relationship to the existing single mainline?

9 A It's approximately 20 feet to the north of
10 the existing single mainline.

11 Q What's the current level of warning devices
12 for each of these crossings?

13 A There's automatic flashing lights and gates
14 with a bell and constant warning time circuitry.

15 Q And what's the current volume of train
16 traffic over these crossings on a daily basis?

17 A There's an average of 31 trains per day.

18 Q And what's the time table speed, the
19 maximum speed, for proceeding through these crossings
20 at this point in time?

21 A On the single mainline, it's 60 miles per
22 hour at all the crossings except at Terry Avenue

1 where it is 40 miles per hour right now.

2 Q Now, with regards to the BNSF right-of-way
3 in this area, this 7-mile area, is it sufficiently
4 wide enough and big enough in size to accommodate the
5 second mainline without having to acquire additional
6 property?

7 A Yes.

8 Q Okay. It can all be built on existing --

9 A The second mainline --

10 Q -- right-of-way?

11 A -- can be built on existing right-of-way,
12 that's correct.

13 Q Now, has BNSF had any engineering work done
14 with regard to the project?

15 A Yes.

16 Q Okay. And are -- take a look at Exhibits A
17 through E, has BNSF developed a crossing plan and
18 profile for each of the five involved crossings?

19 A Yes. That's correct.

20 Q Okay. And who were they prepared by?

21 A They were prepared by TranSystems
22 Engineering. They're a licensed qualified

1 engineering firm that works for us regularly in the
2 state of Illinois.

3 Q Are they regarded as competent and judged
4 as generally a well-regarded --

5 A Yes.

6 Q -- engineering firm?

7 A Yes.

8 Q Do you rely on their expertise to provide
9 accurate and detailed roadway plans and profiles for
10 crossings such as are involved in this case?

11 A Yes.

12 Q Okay. And do you -- based upon your
13 background and experience in the field of civil
14 engineering, are you qualified to read, understand,
15 and provide testimony with regard to the road plans
16 and profiles?

17 A Yes.

18 Q Okay. Now, the first crossing that's
19 affected by the proposed project would be Gordon Road
20 or Gordon Lane?

21 A Correct.

22 Q And what railroad milepost is that located

1 at?

2 A It's Milepost 42.19.

3 Q Okay. I'm going to ask you to take a look
4 at what's previously been marked as Exhibit F.

5 A Okay.

6 Q Is that a true and accurate aerial
7 portrayal of the crossing where Gordon Road meets
8 BNSF's track?

9 A Yes, it is.

10 Q And have you personally been in that area?

11 A Yes, I have.

12 Q Okay. Were you -- was there a meeting with
13 regard to these five crossings that occurred on about
14 February 16, 2015?

15 A Yes, there was.

16 Q Okay. And what was the purpose of the --
17 of the meetings out there?

18 A We discussed the proposed project onsite
19 and then we evaluate the project in terms of the
20 approaches, side lines, roadway contours, and safety
21 of the crossing with our -- our proposed project.

22 Q And who -- is that sometimes known as a

1 diagnostic study?

2 A Yes, it is.

3 Q And who was present at the diagnostic study
4 on that date?

5 A From BNSF, myself, Andrew Wordekemper as
6 the project engineer, Nathan Waller was at that time
7 an Assistant Director of Public Projects, Brian
8 Vercruysse with the ICC was there, and then there
9 were representatives from each of the road
10 authorities depending on which road we were at.

11 So at Gordon, Anthony Speciale from
12 the Village of Sugar Grove; Greg Huggins was from
13 Sugar Grove Township when we were at Barnes; and then
14 Eric Gallt from the City of Aurora was there.

15 In addition to that, we had Tammy
16 Wagner from the Federal Railroad Administration;
17 Brian Misiora from TranSystems, our consultant; and
18 then when we were at Gordon, Michelle Piotrowski from
19 Engineering Enterprises also represented the Village
20 of Sugar Grove.

21 Q And was the representative from the Federal
22 Railroad Administration out there because part of the

1 area involved is a quiet zone?

2 A That's correct. All of the crossings
3 except Gordon Road are involved in a FRA quiet zone.

4 Q And did the group visit all five crossings
5 that day?

6 A Yes, we did.

7 Q Now, I'm going to show you what's been -- I
8 asked you to take a look at Exhibit F again.

9 A Mm-hmm.

10 Q And is Gordon Road shown in that --

11 A Yes, it is.

12 Q -- portrayal?

13 And is that the road that runs
14 vertical across the middle of the exhibit?

15 A Yes. It runs in a north/south direction.

16 Q Is it a two-lane paved highway?

17 A Yes, it is.

18 Q Okay. And who is the road authority?

19 A That's the Village of Sugar Grove.

20 Q Okay. And the crossing at the intersection
21 of BNSF's tracks and Gordon Road, that's shown in the
22 middle of Exhibit F?

1 A Yes, it is.

2 Q And, for the record, what's the -- what's
3 that crossing inventoried as as part of the FRA
4 database?

5 A It's DOT No. 069 721U.

6 Q Okay. Now, I'd ask you to take a look at
7 what's been previously marked as Exhibit A. Is that
8 a true and accurate copy of the road plan and profile
9 for Gordon Road?

10 A Yes, it is.

11 Q And that was prepared by TranSystems
12 Engineering at BNSF's request?

13 A That's correct.

14 Q And does that generally lay out the plans
15 from an engineering perspective for adding additional
16 track through the crossing?

17 A Yes.

18 Q Okay. Could you take a moment and, you
19 know, maybe in a sentence or two explain what changes
20 or improvements are contemplated at that crossing?

21 A It's an addition of a second mainline track
22 20 feet north of the existing mainline with a

1 relocation -- well, pending ICC approval -- of a
2 relocation of the existing flashing light and gate
3 signals to the north side of the new track, and
4 provided that the ICC approves that constant warning
5 time is an appropriate warning device, we would
6 install new bungalow and controller -- new circuitry
7 at this crossing as well.

8 Q Okay. Is any paving work contemplated with
9 regard to Gordon Road?

10 A Yes, paving work as required to tie in to
11 the existing pavement given elevations changes at the
12 location of the new track.

13 Q Okay. And is that the area shown in
14 green --

15 A Yes.

16 Q -- on Exhibit A?

17 A That's correct.

18 Q Okay. And just from a perspective -- this
19 is laid out just a little differently from Exhibit F,
20 is that correct, as far as the north/south references
21 and --

22 A That is correct. The north arrow is turned

1 to the left here.

2 Q So the left side of the page would be north
3 direction?

4 A That's correct.

5 Q And is it contemplated that the asphalt
6 work would be done at BNSF's cost and expense?

7 A That's correct.

8 Q And if approved, would the improvements set
9 forth on Exhibit A -- would the actual work be done
10 in accordance with those plans?

11 A That's correct.

12 Q All right. Now, I'm going to ask you to
13 take a look at Exhibit G. Is that a true and
14 accurate portrayal of an aerial view of Barnes Road?

15 A Yes, it is.

16 Q Okay. And what railroad milepost is that
17 for the record?

18 A It's Milepost 42.0.

19 Q And this was one of the areas that you
20 visited on the diagnostic?

21 A That's correct.

22 Q And what direction does Barnes Road run?

1 A It generally runs in a north/south
2 direction.

3 Q Is that also a two-lane paved highway?

4 A That's correct.

5 Q And who's the road authority for
6 Barnes Road?

7 A Sugar Grove Township.

8 Q Okay. And the crossing, is that shown in
9 the middle of the page on Exhibit G?

10 A Yes, it is.

11 Q And, for the record, what is the DOT
12 inventory number for that?

13 A DOT No. 069 720M.

14 Q Now, I'm going to ask you to take a look at
15 Exhibit B, if you will. And could you -- is that a
16 true and accurate copy of the road plan and profile
17 prepared by TranSystems Engineering for Barnes Road?

18 A That's correct.

19 Q And does that lay out plans from an
20 engineering perspective as to what would be involved
21 in adding a second track at that crossing?

22 A Yes, it is.

1 Q If you could take a moment and just
2 generally explain what's the contemplated changes and
3 improvements if the project is approved.

4 A Yes. It's another 20 feet to the north of
5 the existing mainline, we would add an additional
6 track; paving as required to match the existing
7 pavement; and then, if approved, relocation of the
8 flashing lights and gates with the installation of
9 new constant warning time circuitry.

10 And then the other thing that is shown
11 is relocation or replacement of the center median
12 which is there and will be impacted by either the new
13 track or the paving required in order to match the
14 existing roadway.

15 Q And if approved, does Exhibit -- or would
16 the construction work done out at Barnes Road be in
17 accordance with the road profile and plan set forth
18 in Exhibit B?

19 A Yes.

20 Q All right. Now, what's the next crossing
21 going west to east that's impacted by the project?

22 A That would be Prairie Street.

1 Q And is that in the city of Aurora?

2 A Yes, it is.

3 Q Okay. And what railroad milepost is that
4 located at?

5 A It's Milepost 41.41.

6 Q And I'm going to ask you to take a look at
7 Exhibit H. And is that a true and accurate portrayal
8 of an aerial view of the grade crossing of Prairie
9 Street located in the city of Aurora?

10 A Yes, it is.

11 Q And does that run -- does Prairie Street
12 run compass-wise in an east/west direction?

13 A Generally, yes.

14 Q Okay. Is it a two-lane paved highway?

15 A Yes.

16 Q And who's the road authority?

17 A The road authority is the City of Aurora.

18 Q And at the -- is the crossing -- the
19 Prairie Street shown approximately in the middle of
20 Exhibit H?

21 A Yes, it is.

22 Q And, for the record, what's the DOT

1 inventory number for Prairie Street?

2 A It is 069 719T.

3 Q I'm going to ask you to take a look at
4 what's been previously marked as Exhibit C. And is
5 that a true and accurate copy of the road plan and
6 profile prepared by TranSystems for the Prairie
7 Street crossing?

8 A Yes, it is.

9 Q And this -- was this another -- was this
10 crossing also visited on the day of the diagnostic?

11 A Yes, it was.

12 Q And what direction or -- strike that.

13 Does Exhibit C provide a layout of the
14 plans from an engineering perspective for adding a
15 proposed additional track to the crossing?

16 A Yes.

17 Q Okay. Could you give us an idea of what's
18 set forth on Exhibit C as far as the proposed changes
19 and improvements to the crossing are concerned?

20 A Yes. It would be an additional track
21 20 feet parallel to the existing mainline to the
22 north -- in this case, it is somewhat to the

1 northeast of the existing mainline -- and then if
2 deemed appropriate, relocation of the existing
3 flashing lights and gates, installation of new
4 constant warning time circuitry, and then pavement as
5 necessary to match existing given the new elevation
6 of the roadway at the additional track.

7 Q Okay. And is the area of the anticipated
8 paving shown in green on Exhibit C?

9 A Yes, it is.

10 Q Okay. And if approved, would the work
11 performed at the Prairie Street crossing
12 substantially be in accordance with the road plan and
13 profile set forth in Exhibit C?

14 A Yes.

15 Q Now, what's the next crossing going east to
16 west that's impacted by the project?

17 A It would be Edgelawn Drive.

18 Q And what's the railroad milepost for
19 Edgelawn Drive?

20 A Milepost 40.24.

21 Q Okay. I'm going to ask you to take a look
22 at Exhibit I and ask you is that a true and accurate

1 portrayal from an aerial point of view of the
2 Edgelawn Drive crossing?

3 A Yes.

4 Q And is that located in the city of Aurora?

5 A Yes.

6 Q And is Edgelawn Drive shown approximately
7 in the middle of Exhibit I running vertically?

8 A Yes --

9 Q Okay.

10 A -- in a north/south direction.

11 Q And is that a two-lane paved highway?

12 A Yes, it is.

13 Q And does Exhibit I generally show what the
14 area looks like at this point in time?

15 A Yes.

16 Q And, for the record, could you tell us what
17 that grade crossing is inventoried as?

18 A Yes. The DOT number is 069 718L.

19 Q Okay. And is the Prairie Street -- or
20 strike that.

21 Is the Edgelawn Drive crossing shown
22 approximately in the middle of Exhibit I?

1 A Yes, it is.

2 Q All right. I'm going to ask you to take a
3 look at Exhibit D, as in David, and ask you is that a
4 true and accurate copy of the road plan and profile
5 prepared by TranSystems Engineering for the
6 Edgelawn Drive crossing?

7 A Yes, it is.

8 Q And does that generally lay out the plans
9 or proposed plans from an engineering perspective for
10 adding the additional track to the crossing?

11 A Yes, it does.

12 Q And could you explain generally what
13 changes or improvements are contemplated as shown in
14 Exhibit D?

15 A Yes. It's the addition of a track 20 feet
16 to the north of the existing mainline, paving as
17 necessary to match existing, relocation of the
18 existing flashers and gates with installation of new
19 bungalow and constant warning time circuitry and then
20 relocation or replacement as necessary of center
21 medians that would be impacted by paving or the new
22 track.

1 Q And is it contemplated that the BNSF
2 would -- or the -- strike that.

3 Is it contemplated that the relocation
4 or replacement of the median would be something that
5 would be at BNSF's cost and expense?

6 A Yes. BNSF has volunteered to reimburse the
7 City of Aurora or the Sugar Grove Township at all
8 these crossings for work to replace or relocate their
9 medians.

10 Q Okay. And is the area contemplated by the
11 asphaltting shown in green on Exhibit D?

12 A Yes.

13 Q And if approved, does Exhibit -- or strike
14 that.

15 If approved, would the actual work
16 done with regard to the project at Edgelawn Drive be
17 done in accordance with the road profile and plan
18 prepared by TranSystems Engineering as set forth in
19 Exhibit D?

20 A Yes.

21 Q And, finally, the last crossing affected by
22 the project going from east to west is Terry Avenue?

1 A That's correct.

2 Q And if you could take a look at Exhibit J.

3 A Mm-hmm.

4 Q And is that a true and accurate portrayal
5 from an aerial view of the Terry Avenue crossing?

6 A Yes.

7 Q Okay. And is that located in the city of
8 Aurora?

9 A Yes, it is.

10 Q And let me back up for a second.
11 Who's the road authority for Edgelawn
12 Drive, as you understand it?

13 A That's the City of Aurora.

14 Q Okay. And are they also the road authority
15 for the Terry Avenue crossing?

16 A Yes.

17 Q And what railroad milepost, approximately,
18 is the Terry Avenue crossing located?

19 A Milepost 39.36.

20 Q Now, is Terry Avenue shown in approximately
21 the middle of Exhibit J running vertically across the
22 page?

1 A Yes.

2 Q Okay. Is it a two-lane paved roadway?

3 A Yes.

4 Q And is the crossing shown in Exhibit J in
5 approximately the middle of that exhibit?

6 A Yes.

7 Q And, for the record, could you tell us what
8 that crossing is -- the inventory number is for that
9 crossing?

10 A Yes. It's DOT No. 069 717E.

11 Q Now, I'm going to ask you to take a look at
12 Exhibit E and ask you is that a true and accurate
13 copy of the road plan and profile prepared by
14 TranSystems Engineering for the Terry Avenue
15 crossing?

16 A Yes.

17 Q And does it generally lay out the plans
18 that if this project is approved as to what's
19 contemplated from an engineering perspective as far
20 as the work that would be done near the crossing?

21 A Yes.

22 Q If you could explain generally what changes

1 or improvements are contemplated at Terry Avenue.

2 A Yes, the installation of another second
3 mainline track 20 feet north of the existing
4 mainline, pavement as necessary to tie in to existing
5 pavement elevations, relocation of the existing
6 flashing lights and gates with installation of new
7 bungalow and controller and constant warning time
8 circuitry, and then relocation or replacement of
9 center medians as necessary in order to replace what
10 is existing and impacted by paving or the addition of
11 the track.

12 Q Okay. And is the area to be asphalted, is
13 that shown in green on Exhibit E?

14 A Yes.

15 Q Okay. And the asphalt work done at all
16 these crossings and the median work contemplated at
17 each of these crossings, is that a matter that you
18 understand will be at BNSF's expense?

19 A Yes.

20 Q And if approved, will the work contemplated
21 at the Terry Avenue crossing be substantially in
22 accordance with the road plan and profile shown in

1 Exhibit E?

2 A Yes.

3 Q Now, going further east, is there an
4 existing siding east of Terry?

5 A Yes. There is what we call Aurora siding
6 east of Terry Avenue, and it extends into Aurora and
7 ends at the junction of the Chicago and Mendota
8 subdivisions.

9 Q Okay. And is that siding contemplated as
10 being part of the -- of this mainline double track
11 improvement?

12 A Yes. This new segment of track will tie
13 together the Aurora siding and the Sugar Grove
14 siding.

15 Q And I'd like to ask you a couple of
16 questions about the overall project.

17 A Mm-hmm.

18 Q In your view, with this double track
19 project, will it promote public safety and
20 convenience?

21 A Yes.

22 Q Will it enhance train operations in the

1 area?

2 A Yes.

3 Q Will it permit trains to pass more
4 effectively and reach their destination on a more
5 timely basis?

6 A Yes.

7 Q Okay. Will improvement to train operations
8 help avoid stop- -- stoppage of trains on the
9 existing single mainline and potentially blocking
10 crossings up and down the line?

11 A Yes.

12 Q Will the project, in your view, contribute
13 to getting goods to market more quickly?

14 A Yes.

15 Q Will the additional track allow for
16 increased flexibility as far as train movements
17 through the area?

18 A Yes.

19 Q The proposed changes to the five crossings,
20 in your view, is that in the public interest and
21 convenience?

22 A Yes.

1 Q And overall, will the project promote
2 safety and -- public safety and convenience?

3 A Yes.

4 Q Now, as far as the cost of improvements,
5 we've talked about the asphalt work and the median
6 work. With regard to the track installation, the
7 crossing surfaces, and any signal circuitry related
8 expenses, does BNSF agree to pay for those?

9 A Yes.

10 Q Okay. And with regard to the roadway work
11 that we -- that are shown in Exhibits A through E,
12 are those, to your understanding, compliant with ICC
13 approach regulations?

14 A Yes.

15 Q And one matter I'd like to clarify. With
16 regard to the asphalt work that's contemplated where
17 the medians are located, is it possible that the
18 actual medians will have to be replaced as opposed to
19 just relocated 20 feet of the medians?

20 A Yes. Depending on what the asphalt work
21 is, if we are raising the roadway, then we'll have to
22 pull the medians out. And then once we've done our

1 asphalt, we'll have to put the median back in then.

2 Q Okay. And is it -- that, to your
3 understanding, would be something that the City would
4 do and BNSF would reimburse for as far as the median
5 work is concerned?

6 A Yes. In discussions with the City, they
7 had been willing to give us an estimate of costs and
8 then we would reimburse 100 percent of those costs.

9 Q Now, with regard to the road authorities, I
10 think you've said that Gordon Road is under the
11 jurisdiction of the Village of Sugar Grove?

12 A Correct.

13 Q Okay. And they were present at the
14 diagnostic through Anthony Speciale?

15 A Yes, and their consulting firm, Engineering
16 Enterprises.

17 Q Okay. And did they attend the -- was there
18 a recent meeting with the road authorities?

19 A Yes. We had a meeting last Thursday, which
20 would have been the 4th, in Sugar Grove with the
21 Village of Sugar Grove, Sugar Grove Township, and the
22 City of Aurora to address any concerns they had with

1 the overall project; not specific to the crossings,
2 but just the project in general.

3 Q Okay. Has the Village of Sugar Grove
4 throughout the these meetings -- or strike that.

5 Let me ask you this: Was the Village
6 of Sugar Grove provided Exhibit A, which was the
7 proposed changes and improvements to Gordon Road?

8 A Yes. They were provided that at the
9 diagnostic meeting and then we looked at it again
10 last week.

11 Q Okay. With regard to the Village of Sugar
12 Grove, throughout the these meetings and your
13 interaction with them, have they ever voiced any
14 objection to the project?

15 A No.

16 Q Okay. And you understood Barnes Road to be
17 under the jurisdiction of Sugar Grove Township?

18 A Yes.

19 Q Okay. And they were present at the
20 diagnostic back in February through Greg Huggins?

21 A Yes.

22 Q Is he their highway commissioners?

1 A Yes. He's their roadway commissioner.

2 Q Okay. And was he present at the recent
3 meeting on Thursday or someone from the Village of --
4 or from Sugar Grove Township?

5 A Yes. Greg was there.

6 Q Okay. And was Mr. Huggins provided
7 Exhibit B, which is the proposed changes and
8 improvements to Barnes Road?

9 A Yes, he was.

10 Q In the course of your dealings,
11 interactions, and meetings with the Village -- or
12 strike that -- with Sugar Grove Township, have they
13 ever voiced any objection to the project?

14 A No, they have not.

15 Q Okay. Now, with regard to Prairie,
16 Edgelawn, and Terry, do you understand the City of
17 Aurora to be the road authority?

18 A Yes.

19 Q Okay. And has the City of Aurora been
20 provided with the plans set forth in Exhibits C, D,
21 and E?

22 A Yes, they have.

1 Q Okay. And was the City present at the
2 diagnostic back in last February?

3 A Yes.

4 Q And were they also present at the recent
5 meeting of June 4th?

6 A Yes, they were.

7 Q Okay. And to date, have they voiced any
8 objection to the project as set forth in Exhibits C,
9 D, and E?

10 A No.

11 Q Would you agree that from the diagnostic,
12 the consensus was that all crossings should remain
13 having automatic flashing lights and gates, warning
14 bells, and constant time warning as suitable and
15 appropriate warning devices?

16 A Yes.

17 Q And with constant warning time on all
18 tracks?

19 A Yes.

20 Q Is it true that in Plans A through E,
21 there's no changes contemplated with the location of
22 the signals on the opposite side of the crossing from

1 where the track is to be installed?

2 A Yes. The signals on the south side of the
3 existing mainline are proposed to stay in the same
4 location.

5 Q Okay. And if the project is approved and
6 the signals on the north side are relocated to
7 accommodate the second track, would that relocation
8 and the structure itself -- is that contemplated to
9 be in conformance with MUCTD (sic) standards?

10 A Yes.

11 Q I mean MUTCD.

12 A Correct.

13 Q Is BNSF requesting that the Illinois
14 Commerce Commission consider that the level of
15 warning protection that currently exists be deemed
16 appropriate for the improved crossings as well?

17 A Yes.

18 Q Does BNSF agree to submit a Form 3 in order
19 to obtain ICC review of the signal plans?

20 A Yes.

21 Q And does BNSF agree that it will not begin
22 work on the signal installation until it has been

1 approved by X Resolution by the Illinois Commerce
2 Commission?

3 A Yes.

4 Q As far as future maintenance, if this
5 project is approved, and upon construction of it,
6 does BNSF agree to maintain the crossing surfaces and
7 signal mechanisms for the warning devices going into
8 the future?

9 A Yes.

10 Q Okay. And is it your understanding that
11 maintenance of the roadways will remain the
12 responsibility of the pertinent road authority?

13 A Yes.

14 Q Now, as far as completion time, this
15 overall project involves over 7 miles; is that fair
16 to say?

17 A That's correct.

18 Q Okay. And is there a need to coordinate
19 this project with other projects that are planned by
20 the BNSF in various locations?

21 A Yes.

22 Q Okay. And based upon the size of the

1 project and the need for coordination with other
2 projects, what is BNSF requesting as far as a time
3 period to complete this 7-mile track project?

4 A We're requesting 36 months from the date of
5 order.

6 MR. PRENDERGAST: Your Honor, at this time I'd
7 move to admit into evidence Exhibits A through J.

8 JUDGE KIRKLAND MONTAQUE: Any objection?

9 MR. LAPP: No objection.

10 MR. VERCRUYSSSE: No objection from Staff.

11 JUDGE KIRKLAND MONTAQUE: Petitioner's
12 Exhibits A through J are admitted.

13 (Whereupon, Petitioner's
14 Exhibits A through J were
15 admitted into evidence, as of
16 this date.)

17 MR. PRENDERGAST: Okay. I have no further
18 questions of Mr. Nutt, your Honor.

19 JUDGE KIRKLAND MONTAQUE: Okay. Mr. Lapp, do
20 you have any questions?

21 MR. LAPP: I have no questions.

22 JUDGE KIRKLAND MONTAQUE: Mr. Vercruysse?

1 MR. VERCRUYSSSE: One, your Honor.

2 CROSS-EXAMINATION

3 BY

4 MR. VERCRUYSSSE:

5 Q Mr. Nutt, relative to the ongoing
6 maintenance, you testified that the maintenance of
7 the crossing surfaces will continue to be the
8 responsibility of the BNSF Railway; is that correct?

9 A That's correct.

10 Q As far as the asphalt in between the new
11 mainline track and the existing, will that also be
12 the responsibility for maintenance for the BNSF
13 Railway?

14 A Yes.

15 MR. VERCRUYSSSE: Okay. Thank you.

16 No further questions, your Honor.

17 JUDGE KIRKLAND MONTAQUE: For the -- anything
18 further, Mr. Prendergast?

19 MR. PRENDERGAST: No. That's all I have, your
20 Honor.

21 JUDGE KIRKLAND MONTAQUE: Okay. Well, for the
22 record, Mr. Vercruysse, can you give me Staff's

1 position on this project?

2 MR. VERCRUYSSSE: Yes, your Honor. Thank you.

3 Staff does not have an objection to
4 the BNSF's Petition or the proposal and the plans for
5 the addition of the second mainline track. Staff
6 will review the warning device plans for the
7 revisions that include the second mainline track.

8 Staff has identified with the BNSF
9 Railway before construction starts a review of the
10 existing mainline track should take place relative to
11 the asphalt condition on that side also so that we
12 don't complete one side and leave something that
13 might be inappropriate on the other. We'll work with
14 the BNSF to address that with their local forces and
15 Mr. Nutt also.

16 That is pretty much Staff's position.

17 JUDGE KIRKLAND MONTAQUE: Okay. Thank you.

18 MR. VERCRUYSSSE: Thank you.

19 JUDGE KIRKLAND MONTAQUE: Mr. Lapp, you noted
20 that you filed a position statement from the City of
21 Aurora.

22 MR. LAPP: Correct.

1 JUDGE KIRKLAND MONTAQUE: Did you want to make
2 any further statements on the record.

3 MR. LAPP: No. Those are just -- those are --
4 again, some of those comments probably go beyond --
5 go beyond what the jurisdiction of the -- of what the
6 Commerce Commission is; but they're concerns --
7 they're concerns, I believe, that have already
8 been -- probably already been voiced to the BNSF, but
9 they were concerns nonetheless that they wanted as
10 part of the record.

11 JUDGE KIRKLAND MONTAQUE: Okay. So noted.
12 Thank you.

13 Okay. Well, then at this point, I'm
14 going to mark the record heard and taken. And I
15 would ask the Petitioner to provide me with a draft
16 order which I can use to draft my own order.

17 MR. PRENDERGAST: Sure.

18 JUDGE KIRKLAND MONTAQUE: And what I'm going to
19 do, because there's so many -- you know, it would be
20 easier, I think, if I -- if you give me the draft
21 order and I send it out as a proposed order. We'll
22 wait for the filing period, and, you know --

1 MR. PRENDERGAST: Sure.

2 JUDGE KIRKLAND MONTAQUE: -- proceed that way.

3 MR. PRENDERGAST: That would be great, your
4 Honor.

5 JUDGE KIRKLAND MONTAQUE: Okay.

6 MR. PRENDERGAST: And then I will send it to
7 you and I'll copy everybody on it. And then you're
8 going to make your own determination on the proposed
9 order and then the comment period will run?

10 JUDGE KIRKLAND MONTAQUE: Exactly.

11 MR. PRENDERGAST: Okay.

12 JUDGE KIRKLAND MONTAQUE: After I get the
13 proposed order out. And please sent me a Word
14 version of that draft order.

15 MR. PRENDERGAST: Sure. I certainly will.

16 JUDGE KIRKLAND MONTAQUE: Okay.

17 MR. PRENDERGAST: Thank you, your Honor.

18 JUDGE KIRKLAND MONTAQUE: Then I think that's
19 it for this proceeding. Thank you.

20 MR. VERCRUYSSSE: Thank you, your Honor.

21 HEARD AND TAKEN.

22