

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Petition of CSX :
Transportation, Inc. to :
Close to Vehicular Traffic:
County Road 205/Ulsh Road : Case No. 09-125-RR-UNC
Grade Crossing (262-061N) :
Located in Claridon :
Township, Marion County, :
Ohio. :

- - -

PROCEEDINGS

before Mr. Scott E. Farkas, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-F, Columbus, Ohio, called at 10:00
a.m. on Wednesday, August 12, 2009.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Porter, Wright, Morris & Arthur, LLP
3 By Mr. R. Leland Evans
4 Ms. Megan E. Bailey
5 41 South High Street
6 Columbus, Ohio 43215-6194

7 On behalf of CSX Transportation, Inc.

8 Richard Cordray, Ohio Attorney General
9 By Mr. Nathan Fling
10 Assistant Attorney General
11 Transportation Section
12 150 East Gay Street, Floor 22
13 Columbus, Ohio 43215

14 On behalf of the Ohio Rail Development
15 Commission and Todd Darfus.

16 Richard Cordray, Ohio Attorney General
17 Duane W. Luckey, Section Chief
18 Public Utilities Section
19 By William Wright
20 Assistant Attorney General
21 180 East Broad Street, 9th Floor
22 Columbus, Ohio 43215-3793

23 On behalf of the staff of the Public
24 Utilities Commission of Ohio.

25 ALSO PRESENT:

Ms. Susan Kirkland.

- - -

INDEX

- - -

WITNESSES

PAGE

Todd Darfus

Direct examination by Mr. Evans	8
Cross-examination by Mr. Wright	45
Cross-examination by Mr. Mooney	53
Examination by Examiner Farkas	70

Terry Martin Ludban

Direct examination by Mr. Evans	86
Cross-examination by Mr. Wright	93
Examination by the Examiner	95
Cross-examination by Mr. Mooney	99

Chief Clint E. Canterbury

Direct examination by Mr. Evans	103
Cross-examination by Mr. Wright	147
Cross-examination by Mr. Mooney	159
Examination by the Examiner	167
Redirect examination by Mr. Evans	176
Recross-examination by Mr. Wright	183
Recross-examination by Mr. Mooney	185

- - -

PETITIONER'S EXHIBITS

ID'D REC'D

1 - Diagnostic Review Team Survey	12	80
2 - 6/24/09 letter from B.K. Irons	22	80
3 - 10/16/08 letter from S. Kirkland	40	80
4 - 11/18/08 letter from S.J. Kirkland	42	80
6 - Map	105	186
7 - Photographs	142	186
8 - Petition for Closure	187	187
9 - Amended Petition for Closure	187	187

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

COMMISSION-ORDERED EXHIBIT	ID'D	REC'D
1 - Map	7	7
- - -		

1 Wednesday Morning Session,

2 August 12, 2009.

3 - - -

4 THE EXAMINER: We'll go on the record.

5 The Commission has called for hearing at this time
6 and place the matter of the Petition of CSX
7 Transportation, Inc. to Close to Vehicular Traffic
8 County Road 205/Ulsh Road Grade Crossing (262-061N)
9 Located in Claridon Township, Marion County, Ohio,
10 case number 09-125-RR-UNC.

11 My name is Scott Farkas. I'm the
12 attorney-examiner assigned to hear this case. We'll
13 note for the record that this is the evidentiary
14 portion of the hearing. There was a previous public
15 hearing in Claridon Township where a number of people
16 testified regarding the petition filed by CSX.

17 At this time I'll take appearances.
18 We'll start with the company.

19 MR. EVANS: Yes. Lee Evans on behalf of
20 CSX Transportation, Inc., along with Megan Bailey
21 also on behalf of CSX.

22 THE EXAMINER: Okay. Sir, do you want to
23 make an appearance?

24 MR. MOONEY: Tim Mooney, I am chairman of
25 the Claridon Township trustees representing Claridon

1 Township.

2 THE EXAMINER: Okay.

3 MR. WICKERSHOM: Russell Wickershom,
4 Claridon Township.

5 MR. BOGER: John Boger, Claridon Township
6 trustee.

7 MR. FLING: And I'm Nathan Fling, your
8 Honor, with the Attorney General's office
9 representing the Ohio Rail Development Commission and
10 Mr. Todd Darfus.

11 THE EXAMINER: Am I correct that the
12 individuals that are here from the township are not
13 represented by counsel?

14 MR. MOONEY: That is correct.

15 THE EXAMINER: Okay. At this time, CSX,
16 you can go forward with your first witness.

17 MR. EVANS: Thank you. Your Honor, we
18 would call --

19 THE EXAMINER: Wait. Before we do that
20 let me note for the record that a Commission-ordered
21 exhibit that will be marked is a map showing the Ulsh
22 Road crossing as well as several areas around the
23 crossing.

24 That will be marked Commission Exhibit 1
25 with two clarifications, one is that River Valley

1 School is identified on the crossing, and I've been
2 informed that that is an old River Valley School, and
3 that Ulsh Road does not extend to 309, that the
4 portion of the road that goes from Ulsh Road to 309
5 is technically Marion-Galion Road.

6 Would I be correct?

7 MR. EVANS: That's correct.

8 THE EXAMINER: Thank you.

9 (EXHIBIT MARKED FOR IDENTIFICATION AND
10 ADMITTED INTO EVIDENCE.)

11 THE EXAMINER: Go ahead. And I'll
12 just -- you want to make an appearance?

13 MR. WRIGHT: I apologize for being tardy,
14 your Honor. Our clocks are running a little slow,
15 apparently. Yes, your Honor, thank you. On behalf
16 of the staff of the Public Utilities Commission,
17 Railroad staff, the Ohio Attorney General's office,
18 my name is Bill Wright, 180 East Broad Street,
19 Columbus, Ohio.

20 I've previously spoken with Mr. Evans; I
21 think basically we'll be just monitoring what's going
22 on today, but he's indicated at any point if I have a
23 question or something, that I should feel free to ask
24 it, and I would indulge the Bench as well on that
25 point.

1 THE EXAMINER: Thank you.

2 MR. EVANS: That's fine.

3 THE EXAMINER: Go ahead.

4 MR. EVANS: Yes, we would call Todd
5 Darfus.

6 THE EXAMINER: Okay.

7 MR. EVANS: Is there any particular place
8 you want me, or am I okay here?

9 THE EXAMINER: You're okay.

10 MR. DARFUS: Good morning.

11 THE EXAMINER: Do you want to raise your
12 right hand.

13 (Witness sworn.)

14 THE EXAMINER: You may be seated.

15 - - -

16 TODD DARFUS

17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Evans:

21 Q. Good morning.

22 A. Good morning.

23 Q. Would you state your name, please, for
24 the record.

25 A. Todd Darfus.

1 Q. And, Mr. Darfus, by whom are you
2 employed?

3 A. State of Ohio. I work for the Ohio Rail
4 Development Commission.

5 Q. And what is your position with the Ohio
6 Rail Development Commission?

7 A. I'm a project manager.

8 Q. And as a project manager could you
9 briefly just outline what your job duties are.

10 A. I work in the Safety section. We are in
11 charge of upgrading crossings within the state of
12 Ohio to lights and gates and doing surface projects
13 of that nature.

14 Q. As part of your regular duties with the
15 Ohio Rail Development Commission do you from time to
16 time take part in diagnostic surveys at crossings?

17 A. Yeah. The way our program's structured,
18 a portion of it is that as these crossings come up
19 for lights and gates based on the Federal Rail
20 Administration's formula how to evaluate crossings,
21 and it's based on a ranking system, so quarterly or
22 yearly, however we might have the funds to do the
23 projects, we're required to do a diagnostic survey of
24 each crossing as they come up on a list, and that
25 list is presented by the PUCO Division of Rail.

1 Q. And just for the record also, what, at
2 least from your standpoint, what is the primary
3 purpose or the role of the Ohio Rail Development
4 Commission in Ohio? What kinds of things do you do?

5 A. Well, we have several roles. We have a
6 development side that oversees development money and
7 grants and loans to enhance rail systems and company
8 infrastructures within Ohio; we also have a safety
9 division that evaluates crossings and upgrades them
10 to lights and gates and oversees surface projects
11 within the state; and then we have a commission
12 itself that oversees all of us that is basically, you
13 know, in charge of rail development and rail
14 infrastructure within the state of Ohio to, you know,
15 further the transportation needs of the state of
16 Ohio.

17 Q. Thank you.

18 Not that this is significant in terms of
19 your testimony, but just for the record, you're here
20 pursuant to subpoena today, correct?

21 A. Yes, sir.

22 Q. Okay. I want to talk to you briefly
23 about your involvement in relation to Ulsh Road to
24 this -- the Ulsh Road crossing to this point. First
25 of all, you're aware, I think, that there was a

1 diagnostic survey or review at this particular
2 crossing?

3 A. Yes.

4 Q. And did you personally actually take part
5 in that particular diagnostic review?

6 A. No. The project manager for that
7 territory took part in that particular diagnostic.

8 Q. Have you, nevertheless, been to the
9 crossing?

10 A. Been to the crossing several times.

11 Q. And I'll get into what you've done there
12 and so forth in a little bit.

13 In connection with this particular
14 crossing did you attend any meetings of the Claridon
15 Township trustees?

16 A. Yes, sir, I did.

17 Q. Do you recall how many such meetings you
18 attended?

19 A. I attended one of them. I attended the
20 final meeting that we had before the petition was
21 placed.

22 Q. And I assume you attended those as a
23 representative of the or at least one representative
24 of the Ohio Rail Development Commission.

25 A. Yes, sir.

1 Q. Let me show you, if I may, what we've
2 marked as Petitioner's Exhibit 1 for identification.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. As you became aware that you'd be
5 testifying in connection with this matter, did you
6 have occasion to review any file material kept by the
7 Ohio Rail Development Commission concerning the Ulsh
8 Road crossing?

9 A. I've reviewed the complete file.

10 Q. And does that file contain, among other
11 things, the diagnostic review team survey?

12 A. Yes, sir, it does.

13 Q. So are you able to identify the document
14 that I placed in front of you as Exhibit 1 as being
15 the diagnostic review team survey for this particular
16 crossing?

17 A. Yes, it is.

18 Q. And I want to get to your actual
19 involvement and things you did and observed at the
20 crossing, but before I do that I think I need to kind
21 of go through this document a little bit with you for
22 the record and make sure the record's clear as far as
23 what this is and what it says.

24 First of all, you've kind of indicated
25 this already, but in a nutshell what is a diagnostic

1 review?

2 A. A diagnostic review is once the crossing
3 has come up on the formula list to be upgraded or to
4 be looked at to be upgraded, we take an assembly of
5 team members that are involved, usually it consists
6 of the railroad, a PUCO member, the local authorities
7 whoever that might be, whether it's the state,
8 township, or county, and obviously the Rail
9 Commission's part of that.

10 And then we look at the surrounding areas
11 and what the parameters are of the project and what
12 it's going to consist of, and there is a chance for a
13 closure or the safety of -- a possible closure or
14 upgrade.

15 So we take a survey of the team members
16 in that diagnostic survey and get a general consensus
17 of what we are thinking of the crossing and how it's
18 going to be either closed or upgraded or pursued.

19 Q. Okay. That particular diagnostic review,
20 based upon Exhibit 1, I take it occurred on September
21 23 of 2008?

22 A. Yes, sir.

23 Q. And there's a listing of the on-site
24 review team that includes representatives of the
25 various organizations or agencies that you listed,

1 correct?

2 A. Uh-huh. Yes, sir.

3 Q. And, for example, you mentioned earlier
4 your counterpart was initially assigned to this, that
5 would be Joseph Reinhardt, correct?

6 A. That's correct.

7 Q. And CSX had a couple of people there,
8 correct?

9 A. Yes, sir.

10 Q. As did the Clairidon Township trustees, I
11 believe all three trustees were there, correct?

12 A. Two of them I see.

13 Q. Mr. Mooney, Mr. Wickershom, and
14 Mr. Boger.

15 A. Okay.

16 Q. And so -- and the document will speak for
17 itself as far as those that signed. And I take it
18 the normal practice is to have them sign on here
19 indicating their presence?

20 A. Yeah, that's usually, other than the
21 location data, that's usually the first order of the
22 diagnostic team is to sign in.

23 Q. Below that there's an indication of
24 existing traffic control devices and some boxes that
25 are marked yes and no and so forth. Can you

1 summarize in a nutshell what the record will reflect
2 was the status of the traffic control devices as of
3 the time of the survey?

4 A. Well, when we are out in the field and we
5 conduct these diagnostics, we have a database within
6 Ohio that offers all the information on every
7 crossing so sometimes, when we have several of them,
8 we fill this in in advance as per the database. And
9 then once we go to the field, to the right of that
10 you can see comments or quantity and so on, we'll
11 verify what's also on the database and what's
12 actually in the field at the time of the diagnostic
13 survey.

14 So whatever happens to be out at the
15 crossing, at the particular crossing, whether it's
16 crossbucks or gates and lights or cantilevers or
17 whatever, we document that and put it in this
18 particular area of information.

19 Q. And in this instance the information
20 provided generally would indicate that at the time of
21 this survey there were crossbucks in place at this
22 crossing, correct?

23 A. That's correct.

24 Q. Referring you to the next page of the
25 diagnostic review, what does this form tell us about

1 accident history or crashes at this particular
2 crossing as of the time of the review?

3 A. Well, usually there's a five-year history
4 that the PUCO representative will run. Our
5 diagnostic surveys are done, if it's a -- if it's in
6 the federal program, the PUCO conducts and
7 coordinates the diagnostic review. If it's our
8 money, and we have some other programs, we'll do our
9 own diagnostic review.

10 So basically the database is showing that
11 this crossing came up as the 12th most hazardous
12 crossing in the state of Ohio at the time, when that
13 formula was ran; that could vary from day to day.
14 Another crash at any location in the state of Ohio
15 could move that up or down.

16 Q. So in this instance at this time it was
17 reflecting a couple of accidents in the previous five
18 years.

19 A. Yes.

20 Q. And as of that date it was showing a
21 hazard ranking of 12; is that correct?

22 A. Right. I think the last, I believe the
23 last crossing that -- or the last crash at the
24 crossing was sometime the previous May in 2008.

25 Q. Now, below that on the form there's an

1 indication of some railroad data, principally or at
2 least first the total number of trains per day.

3 A. Correct.

4 Q. Do you know where that information is
5 typically obtained?

6 A. That also is in the database. That
7 information comes from the railroad, but those trains
8 vary, you know, if they're agriculture trains or the
9 economy or they're running grain, I mean, those vary,
10 but usually right at the diagnostic time we get an
11 update of the train count at that particular time.

12 Q. And in this instance with input based
13 upon customary practice, input from the railroad
14 personnel in attendance, the indication of total
15 trains per day was 19?

16 A. It was 19.

17 Q. All right. Now, there's also a -- well,
18 first of all, under Railroad Data also there is an
19 indication there is one set of tracks there, correct?

20 A. That's correct.

21 Q. And that was true when you went out there
22 on whatever occasions you were there.

23 A. Yeah, one set of tracks.

24 Q. In terms of roadway data, again, briefly,
25 where does that information generally come from?

1 A. Usually that's gathered, once again, from
2 the local authorities and the database, but we verify
3 it once we're out there. As you can see, in
4 attendance was the township trustees, and we verify
5 all the data through them.

6 THE EXAMINER: Just for the record, can
7 you clarify back to the railroad data, it identifies
8 total trains a day of 19, and then it says "Day thru
9 trains, 9." Can you explain how they get 19 and 9?

10 THE WITNESS: Basically, what we're
11 looking for is a total number of trains a day on the
12 crossings, that's in a 24-hour period, then we ask
13 how many trains a day come through the daylight
14 hours, how many trains at night, how many trains are
15 switching. Some switching moves will be just a local
16 facility that's in the area or a local train that's
17 going from one destination to another within the
18 county. Then we ask for through trains meaning that
19 it's on the main line and it's going to a destination
20 further away.

21 THE EXAMINER: Okay. But given the fact
22 that there is no -- there aren't any trains indicated
23 as night thru trains or day switching trains or
24 nighttime switching movements, how do we get 19 and
25 9?

1 THE WITNESS: The rest of the data as far
2 as the daytime switching movements should reflect the
3 remainder of 10 or the combination of the number
4 should equal 19.

5 THE EXAMINER: So there are some other
6 trains operating at night, you're saying --

7 THE WITNESS: Yes.

8 THE EXAMINER: -- that aren't reflected
9 on this.

10 THE WITNESS: We can assume they're
11 operating at night or doing switching moves during
12 the day or night.

13 THE EXAMINER: Thank you.

14 Q. (By Mr. Evans) Since we jumped back I
15 should have asked you, there's also an indication
16 under Railroad Data of maximum train speed which is
17 indicated to be 60 miles per hour, correct?

18 A. Yes, sir.

19 Q. And is that data that is obtained either
20 from the PUCO system or from the railroad?

21 A. That data is collected from the
22 railroads, and that also can vary. You know, we look
23 at maximum train speed as how fast they can come
24 through the crossing, but we're also looking at it as
25 when we design and upgrade a crossing, you know, you

1 design for that maximum train speed. You design for
2 the worst scenario or the most scenario. So these
3 approaches would be, you know, at a 60-mile-an-hour
4 approach.

5 Q. We had briefly moved on to the roadway
6 data, and based upon your review of the form what can
7 you tell us about the nature of Ulsh Road at the
8 location of the crossing?

9 A. Well, the daily traffic at the time of
10 the diagnostic was 132 cars in a 24-hour period. The
11 roadway's very narrow, it's only 15 feet to handle
12 two vehicles, it's in a rural location. And the
13 vehicle speed is quoted to be 55 on Ulsh Road, but it
14 would be impossible to drive 55 at that location.

15 School bus operations, they're saying no,
16 but after the article I read in the Marion paper,
17 that school buses are traveling over the crossing,
18 just empty. No children on board. So they are using
19 school buses.

20 There are some hazardous trucks that
21 could use the crossing; small amount of shoulder, and
22 the shoulder, it was surfaced; and there's no
23 existing guardrail.

24 Q. Is it customary or typical to have some
25 attachments to the diagnostic review?

1 A. We'll attach accident history, we'll
2 attach a more formal sketch when we're in the field.
3 It's kind of hard to sit down and do a formal sketch,
4 you know, but we'll attach a sketch or we'll attach
5 the data from our database to it, we might attach any
6 accident history.

7 Q. And at least as this document was
8 presented to me or as I received it, I believe from
9 the ORDC, one of the items attached was a Marion
10 County Engineering Department traffic count for 24
11 hours, sort of historical data over time. Do you see
12 that there?

13 A. Yes, I do, sir.

14 Q. Have you seen that type of document
15 before?

16 A. Yes, I have.

17 Q. Is that the type of document that would
18 often be attached to a survey such as this?

19 A. It is. When we are in these diagnostic
20 surveys, we try to get as much information compiled
21 and put with these as we can. We ask for the local
22 authorities, the school board to usually invite
23 along, the superintendent of school busing, try to
24 get an accurate count on how many buses cross the
25 crossing on a particular day. The traffic count,

1 we're always looking for that. Of course the
2 accident history. But yes, these are all forms that
3 would be attached.

4 Q. Okay. And on that Marion County
5 Engineering Department record there are a series of
6 entries of traffic counts done over time, but the
7 4/05 entry would match up with the 132 vehicles
8 indicated on the form, correct?

9 A. That's correct.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. I want to just show you a document we've
12 marked as Petitioner's Exhibit 2. I don't know that
13 you've ever had occasion to see Exhibit 2.

14 A. No, I haven't.

15 Q. Okay. If you'll take a look at the third
16 page of Exhibit 2, there's a chart, again, that says
17 "Marion County Engineering Department." Do you see
18 where I'm talking about?

19 A. Yes, sir.

20 Q. And if you match up the entries, the
21 dates of those entries on that page down through
22 April of '05, I believe you'll find they match up
23 with the record we were looking at previously of
24 historically what the traffic counts have been.

25 A. Yes, sir.

1 Q. And you'll note that in May 2009 there
2 was an additional traffic study done.

3 A. Uh-huh.

4 Q. And just for the record, what was the
5 indication as to the amount of traffic in May 2009?

6 A. From the April traffic count to the May
7 traffic count, it's increased five cars a day in a
8 24-hour period.

9 Q. So 137 in May '09 and 132 in April of
10 '05; is that correct?

11 A. That's correct.

12 Q. Then continuing on with the diagnostic
13 survey form, there is a -- I'm on to what would be
14 the fourth page of Exhibit 1 which talks about
15 Quadrant Northwest at the top.

16 A. Yes, sir.

17 Q. The information at the top of that page
18 is additional information about the physical
19 characteristics of the crossing; is that fair?

20 A. Yes.

21 Q. And there's a bar about a third of the
22 way down, it says "Type of Development" and there's a
23 place there for someone to indicate the type of area
24 where this crossing is found, correct?

25 A. That's correct.

1 Q. And this one is indicated to be open
2 space.

3 A. That's correct.

4 Q. And other choices included institutional,
5 commercial, industrial, and residential, correct?

6 A. That's correct.

7 Q. And having been out there, not to jump
8 ahead, we'll get more into your personal involvement
9 out there, but would a characterization of this area
10 where this crossing is located as being open space be
11 consistent with what you observed?

12 A. Yes, sir, it would.

13 Q. There's also an indication of nearby
14 schools, and the form indicates None; is that
15 correct?

16 A. The form indicates None, that's correct.

17 Q. And the district involved is indicated to
18 be River Valley District, correct?

19 A. That is correct.

20 Q. Below there's some utility information
21 there, which I wasn't going to ask you much about. I
22 know there's a representative from the local
23 utilities that attends, correct?

24 A. That's correct.

25 Q. And that's in case if there is going to

1 be a project involving flashers and gates and so
2 forth, sometimes that can involve movement of
3 utilities and things --

4 A. Yes.

5 Q. -- is that accurate?

6 A. That's accurate.

7 Q. Below that there's a diagnostic team
8 recommendation, and right above where it says "Type
9 of Development" there's an area that says "Is it the
10 consensus of the Diagnostic Review Team that this is
11 a potential closure project," correct?

12 A. That's correct.

13 Q. And what is the answer given there by
14 this review team as far as whether this is a
15 potential closure project?

16 A. It is.

17 Q. And there's a place for an indication of
18 reasons, and just for the record would you indicate
19 what the reasons are that were stated there?

20 A. Pending closure evaluation by local
21 highway authority. Township trustees to discuss at
22 monthly meeting. Is that what you --

23 Q. I'm sorry. Back up to right above Type
24 of Development, it says "Explain reasons" as to --

25 A. Oh, I'm sorry.

1 Q. My fault.

2 A. I apologize. Low traffic count, angle,
3 and HazMat.

4 Q. And then as far as the recommendation,
5 there's, again, a date of 9/23/08, and I think you
6 just read this into the record before but it says
7 "Recommendation, held in abeyance pending closure
8 evaluation by local highway authorities"; is that
9 correct?

10 A. That's correct.

11 Q. And then there is an arrow that points to
12 a "10/7/08 - Township trustees to discuss closure at
13 monthly meeting."

14 A. That is correct.

15 Q. Following that in the diagnostic review
16 team survey there are a couple of pages of
17 measurements and a map; you referenced those in your
18 testimony a few moments ago, correct?

19 A. Yes.

20 Q. These are customarily prepared with a
21 survey?

22 A. Yes, they are.

23 Q. And it looks like these particular --
24 well, the first of those two pages on which the
25 roadway width is indicated, it says "Measurements by

1 Rand Patterson," correct?

2 A. Yes.

3 Q. And he's with the ORDC?

4 A. No. He's with the Public Utilities
5 Commission, Rail division.

6 Q. And he was one of the attendees based
7 upon that --

8 A. Yes, he was.

9 Q. Do you know, would he have also been the
10 person to prepare the map on the next page which has
11 some --

12 A. Yes, he would.

13 Q. Now, we can go through these, but I think
14 my understanding from your earlier testimony is that
15 you personally have been to the crossing.

16 A. Yes, I have.

17 Q. If you said this, I lost it; how many
18 times have you been there?

19 A. I've been there several times. I
20 would -- just off the top of my mind, six or seven,
21 eight times.

22 Q. Have all of those times been in
23 conjunction or since or -- in conjunction with this
24 diagnostic survey or were some of them before that?

25 A. No; all in conjunction with the survey.

1 Q. For example, you mentioned you went to
2 one, I think, of the Claridon Township trustee
3 meetings which are held not too far from the crossing.
4 Would you have gone to the crossing in conjunction
5 with that meeting?

6 A. This is the crossing prior to the
7 meeting.

8 Q. At any point when you've been out there
9 have you conducted any of your own measurements and
10 review?

11 A. Yes, sir. Yes, I have.

12 Q. When was the last time you were out
13 there?

14 A. Yesterday.

15 Q. At that time did you do any measurements
16 of any kind?

17 A. Yes, I did.

18 Q. Did you make any notes of what your
19 measurements were?

20 A. Yes, I did, sir.

21 Q. Rather than me try to go piecemeal why
22 don't you kind of just tell us -- before I do that,
23 you said you've been out there a number of other
24 times. Is this the only time you've actually done
25 any measurements and things like that as opposed to

1 generally looking at it?

2 A. It's probably about the fourth time.

3 Q. Fourth time you've done some
4 measurements?

5 A. Yeah.

6 Q. And do you have -- was yesterday a
7 duplication of things you had done before or was it
8 in addition to?

9 A. In addition to. I wanted to get a
10 scenario of going back to the crossing assuming it
11 was closed to the last house, and coming completely
12 from the last house on Ulsh Road prior to the
13 crossing as you come down Ulsh Road from State Route
14 98 completely all the way around back to
15 Marion-Galion Road, I wanted to get a total distance
16 of this to see what the -- I wanted to make a
17 comparison of distance traveled versus -- the
18 crossing open versus it being closed is what I was
19 trying to establish.

20 Q. And in doing that -- that was the primary
21 measurement you did yesterday.

22 A. Yes.

23 Q. And in doing that you were comparing the
24 route traveled if Ulsh Road were open against the
25 route traveled if Marion-Galion Road were used; is

1 that right?

2 A. Correct.

3 Q. Why don't you tell us about what you did
4 and what your measurements revealed.

5 A. Okay. What I did is basically took
6 measurements from State Route 98 at the point of
7 intersection to Ulsh Road, traveled to the first
8 house as you're traveling on Ulsh Road, which was
9 3/10 of a mile. There's only two houses on Ulsh
10 Road. Let me clarify that. The second house, which
11 is closer to the intersection of the CSX crossings,
12 that is 6/10 of a mile.

13 Q. From the Route 98-Ulsh Road intersection?

14 A. From State Route 98 also down Ulsh Road.

15 Q. Okay.

16 A. The point of the intersection of Ulsh
17 Road and the railroad crossing is 7/10 of a mile.
18 And then the point of intersection of Ulsh Road at
19 Marion-Galion Road from State Route 98 is 8/10 of a
20 mile.

21 Then I measured the distance of
22 Marion-Galion Road from State Route 98 to the point
23 of intersection of Ulsh Road and that was 9/10 of a
24 mile. And then I measured the distance from Ulsh
25 Road to the intersection of the CSX line on State

1 Route 98 which is 3/10 of a mile. And then I went a
2 distance from Ulsh Road south on 98 to east on State
3 Route 309 and it's a distance of 1.2 mile.

4 So basically the difference of the travel
5 way was 3/10 of a mile if it was closed.

6 Q. Okay. So a person who finds themselves
7 at the intersection of Route 98 and Ulsh Road and is
8 trying to get on, eventually get to 309 heading in an
9 easterly direction in the vicinity of Caledonia, for
10 example, to travel -- your measurements reflect to
11 travel Marion-Galion Road as opposed to Ulsh Road, in
12 other words assuming the Ulsh Road crossing were
13 closed, that individual would travel an additional
14 3/10 of a mile?

15 A. No.

16 Q. No.

17 A. If an individual was traveling south on
18 98, went over the gated crossing on State Route 98,
19 went to the intersection of 309 and then proceeded to
20 Caledonia, they would travel the difference of 3/10
21 of a mile.

22 Q. Okay. Did you happen to measure the
23 distance that would be traveled if, instead of going
24 a little bit further south on 98 to 309, they made a
25 left turn on Marion-Galion Road?

1 A. Yes.

2 Q. And what did you find there?

3 A. That's a difference of 1/10 of a mile.

4 Q. Fair enough.

5 Did you do anything else in the way of
6 measurements when you were out there yesterday?

7 A. Just verified the road width, the
8 distance from the railroad tracks. You know, as I
9 look at these, I was looking at the last house on the
10 lane that would possibly be closed, you know, what's
11 the safety factor for her. What's the route that an
12 emergency squad would travel or a fire truck or a
13 school bus, say if they had to pick up children or,
14 you know, the inconvenience factor, and that's what I
15 was measuring, I was trying to come up with that.

16 Q. You measured road widths, did you say?

17 A. Yes.

18 Q. You measured the width of Ulsh Road?

19 A. Yes.

20 Q. Do you know what you came up with?

21 A. Fifteen feet.

22 Q. And that's the same --

23 THE EXAMINER: What? I'm sorry.

24 THE WITNESS: Fifteen feet. I'm sorry.

25 THE EXAMINER: Fifteen.

1 THE WITNESS: Yes, sir.

2 Q. That's the same that's indicated on the
3 fourth page of Exhibit 1, I believe.

4 A. Yes, sir.

5 Q. Did you happen to measure the width at
6 any point of Marion-Galion Road?

7 A. Marion-Galion Road intersects with Ulsh
8 Road, comes into like a Y. If you can picture on the
9 map, as Marion-Galion Road comes in to Ulsh Road, and
10 over the time period as it's been traveled it's
11 gained further distance, to take a measurement back
12 on Marion-Galion Road where it's from edge of road to
13 edge of road it's roughly about 24 feet, but as it
14 comes into the intersection of Ulsh Road where you're
15 either going up Marion-Galion or going up to Ulsh
16 Road up over the railroad tracks, that traffic varies
17 because as it goes closer to the tracks or closer to
18 State Route 98, it gets wider.

19 Q. Okay. I understand. I've been there, so
20 I can picture what you're saying how wide that road
21 gets as Marion-Galion meets Route 98.

22 A. Right.

23 Q. But I think you said that if you go back
24 a little bit further on Marion-Galion Road so you're
25 away from that apron --

1 A. It's roughly 24 feet. You know, to
2 pinpoint because of being a rural road it's hard, you
3 know, you have gravel berm and things, but it's
4 roughly 24 feet.

5 Q. In any event, it would be fair to say
6 that Marion-Galion Road is wider than Ulsh Road.

7 A. Absolutely.

8 Q. Okay. So in terms of farm equipment if
9 it would need to operate -- as comparing farm
10 equipment operating on Ulsh Road versus Marion-Galion
11 Road or, for example, a school bus on Ulsh Road
12 versus Marion-Galion Road, Marion-Galion would
13 actually be a little bit wider and a little bit
14 easier operation; is that fair?

15 A. Yes. I believe so.

16 Q. Okay. I don't want to interrupt your
17 flow. Any other measurements? I think I understand
18 what measurements you did yesterday. Are there any
19 other measurements you did any other day that were
20 pertinent to your analysis here?

21 A. No, not pertinent, just verified what was
22 on the diagnostic survey.

23 Q. And did you generally find that the
24 numbers on the diagnostic survey were consistent and
25 accurate --

1 A. Yes.

2 Q. -- with what you found?

3 A. Yes, sir.

4 Q. Mr. Darfus, based upon what you've seen
5 both in the diagnostic survey as well as your own
6 personal observations and measurements and work at
7 the crossing and your experience in dealing with
8 these matters, do you at this point concur with the
9 ORD -- I'm sorry, with the recommendations set forth
10 in the diagnostic review team surveys as far as
11 whether this is a crossing that is a candidate for
12 closure?

13 A. Yes, sir, I do.

14 Q. And in your own words just can you
15 explain to us, you know, your thoughts and your views
16 as to why this is a crossing that should be closed?

17 A. Well, in my position as a project
18 manager, our charge is the safety of the traveling
19 motorists in the state of Ohio at railroad crossings,
20 and any time that we, you know, our budget varies
21 from year to year, but when you're looking at an
22 average railroad crossing roughly costing anywhere
23 from 170- to 250,000, and you have other variables
24 that would increase that cost such as interlocking
25 and wayside signal, and they keep mounting and

1 mounting and the costs keep going up.

2 So out of 6,000-some crossings in the
3 state of Ohio are we spending our money wisely, you
4 know, at redundant crossings or crossings that
5 actually need upgraded. You know, you take a
6 crossing like Ulsh Road and you have an accident or,
7 we don't like to call them accidents, we like to call
8 them a crash at that particular location, that
9 signals the formula to present this for a diagnostic
10 survey.

11 So we're always looking for -- we have
12 programs within the ORDC for the closure of redundant
13 crossings to upgrade a more prevalent crossing. So
14 you can take the hundred-some cars that travel on a
15 rural county road or a township road at a very low
16 rate and put them on a safer road and a wider road
17 and put them at a crossing that is gated.

18 So in the programs that we have that
19 offer -- anytime that you can close a crossing, we
20 offer incentives such as a one-for-one as far as if
21 you close one, we'll upgrade another crossing in that
22 particular municipality or county or what have you on
23 that line at a hundred percent, or we will redo a
24 surface, but we're always looking for a redundant
25 crossing to be closed.

1 We feel a closed crossing is a safe
2 crossing, and anytime we can direct traffic from a
3 crossing such as Ulsh Road -- and the observation
4 it's a very skewed crossing. It's a hump crossing.
5 It's a double-hump crossing. There used to be
6 another line that was used. So if you travel Ulsh
7 Road, you come up over the crossing, as you start to
8 approach that there's a hump and then there's another
9 hump with the crossing that sits well above
10 Marion-Galion Road and -- let alone the elevation of
11 Ulsh Road.

12 And as you travel from either direction,
13 you have to really stop and take a look at where the
14 train traffic is because the sight distance is fine,
15 you know, but there's -- as times change and seasons
16 change there's brush and leaves and things, and as
17 far as the crossing is concerned, that's pretty well
18 maintained. But it's such a skew that it's a very
19 hazardous crossing.

20 So, you know, when we go out to these
21 diagnostic surveys, we're looking for these sort of
22 things, you know, is this a candidate. Well, this is
23 a candidate. We have, you know, three other roads
24 that could be traveled with very little inconvenience
25 to anybody at a much safer distance to travel than to

1 go over Ulsh Road.

2 Ulsh Road, in my opinion, is probably one
3 of the worst cases of a crossing scenario as far as
4 safety that I've seen in my 15, 16 years at the Rail
5 Commission, so it's a prime candidate for closure.
6 So we attend these meetings and we offer -- and when
7 I attended the meetings of the township, you know, I
8 felt there was a good consensus that the township
9 trustees wanted to see the safety for their
10 constituents in the area, but that, you know, when
11 you go to these meetings, nobody ever comes out to
12 support it, you know.

13 All the people that are in favor for
14 these kind of closures stay home. It's the people
15 that are inconvenienced by going another 3/10 of a
16 mile on a much better condition, road condition,
17 safety condition, and across the tracks a better
18 condition, that oppose it.

19 In my opinion, Ulsh Road is a shortcut to
20 cut out any kind of train traffic that may be at the
21 Ulsh Road crossing or the 98 crossing. And my
22 observations being out there, I've seen it over and
23 over again, that people will actually try to beat the
24 train according to which direction it's going. If
25 it's blocking the 98 crossing, coming from that

1 direction, they'll run down to Ulsh Road so they can
2 get it as the train goes by, or vice versa. So --
3 and that's a hazard.

4 You start playing Russian roulette with
5 the train. It's very hard to judge the time it's
6 traveling, the distance it's traveling, how fast it's
7 traveling so, you know, it's not surprising that
8 you've had the accidents at Ulsh Road. And it's, I
9 think it's just another accident and another death or
10 fatality waiting to happen.

11 Q. You've referenced the alternative
12 crossings and alternative roadways in the area, and
13 we've I think touched on most of those, but just for
14 the record, the Route 98 crossing, that's a state
15 highway, that's a crossing that's already improved
16 with flashers and gates, correct?

17 A. That's correct.

18 Q. And I don't know if your travels out
19 there got you over to the next crossing over which is
20 Nesbitt Road --

21 A. Yes, sir.

22 Q. -- which meets the tracks at a much
23 closer to square angle --

24 A. Right.

25 Q. -- correct?

1 A. A right angle, yes.

2 Q. And that crossing is also protected by
3 flashers and gates.

4 A. Yes, sir.

5 Q. You mentioned attendance at the meetings
6 and the Ohio Rail Development Commission's efforts to
7 offer incentives, I guess you could say, to closure.
8 I wanted to show you two additional exhibits I've
9 marked as Exhibits 3 and 4 for identification.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 Q. I'll give you just a second to take a
12 look at those.

13 THE EXAMINER: Have you ever seen these
14 before?

15 THE WITNESS: Yes, sir, I have.

16 Q. Are these two documents marked as
17 Exhibits 3 and 4, are they contained within the Ohio
18 Rail Development Commission file that you've
19 indicated you reviewed?

20 A. Yes, sir, they are.

21 Q. And for the record, what is Exhibit 3,
22 first of all? What is the date of that document and
23 in a general sense what is it?

24 A. Dated October 16th, 2008, it's
25 basically the Commission's -- the safety section of

1 the Rail Development Commission, as we go into these
2 negotiations and try to gain the closure, we offer --
3 it's basically an explanation of our incentive
4 program and what we would offer a particular
5 municipality to do a closure and how we can assist
6 them in upgrades within their community as far as
7 safety at railroad crossings.

8 There also is a -- I want to mention
9 that, you know, when Mike Dewine was lieutenant
10 governor, we came up with a program and Mr. Dewine
11 set aside money to also go along. There was such
12 concern, the state of Ohio constantly being third,
13 fourth, fifth in the nation with fatalities at
14 railroad crossings, there was a huge concern for the
15 administration, and Governor Voinovich and Lieutenant
16 Governor Dewine set up a program that offered cash,
17 basically a check to communities that they could use
18 towards other safety projects within their community.

19 And there's been a real incentive, I've
20 been involved in hundreds of crossing closures
21 throughout the state and have used this incentive
22 many, many times, and many times it's been the last
23 straw to break the deal that we're going to close
24 this because we can use this money for other safety
25 projects within, you know, the community such as

1 paving projects or wheelchairs ramps and things like
2 this, so -- a lot of small communities don't have the
3 funds to do that.

4 So it's been a big incentive for us to
5 get out there and do this program, so that's also
6 offered in here and I kind of wanted to explain that.

7 Q. Just for the record, this is -- you said
8 the date of the letter, and it's to Mr. Wayne Crum,
9 Fiscal Officer at the Board of Claridon Township
10 Trustees, correct?

11 A. Yes, sir.

12 Q. And it's signed by Susan Kirkland,
13 Manager, Safety Programs, Ohio Rail Development
14 Commission, correct?

15 A. Yes, sir.

16 Q. Exhibit 4, what's the date of that letter
17 and, in essence, what is that?

18 A. Exhibit 4 is dated November 18th, 2008,
19 just basically Susan's explanation of thanking the
20 township for meeting with them, kind of explaining
21 the examples of what we can do for exchange of the
22 closure, once again.

23 Q. Okay.

24 A. It's a, not a general letter, but it's a
25 letter that we use in the Safety section to follow up

1 on, obviously, the attendance of our commission being
2 at the township meeting. Basically these meetings
3 go, you know, we ask for -- once we get involved at
4 that stage, this might be a closure project and we
5 attend the first public meeting, usually two of these
6 meetings, three, and then ask for the public input.
7 Sometimes they get pretty intense. Like I said, the
8 people that object are the ones that show up and it
9 sometimes can get quite boisterous.

10 So, you know, what originally seems like
11 a great idea, you know, and I think that happened in
12 this situation, on the first vote I think two of the
13 township trustees were in favor and one was opposed,
14 and then in the final vote they were all opposed.

15 So I don't think it was the idea of the
16 township trustees, that they didn't feel that the
17 closure of Ulsh Road was so significant that it would
18 affect the future of Claridon Township. I think that
19 the voices of their constituents that showed up to
20 voice their opinions which, you know, was just a
21 handful considering the population of Claridon
22 Township.

23 So to answer your question, it's just
24 kind of our way of explaining, you know, what the
25 other alternatives are and thank you for letting us

1 speak and present our case.

2 Q. And so both of these letters, Exhibits 3
3 and 4, are representative of letters that, among
4 other things, memorialize what the Rail Development
5 Commission and CSX together may be willing and able
6 to do in terms of incentives.

7 A. Exactly.

8 Q. Okay. And I did want to ask you, on
9 Exhibit 4 there is a -- it's the first I guess two
10 sentences of the third paragraph of the letter, it
11 says, "Please understand that we view the closure of
12 the Ulsh Road crossings as a far superior option to
13 installing flashing lights and roadway gates at the
14 crossing. Over 50 percent of the crashes that occur
15 at railroad crossings in Ohio happen at crossings
16 already equipped with active warning devices."

17 Do you agree with those statements?

18 A. I agree with the statement, and it's a
19 documented fact that at least in the high 40 percent
20 of the crashes that occur in the state of Ohio are at
21 gated crossings.

22 MR. EVANS: I think that's all the
23 questions I have for you at this time. Obviously,
24 the Hearing Examiner or others may have questions.

25 THE EXAMINER: Do you have any questions?

1 MR. WRIGHT: I might have just a couple
2 for clarification.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Wright:

6 Q. Good morning, Mr. Darfus.

7 A. Good morning.

8 Q. Just to make sure the record is clear,
9 you've referred several times to a ranking system and
10 a diagnostic survey. The purpose -- do I understand
11 the purpose of the ranking system, I believe -- well,
12 let me just ask you. I believe you testified that
13 that leads to a, depending on the ranking that leads
14 to a diagnostic survey; is that correct?

15 A. That's correct.

16 Q. The purpose of the ranking/diagnostic
17 process I believe you testified is to determine if an
18 upgrade is necessary at a particular crossing?

19 A. That's correct.

20 Q. And by "upgrade" you mean what?

21 A. When we upgrade, as far as when the
22 diagnostic -- when the ranking presents the number of
23 crossings that we can afford to do in a particular
24 fiscal period, we'll ask the PUCO to give us a list
25 of maybe 20 and with the intentions of doing 12 with

1 funds available. Some might fall off as far as we're
2 not going to do it. Some might go to a closure. The
3 majority get upgraded.

4 Q. And I'm sorry, excuse me, by "upgrade"
5 you mean what? That's my question.

6 A. Most of these crossings, when you have
7 the crash history that reflects what goes into the
8 formula, there could be a crossing with just
9 crossbucks or it could just have flashing lights or
10 it could have flashing lights and gates with old
11 circuitry in it, so when we say an "upgrade,"
12 whatever is existing there, our goal is to make it
13 better.

14 So if it's a crossbuck only, then,
15 obviously, in most situations we'll install lights
16 and gates. If it's in a hilly region or an
17 industrial area where there's two lanes, you know, we
18 clarify if we're going to put in cantilevers and
19 gates, a combination of the two. If it's got lights
20 and gates already and it's on a track that has old
21 crossing predictors, we may want to upgrade the
22 constant warning time. So whenever we say an
23 "upgrade," we're looking for a betterment of that
24 particular crossing. We're looking to make it safer.

25 Q. Okay. Thank you.

1 On the diagnostic survey there was a
2 multipage document I believe which was Petitioner
3 Exhibit 1, there's a reference there to the speed
4 limit for vehicles on Ulsh Road and it notes that
5 that's 55 miles an hour; is that right?

6 A. That's what it says.

7 Q. Now, you testified, I believe, that it
8 was, quote, "impossible to drive 55 at that
9 location." By "that location" I assume you were
10 referring to the crossing?

11 A. It's possible, but it's very dangerous.
12 The crossing slightly starts to turn in a curve. If
13 you're coming from 98 down Ulsh Road, as you approach
14 Marion-Galion Road it starts to go into a slight
15 curve, the crossing is very elevated or humped, and
16 then it drops off the other side. So it would be
17 like being on a roller coaster. It would be very
18 dangerous to travel 55 at that location.

19 Q. When you were, you've indicated you've
20 been out to the crossing on several occasions, did
21 you observe traffic on that road, on Ulsh Road --

22 A. Yes, I did.

23 Q. -- going through the crossing?

24 A. Yes, I did, sir.

25 Q. Recognizing that you probably didn't have

1 the equipment to gauge car speed, do you nonetheless
2 have any opinion as to -- were cars slowing down?
3 Were they typically slowing down?

4 A. I seen a few cars slow down, and I think
5 there seemed to be a variety. I seen a lot of
6 instances of cars traveling very fast and not slowing
7 down, not looking at the railroad crossing or not
8 even paying attention if a train was coming. And you
9 have that in every situation that you seem to go out
10 and look at these crossings and evaluate what the
11 traffic's like in today's world. You know, you have
12 somebody talking on a cell phone, putting on lipstick
13 and traveling 55 and never pay -- I was at a crossing
14 the other day and it was queued back over the
15 railroad crossing, several cars, even a local police
16 officer sitting on the tracks when the train was
17 coming, so you have these at all crossings.

18 I think the traveling public just takes
19 it, especially if you live in the area, just takes it
20 for granted when trains come and when trains go and
21 those are variables that you don't want to try to
22 predict.

23 But I've witnessed both. I saw people
24 paying attention, and I saw several that weren't
25 paying attention.

1 Q. Is there any -- did you notice when you
2 were out at the crossing, is there any signage on
3 Ulsh Road if one approaches the crossing indicating
4 slow down or anything like that?

5 A. No slow. There's no cautionary -- and
6 you'll see a lot of state highways, the yellowish
7 orange signs are always cautionary, they're
8 suggestive signs, they're not enforceable speed
9 limits. But there's not -- chevrons, Turn Ahead, or
10 35 on the Ramp, warnings of that nature, they're all
11 cautionary signs. But there's no cautionary signs as
12 far as Humped Crossing or Railroad Crossing other
13 than an advanced warning sign, which is also a
14 cautionary sign.

15 But, you know, I've seen it in other
16 instances where there was multiple tracks or various
17 levels of tracks, there's been cautionary signs, but
18 at Ulsh Road there's no other cautionary sign.

19 Q. You were asked several questions by
20 Mr. Evans about the consensus of the diagnostic
21 review team, and there are several reasons that were
22 listed on the report, low traffic, angle, and HazMat.
23 Do you recall that?

24 A. Uh-huh.

25 Q. Are you familiar at all with the nature

1 or level of HazMat traffic that would utilize the
2 Ulsh Road crossing?

3 A. We asked that question in the diagnostics
4 and, once again, unless somebody's standing out there
5 doing an actual survey in a 24-hour period how many
6 would cross it at that particular crossing, you know,
7 when we talk HazMat, it can go anything from gasoline
8 trucks that are fueling the nearby farms or propane
9 trucks, or even the local farmer that's hauling
10 fertilizer, those are all HazMat items. I've seen
11 farm chemicals, you know, I've been out there, I
12 think there's soybeans out there right now on most of
13 the quadrants and I've seen farmers with fertilizer
14 go across that crossing.

15 So you always have -- and it's very hard
16 to estimate what amount of HazMat crosses a
17 particular crossing. I think when it gets into more
18 dangerous chemicals and the local authorities are
19 monitoring, you know, what's crossing a particular
20 route, and you can analyze that, you know, at this
21 particular crossing we're assuming that, and I've
22 seen in person there are chemicals going across that
23 crossing that, you know, whether it be a farmer or a
24 gas truck or a propane truck delivering fuel.

25 Q. You were questioned -- you were asked

1 several questions regarding the Marion-Galion Road;
2 do you remember that?

3 A. Uh-huh.

4 Q. In your opinion, and I believe you
5 testified, did you not, that that road is wider?

6 A. Yes, sir.

7 Q. Than Ulsh Road.

8 A. Yes, sir.

9 Q. So is it your opinion that Marion-Galion
10 would be adequate to handle the same type of traffic
11 that Ulsh Road currently handles?

12 A. Very well handle the traffic that Ulsh
13 Road and the traffic that it handles, that
14 Marion-Galion handles currently. It's -- I don't
15 have a traffic count on Marion-Galion in front of me,
16 but it's a little better traveled than Ulsh Road. I
17 think some people understand the parameters and the
18 dangers of crossing the crossing at Ulsh Road just as
19 other people look at it as a shortcut. But yes, it
20 can handle the traffic adequately.

21 Q. Now, you also indicated that, I guess as
22 recently as yesterday you've taken your own
23 measurements at the crossing --

24 A. Uh-huh.

25 Q. -- and vicinity. For the record, could

1 you explain how you took those measurements?

2 A. Well, obviously measuring the roadway
3 width I have a wheel, a measuring wheel that's
4 provided to me, and a tape. I took the car we're
5 supplied, the state vehicle, and just set the trip
6 odometer and did it on an average of three or four
7 times. So we're measuring tenths of a mile so, you
8 know, we aren't measuring by feet, but I did it by
9 the vehicle's odometer, trip odometer.

10 And it was consistent with Rand's. I
11 measured it several times and it was very consistent
12 with Rand's measurements on his diagnostic survey,
13 the few measurements that he took in here.

14 Q. By "Rand" you're referring to Rand
15 Patterson?

16 A. Rand Patterson, I'm sorry.

17 MR. WRIGHT: That's all I have. Thank
18 you.

19 THE EXAMINER: Okay. I'll allow
20 Mr. Mooney if you want to ask a question or some
21 questions.

22 MR. MOONEY: Would you like me to stand
23 when I do this?

24 THE EXAMINER: No. You're fine.

25 - - -

CROSS-EXAMINATION

By Mr. Mooney:

Q. I just have a few questions if I may.
It's Mr. Darfus, correct?

A. Uh-huh.

Q. Okay. How long have you been in the
position you're in?

A. I've been with the Department of
Transportation for 28 years, almost 28 years at
Christmas. I've been with the Rail Commission
15-plus of those.

Q. So how long have you been doing these
surveys?

A. About 15 years.

Q. About 15 years?

A. Uh-huh.

Q. You said that you would get a list of
crossings; is that correct? Is this from the Ohio
Department of Transportation?

A. From the diagnostic surveys, these
crossings?

Q. Yes.

A. The list is generated on -- our
foundation of how we do our projects, you have to
have a good foundation to do these projects because

1 you can't have Mayor So-and-so calling in, Senator
2 So-and-so. So we use a formula, and the best way to
3 do that was based on the federal formula and that
4 formula is generated by the Federal Rail
5 Administration that monitors traffic accidents at
6 railroad crossings.

7 The variables that go into those formulas
8 are daily traffic, train traffic, sight distance,
9 school bus, HazMat, and obviously fatalities and
10 crashes at railroad crossings. Unfortunately,
11 fatalities always push you right to the top as
12 accidents do also. So those variables can change
13 from day to day.

14 But that list is generated through the
15 PUCO. When we come up with our funding source -- our
16 budget allows us to do a set amount of crossings, and
17 so we go to the PUCO Rail division and they generate
18 that list for us. When we're spending federal money,
19 the PUCO conducts, as this particular location, this
20 was one of the picks that came in 12th for us to do
21 a diagnostic survey.

22 So that list is generated by the Federal
23 Rail Administration, to answer your question, the
24 PUCO types in the variables of that and it comes back
25 as one of the particular crossings that we're to look

1 at.

2 Q. Okay. So you said that you try to look
3 at approximately 20 crossings if the funds are
4 available to do those 20 crossings.

5 A. Yeah, it's according to what our budget
6 is.

7 Q. Okay.

8 A. We'll ask for -- give us 12 crossings,
9 give us 15, that could change from quarter to quarter
10 or year to year --

11 Q. Okay.

12 A. -- whatever our particular budget allows
13 us.

14 Q. Now, you work for Ohio Rail Development,
15 correct?

16 A. I'm an employee of the state of Ohio
17 Department of Transportation, but my particular
18 assignment is with the Rail Development Commission
19 which is a part of the Department of Transportation,
20 it's under the umbrella of the Department of
21 Transportation.

22 Q. So you basically have no affiliation with
23 CSX?

24 A. I have no affiliation with CSX.

25 Q. None at all.

1 A. None at all.

2 Q. Okay. Do you know where the Ulsh Road
3 crossing was as far as where it ranked before it went
4 to 12th?

5 A. Do I know the number? It could have
6 ranked anywhere into the 6,000 range. It's had a
7 couple accidents and as those accidents -- when you
8 have a noninjury accident, it would send it slightly
9 up the rankings. When you have an injury accident,
10 it will send it up a little more. If you have a
11 fatality, sends it up even more.

12 But I can have Ulsh Road -- when you're
13 dealing with over 6,000 crossings, I could have two
14 fatalities on the same day in different parts of the
15 state and those could come in close with each other
16 and the rankings, obviously, would come up in the top
17 few that we'd be doing surveywise.

18 To answer your question do I know where
19 it was prior to those accidents, no. There was no
20 indication why it would. There's no way I could keep
21 track of all 6,000-plus crossings in the state of
22 Ohio unless an accident sends it to that particular
23 point of alarm.

24 Q. I can tell you with some certainty that
25 that ranked in the 70s in the state, was the

1 information I was given. I was given -- I can't give
2 you the exact number, 74th, 75th, something like
3 that. Now, when that particular MVA or auto accident
4 or crash as you call it, when that happened, I
5 believe it went to 12th. Is that correct?

6 A. I would assume so. I mean, that's
7 usually the trigger. Like I said, the first accident
8 could have been a noninjury and would have sent it up
9 to maybe your 75th level. Seventy-fifth is pretty
10 high.

11 Q. Yeah.

12 A. The next accident could have sent it to
13 the 12th. A fatality could have sent it to No. 1.
14 Yeah. I think in talking to you gentlemen in the
15 previous township hall, you know, there's been a
16 history of accidents over time at that particular
17 crossing. I believe you stated the testimony that a
18 gentleman on a tractor was hit there at one time.

19 It seems there's been quite a few
20 histories, and I think from what I've gathered from a
21 couple that's retired, that this Ulsh Road is
22 continually coming up, it's been a point of
23 contention for several years: Is it a safe crossing?
24 Is it a crossing that needs closed?

25 Q. That particular accident we're talking

1 about, that was a gentleman that had a dump truck and
2 was hauling a backhoe. He was a farmer.

3 A. Yeah.

4 Q. And he was a gentleman that had told me
5 about his accident and he had just failed -- he had
6 claimed that there wasn't a light on, whatever,
7 whatever the situation was, but anyway, when I asked
8 him if he would want this crossing closed now, he
9 said "No." So, you know, he got hit there and he
10 still -- it was a convenience thing I'm sure.

11 A. Exactly. Because I travel around the
12 state of Ohio and I've done hundreds of these. It's
13 always -- it's such a contention to make people look
14 outside to the realm of what they're used to,
15 especially at crossings.

16 But as Joyce Bushman, the city manager in
17 Pickerington, Ohio, I approached her three, four,
18 five times to talk about closing East Street and
19 let's get some lights and gates through the city of
20 Pickerington; this has been ten years ago. Conrail
21 was the operator on the line. And I just talked to
22 Joyce two weeks prior to that, a week prior to that,
23 sent her a letter, under my understanding that the
24 village of Pickerington, at that time, has no desire
25 to pursue lights and gates, and just sent it in the

1 mail to her.

2 And I had a gentleman sitting on the
3 tracks talking to a real estate broker in Texas, had
4 the cell phone in his hand still with the cords, as
5 we remember when they were attached to the dash, and
6 lady in front, lady in back screaming to get off the
7 tracks, you know. He's dead. He's dead. So it's a
8 convenience factor. It's hard to make a community
9 understand that until something like that happens.
10 Well, Joyce Bushman was the first phone call I got on
11 Monday morning.

12 Q. Exactly. Okay. Of all these crossings
13 that you survey, do you know of any percentage or is
14 this not a fair question to ask, do you have to close
15 a certain amount of these?

16 A. No.

17 Q. Is there any requirement that a certain
18 amount of these be --

19 A. No, there's no requirement. There's no
20 requirement whatsoever. And, you know, I guess
21 that's why I get involved in these projects. I look
22 at -- our charge is not to inconvenience a community.
23 Our charge is not to close streets and make emergency
24 squads and school buses turn around in driveways.
25 The things that -- all that you hear at all these

1 meetings at night, that it's going to inconvenience
2 somebody, that's not our charge at all.

3 There's no standards, there's no
4 requirements of any kind if we need five closures a
5 year, we need three closures a year. We truly
6 believe, and me and the other project managers, that
7 if there is an alternative route that is in close
8 proximity that will not inconvenience the local
9 community, the emergency -- you know, that's the
10 first thing that's always brought up, the emergency
11 squads and fire trucks and stuff. And then I've been
12 to these meetings where these medics talk about these
13 accidents at these railroad crossings, and I've seen
14 these fatalities myself personally; they're not
15 pretty either.

16 Yeah, I might have two or three more
17 seconds getting Ruth from lane 1 to lane 2 because
18 the crossing was closed, but there is no set standard
19 as far as closure. We take our job very seriously,
20 you know, we have to spend the funds so, once again,
21 when we spend our money, the slight amount of money
22 that it is that we get, whether it's 15 million a
23 year or 20 million a year, when you're talking
24 250,000 a pop, you don't get a lot of railroad
25 crossings done.

1 And then all the -- the state of Ohio is
2 probably one of the most aggressive states in the
3 country as far as safety at railroad crossings. So
4 we don't come into your community trying to bulldog
5 you into doing a closure. We come in wanting you to
6 understand that this is our program, this is what
7 we're charged to do, this is what we're offering you,
8 we're offering you a program to close a redundant
9 very unsafe crossing that has the potential -- and
10 every crossing has the potentials at any given times.
11 You've heard testimony that 50 percent of the
12 fatalities in the state are at gated crossings;
13 people trying to beat the train.

14 Well, when we look at a particular
15 situation like Ulsh Road that has an alternative
16 route parallel to the tracks, right next to it, and
17 then even a safer route, State Route 98 and 309 which
18 takes another 3/10 of a mile, you know, there's two
19 potential routes that you can cross the crossing, you
20 can travel safely.

21 And it's an inconvenience, but even when
22 the farmers testified in your township hall, will we
23 have to take our planter or our grain silo or
24 whatever out on -- well, you have Marion Road. It's
25 not that I have to put it on a state route.

1 And then I've come from a farming
2 community myself, and I know what that's like taking
3 heavy equipment and large equipment down state
4 routes.

5 But, you know, they're designed for large
6 equipment, they're designed to get -- for
7 tractor-trailers and tractors to be out on a larger
8 road. You know, we've all traveled the township road
9 where you have to get completely off the road
10 because, you know, the farmer's bringing down his
11 planter or, you know, his plows or whatever, and then
12 a lot of times we've seen them at railroad crossings
13 where they've hit both signs, you know, from the
14 planters and things.

15 But it's hard to make the communities
16 realize that, you know, until they see those
17 fatalities in their community, yeah, you hear about
18 them, you know, you hear about them one by one. And
19 actually there's even more fatalities at railroad
20 crossings than there are airplane crashes, but you
21 just hear about them because they're so large and so
22 many people -- there are people dying all over the
23 state and all over the country at railroad crossings.
24 We can't stop a train. We know it's hard to do.

25 And most of the time it's human error.

1 They're not paying attention. They're used to their
2 environment. They're pulling a tractor, operating,
3 looking back. There's a lot of variables, so we take
4 our job very seriously as far as safety, and I think
5 that's why you continue to see and we continue to see
6 that we're getting ahead of the game in the state of
7 Ohio.

8 When I started at the Rail Commission, we
9 were chasing accidents. We were chasing fatalities.
10 Very seldom really approaching these railroad
11 crossings now we're there because of fatalities
12 unless it was a suicide. We're playing an advocate
13 of doing something in advance. So when we see these
14 numbers that make these railroad crossings come up in
15 the formula, it's, you know, a noninjury accident or
16 old equipment.

17 You know, we were to a place where we
18 were always putting in lights and gates. Now in our
19 program we're developing constant warning time or
20 developing all kind of interconnects and things with
21 traffic control devices. In the last 15 years I've
22 been there the railroad industry has advanced, the
23 communications of traffic control versus railroad
24 control, the two interconnected, we've seen a lot of
25 technology going from old relays to computerized data

1 with switch controls in them.

2 I mean, it's advanced a lot. And the
3 safety's advanced a lot. So, you know, we're seeing
4 our money being spent on that and we're advancing
5 with the times.

6 So we're not out to inconvenience your
7 community. We're out to save lives. And when we see
8 these kind of crossings, it's not that we're trying
9 to force you to close that because we want it closed.
10 We work in conjunction with CSX, we work in
11 conjunction with Norfolk and Southern and any other
12 short lines in our state for the same reasons they
13 work for it too, for safety, saving lives, fatalities
14 at railroad crossings, so . . .

15 Q. In your statistical data do you know if
16 the number of accidents at this crossing are above or
17 below average with any crossing? Is there any data
18 to support that?

19 A. I don't know if you can classify that
20 it's below or above average. I mean, like I said, we
21 could have a crossing out here on Broad and somebody
22 could go around the gates and be killed. We can
23 have -- obviously it's more likely in statistics
24 numerically that the more crossings -- the more cars
25 that cross a day and the more trains you have on that

1 particular crossing, the more chances are that
2 somebody might get hit, especially if it's an
3 unprotected crossing.

4 Q. But you don't have any data that says
5 this crossing is habitually or it has statistically
6 higher accident rates at that crossing.

7 A. That is the data that put us here today.

8 Q. Correct. But we were talking, you know,
9 an accident that dropped it from or brought it up to,
10 whichever you want to say, from 75 to 12 because of
11 the accident, possibly could have gone to No. 1 had
12 there been a fatality.

13 A. Could have.

14 Q. One other question. Is the money there,
15 do you know if the money's there to go ahead and
16 upgrade this particular crossing?

17 A. No. No, the money's not there.

18 Q. The money is not there.

19 A. The money -- by law we are not allowed to
20 encumber any funds. First of all, we do our -- get
21 the numbers from the PUCO -- I'll kind of explain our
22 process. We do the diagnostic survey. Once that
23 diagnostic survey is concluded, if we're going to
24 upgrade the lights and gates or whatever, we'll
25 start -- we'll come back and PUCO may issue an order

1 to the railroad, we'll start doing the agreements and
2 then the funds are encumbered.

3 That crossing -- as we meet as a
4 diagnostic team and it was consensus of the
5 diagnostic team this is a good closure candidate so,
6 therefore, we put it in that process. It is going to
7 go through the process of the closure.

8 If this whole process ends and we don't
9 get a closure, or it's not closed, it will be put
10 right back out there for another diagnostic. What do
11 we do with this crossing? Do we not do anything? Do
12 we put lights and gates? Or do we demand that it be
13 closed? It will go right back to -- there's no funds
14 set aside for this crossing.

15 Q. Mr. Darfus, I was told, and I would have
16 to do a little digging here, but I was told at one
17 point by somebody, and I hate to be this way but I
18 was told that money, because of it going to No. 12 in
19 the state, that the money was there through the state
20 and federal government to put lights and gates at
21 that crossing. I think as the trustees and as we
22 looked into it and had our meetings, you know, we
23 definitely want that crossing to be upgraded
24 definitely with, you know, lights and gates would be
25 the optimum.

1 A. Well, everybody does.

2 Q. But, you know, I was told and I was under
3 the understanding that there was money there for this
4 particular project to go forward.

5 A. Well --

6 Q. This is what I don't understand.

7 A. Let me try to explain it to you.

8 Q. You're saying no --

9 THE REPORTER: Can I just have one person
10 at a time.

11 A. Let me try to explain it to you.
12 Everybody wants lights and gates. Everybody wants
13 lights and gates and nobody wants closures, you know,
14 and our closures are very few compared to the
15 upgrades that we do.

16 Secondly, the process works that, once
17 again, we have to have a foundation to base why we're
18 there. So why we're there is the database or the
19 Federal Rail Administration's formula. The PUCO
20 gives us Ulsh Road to go and visit.

21 There are funds that are put in our
22 charge that we handle, and we ask for particular 12
23 crossings or 15 crossings, whatever it may be at the
24 time we request those, the funds are there to do
25 these 12 crossings. That doesn't mean every crossing

1 we go visit we're going to do. There's funds to do
2 12 crossings.

3 Whether we decide to do a crossing and
4 agree as a diagnostic team, that's our duty, we have
5 opinions from the local community, the railroad, the
6 PUCO, and the ORDC and anybody else that would have,
7 whether it be a school board or, you know, there's a
8 crossing right next door to a new school, everybody
9 that we invite in there usually has a vested interest
10 in the crossing.

11 So there's all the people that you see on
12 the front page of the diagnostic form that has an
13 opinion and has asked for a consensus of that
14 opinion, and as you see the consensus of that
15 opinion, and you gentlemen were included, that this
16 is a good crossing candidate to be closed and you
17 agreed upon that as far as a diagnostic team.

18 Yes, there's money to do 12 crossings.
19 That doesn't mean that Ulsh Road is one of those 12.

20 Q. Okay.

21 A. We all agreed in the diagnostic survey,
22 you as a team, with all the other variables involved
23 that this is a good crossing candidate. So,
24 therefore, we went to meeting. We went to your
25 meetings. We invited your constituents to come and

1 voice their opinion. We heard those opinions. We
2 presented ourselves as the incentives we can give the
3 community, the incentives the railroad would give the
4 community for a crossing candidate.

5 That's not to say there wasn't any money
6 designated for Ulsh Road. The money is designated
7 for the 12 or 13 crossings, whatever we can spend of
8 the funds that we have available to do the number of
9 crossings that we can do.

10 Ulsh Road, yes, it was one of the
11 candidates that came up on the formula. But as a
12 diagnostic team, before that team came together this
13 amount of money wasn't set aside for Ulsh Road. We
14 didn't have 200,000 to upgrade Ulsh Road in
15 particular, no more than we had it to upgrade the
16 rest of the crossings that were presented from the
17 PUCO at the time that we requested crossings.

18 If Ulsh Road would have been approved as
19 a diagnostic team, Yeah, this is a great candidate,
20 as we have in your township before, saw good
21 candidates that needed upgraded and it's a busy road
22 and people use it, it's a vital link, a vital vein
23 that feeds our community as far as intermodal
24 transportation, taking people to work and school
25 buses to school, yeah, it would have been a great

1 candidate.

2 But as a team they decided it wasn't a
3 great candidate. It's a good opportunity for a
4 closure and to upgrade maybe something else, we gave
5 you several incentives, you know, it's -- to answer
6 your question yeah, the money was there, not for
7 necessarily Ulsh Road, but it was there set aside for
8 the number of crossings that we requested.

9 MR. MOONEY: John, Russ, do you have any
10 questions?

11 THE EXAMINER: Well, I'm just going to
12 allow you to ask questions.

13 MR. MOONEY: Just allow me?

14 THE EXAMINER: Yes.

15 MR. MOONEY: Okay. I guess at this
16 particular time I have nothing further.

17 THE EXAMINER: Okay. I have a few
18 questions for you.

19 THE WITNESS: Okay.

20 - - -

21 EXAMINATION

22 By The Examiner:

23 Q. The ranking of Ulsh Road as No. 12, that
24 was July 22nd, 2008, I assume that's the date, the
25 second page of the diagnostic review team survey.

1 A. Yes.

2 Q. Do you know what its ranking is now?

3 A. As of today I don't.

4 Q. Okay.

5 A. I don't. And those, once again, those
6 could change daily. I mean, you could run that every
7 day and -- the railroad's report -- the railroad,
8 each railroad reports to the Federal Rail
9 Administration these accidents, and whether they do
10 it on line or through the mail, whether it's a short
11 line or a major carrier, those all affect those
12 rankings, so they could change.

13 Q. So is it likely that it has changed?

14 A. I would say that it's likely it has
15 changed. Most definitely it's changed. I don't know
16 how far it's changed.

17 Q. Would you expect, since there have not
18 been any reported accidents, that the ranking is a
19 higher number? It's not more. I guess as you get
20 the numbers, if 12 -- the lower the number is the
21 more serious.

22 A. Right.

23 Q. Would you expect this --

24 A. The closer it gets to 1 the more serious
25 it is.

1 Q. So would you expect, your expectation
2 based on your --

3 A. It would drop.

4 Q. -- your expertise --

5 A. It would drop. The more days that you
6 have from that last accident and it goes on without
7 another accident, obviously, that's going to continue
8 to drop as far as a hazard ranking. Or if there was
9 another accident, obviously a fatality that claimed
10 lives or many lives would send it plummeting.

11 Q. Is that information that's available to
12 ORDC to find out the ranking --

13 A. Yes.

14 Q. -- of the --

15 A. Yes.

16 Q. Can ORDC provide that information?

17 MS. KIRKLAND: As can PUCO staff.

18 THE EXAMINER: Okay.

19 MS. KIRKLAND: Typically it's PUCO staff
20 that enables that ranking. We have a computer in our
21 office that PUCO provides to us that we could pull
22 it, but Leah Dalton could do it as well.

23 THE EXAMINER: Well, since you're here
24 why don't you just file that --

25 MS. KIRKLAND: Sure.

1 THE EXAMINER: -- in the docket just so
2 we have an updated record there.

3 Q. (By The Examiner) Also there's been a lot
4 of discussion with regard to the diagnostic review
5 team having a consensus. What does that mean, a
6 consensus? Does that mean everybody's in agreement,
7 or is it a majority vote? Or what is the consensus?

8 A. Well, a consensus is just as it sounds,
9 it's a majority vote. As we do these, the majority
10 of diagnostics that we do get upgraded. And the
11 majority agree.

12 Q. Okay. But you weren't part of this
13 diagnostic team.

14 A. I was not part of this team.

15 Q. So you don't know actually how everybody
16 felt.

17 A. Right. I don't have, you know, I was --
18 obviously, I wasn't there, so I can't speak for that
19 Mr. Mooney said "No. I'm a little skeptical."

20 Q. You just don't know.

21 A. Yeah, I don't have a clue.

22 Q. So you're basing your opinion that the
23 consensus was to close it on what?

24 A. On this diagnostic review and also
25 talking to Joe Reinhardt in my office that the

1 consensus was, once again, the consensus was that
2 they felt it was a good crossing candidate for
3 closure.

4 Q. Okay. Also you've indicated that because
5 you're saying the consensus was to close, that this
6 crossing is no longer a candidate in the eyes of ORDC
7 for grade crossing improvement.

8 A. I'm saying that any crossing can be a
9 candidate for improvement.

10 Q. Until another diagnostic survey is done.

11 A. Exactly. Yes.

12 Q. It is a candidate for closure.

13 A. Yes. Technically, it's still a candidate
14 for closure.

15 Q. Okay.

16 A. If that doesn't happen, where will it
17 rank, like you were questioning, where does it rank
18 again.

19 Q. Okay.

20 A. We'll probably go out and do another
21 diagnostic review.

22 Q. Now, in the petition of the CSX, they
23 state that ORDC previously recommended and requested
24 that Ulsh Road crossing be closed. Do you know when
25 ORDC previously recommended that this crossing be

1 closed?

2 A. In their petition. I'd have to see their
3 petition. It depends on the date. From the --

4 Q. Filed March 16th, 2009, is their
5 amended petition which they repeated that also.

6 A. Well, it was previously recommended
7 obviously at the diagnostic review. It was
8 recommended at several of the township meetings. But
9 from the history of the crossing it's been
10 recommended for years that this crossing be closed.
11 Not only once this ranking came in and this accident
12 made it skyrocket to a more hazardous crossing, but
13 this crossing has been in contention for years. It's
14 had previous accidents at it.

15 Prior to our process of doing a
16 diagnostic review and using the FRA formula it's had
17 accidents at it. It's been evaluated and presented
18 to township trustees before these gentlemen were
19 township trustees for closure.

20 Q. So there have been in the past diagnostic
21 reviews?

22 A. You know, in the last 10, 12 years, we
23 always had meetings at crossings, we're trying to
24 find -- we're trying to follow a format nationally
25 how we evaluate crossings so, you know, nationally

1 across the United States we're doing diagnostic
2 reviews. We've always had meetings at crossings
3 prior to upgrading.

4 So in the years prior to diagnostic
5 reviews it's always been considered a hazardous
6 crossing, it's had accident histories.

7 Q. Okay. So from your experience with the
8 ORDC, your opinion is that this crossing has for the
9 last ten years, let's say, the recommendation of the
10 ORDC is that it be closed --

11 A. Yes.

12 Q. -- rather than be a candidate for
13 upgrade.

14 A. Yes, sir.

15 Q. Okay. Now, you had indicated -- you had
16 referenced some of the testimony at the public
17 hearing. Were you at the public hearing?

18 A. I was at the last public hearing.

19 Q. Okay. The one in Caledonia?

20 A. Yes, sir.

21 Q. And at that hearing there was some
22 discussion about farmers who would drive heavy
23 equipment, tractor-trailers, down Ulsh Road from 98
24 headed toward the crossing.

25 A. Yes, sir.

1 Q. Do you recall that?

2 A. Yes.

3 Q. Okay. And some of that equipment would
4 be loaded up with farm produce. And if the crossing,
5 if Ulsh Road was closed and a truck was headed east
6 from 98 down Ulsh Road towards -- on the side of the
7 road, one of the farmers, how would a truck negotiate
8 out of Ulsh Road back to 98?

9 A. Well, in the farming community, like I
10 said, I'm from a farming community and my grandfather
11 was a farmer, any truck that would have any business
12 back Ulsh Road once it's closed would obviously be a
13 grain truck or hauling corn in to seed into the
14 planters or hauling the harvest back out.

15 So most of those trucks, once the harvest
16 is taken off or what have you, are going in the
17 fields. The large grain trucks and stuff are going
18 into the field drives as they do now. So they'd have
19 no problem negotiating a turning around point or
20 getting out of Ulsh Road. There would be no other
21 business for any other trucks to be back there other
22 than snow equipment if the township --

23 Once we close the crossings, that doesn't
24 mean the road's closed. Obviously, the road is still
25 there, it's just closed at the crossing. So they'd

1 have to maintain that road. Whether they do a T turn
2 around at the crossing or they use somebody's
3 driveway, or there could be a cul-de-sac, there's
4 variable ways.

5 But as far as large semi trucks and farm
6 equipment that's going in and out of field drives,
7 they have their own property to turn around on. So
8 when people present that as an argument, to me that's
9 a moot point because you're going into the field,
10 you're coming back out of the field. You're going to
11 head the direction that you came.

12 As far as equipment, you know, there's
13 2/10, I think I measured there's 2/10 of a mile from
14 the last house on the right, there's only two houses
15 on the road, she came in at .6 and at the crossing --
16 well, there's 1/10. At the crossing is .7. So
17 there's 1/10 of a mile past the last house. I would
18 assume that the township would maintain and even snow
19 removal they would maintain up to that particular
20 driveway. We're not planting in the winter, we're
21 not harvesting in the winter, so there's no reason to
22 maintain up to the crossing.

23 I've seen instances where particular
24 municipalities have even turned that portion of the
25 road back over to the underlying fee owner or the

1 landowner. So there's different variables how that
2 could be done.

3 But as far as large trucks turning around
4 and negotiating and turning around, that's usually
5 done in the fields. Any other truck wouldn't have
6 any other business back there. As far as snow
7 equipment, yeah, it's a little bit larger than a
8 pickup truck and things. The several that I've done,
9 they've found a way to turn around.

10 THE EXAMINER: Okay. I think that's all
11 the questions I have. Do you have any redirect?

12 MR. EVANS: Well, I guess in the
13 classic -- I did have one area of questioning I
14 wanted to ask him about, I'm not sure it has been
15 touched on at this point. If you don't mind, I'd
16 like to ask one additional question.

17 THE EXAMINER: It will be redirect.

18 MR. EVANS: Well then I'll wait and ask
19 another witness.

20 THE EXAMINER: You're excused.

21 THE WITNESS: Thank you very much.

22 (Witness excused.)

23 THE EXAMINER: Is there any objection to
24 the admission of CSX Exhibits 1, 2, 3, 4? Hearing
25 none, they will be admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 THE EXAMINER: Why don't we take a short
3 recess at this point for ten minutes.

4 (Recess taken.)

5 THE EXAMINER: Why don't we go back on
6 the record.

7 You can call your next witness.

8 MR. EVANS: Your Honor, we have
9 transcript, actually two in a row to read into
10 evidence, or pertinent portions of the transcript to
11 read into the record.

12 THE EXAMINER: Transcript from what?

13 MR. EVANS: From the deposition of Gary
14 Collins and the deposition of Roger Kepford.

15 THE EXAMINER: You want to read a
16 deposition into the record?

17 MR. EVANS: Unless you tell me I need not
18 do that.

19 THE EXAMINER: I don't know of any
20 provision in the Ohio Administrative Code that allows
21 someone to read a deposition into the record unless
22 the witness is here.

23 MR. EVANS: I think my understanding
24 would be that the civil rules generally apply and the
25 civil rules generally permit reading into the record

1 sworn deposition testimony as you would, for example,
2 do it at trial.

3 THE EXAMINER: Do you know what rule that
4 would be?

5 MR. EVANS: I'd have to look.

6 THE EXAMINER: I think that's if the
7 party is dead or unavailable, and certainly these
8 people could have been subpoenaed, as far as I know.
9 I don't know who you're talking about, but if they're
10 individuals that could have been subpoenaed, I'm not
11 sure --

12 MR. EVANS: Well, we filed the
13 transcripts and I take it they would be of record
14 based upon having been filed.

15 THE EXAMINER: They're not part of the
16 record of the case. They're docketed in the --
17 they're filed in the docket of the case, but they're
18 not evidence in the case.

19 MR. EVANS: Okay. Well, we have sworn
20 testimony of two individuals, school district
21 transportation director and a farmer that farms a
22 field along -- adjacent to Ulsh Road or contiguous to
23 Ulsh Road.

24 THE EXAMINER: Could they have been
25 subpoenaed?

1 MR. EVANS: They could have.

2 THE EXAMINER: But you didn't subpoena
3 them.

4 MR. EVANS: I subpoenaed the fire chief.

5 THE EXAMINER: But I mean the individuals
6 that you're talking about that you deposed that
7 you're wanting to read parts of the deposition into
8 the record --

9 MR. EVANS: Right.

10 THE EXAMINER: -- those individuals you
11 chose not to subpoena.

12 MR. EVANS: No. I guess for a complete
13 record we sent an -- I sent an e-mail, my staff did
14 actually, to you indicating we would like to.

15 THE EXAMINER: And for the record, did I
16 respond to your e-mail?

17 MR. EVANS: No. And we indicated we were
18 planning to read them in. I guess I misunderstood
19 your silence for, that that would be an appropriate
20 way to go as opposed to subpoenaing these individuals
21 to come down to testify.

22 THE EXAMINER: Well, I don't have a
23 provision in the civil rules that allows, I mean, if
24 you can point me to one, I'd be glad to look at it,
25 but as far as I know there's only a few exceptions

1 for allowing a deposition to be used when a witness
2 is not here, and I don't believe that you've
3 identified one.

4 I mean, under the Civil Rule 32 it says
5 may be used by any party if the witness is dead, the
6 witness is beyond the subpoena power of the court,
7 the witness is unable to attend or testify because of
8 age, sickness, infirmity or imprisonment, you've been
9 unable to procure the witness by a subpoena, or the
10 witness is an attending physician or a medical
11 expert, if oral exam is not required.

12 So I'm not sure where your two witnesses
13 would fall into those categories unless you can --

14 MR. EVANS: No, they're definitely not
15 medical doctors or individuals that were beyond the
16 subpoena power of the court. Their testimony, as I
17 said, all I can indicate to your Honor is that the
18 testimony was filed, the deposition is sworn
19 testimony. I would ask that the depositions be
20 submitted of record and they are, as you said, filed
21 and part of the docket, and I would ask that they be
22 considered in their entirety then by the Hearing
23 Examiner as sworn affidavits, sworn evidence as part
24 of our case.

25 THE EXAMINER: I'm not going to allow

1 that.

2 MR. EVANS: Okay. We have the chief
3 subpoenaed although he, as I mentioned earlier, I
4 would need -- our other witness would be Mr. Ludban
5 from CSX, but I need a few moments to figure out
6 after the last witness what would need to be asked of
7 him.

8 THE EXAMINER: Okay. That's fine.

9 MR. EVANS: The only thing I guess I can
10 do is ask the court for the opportunity to contact --
11 to subpoena these witnesses and to come on a
12 different day.

13 THE EXAMINER: No. You had that
14 opportunity. This is the day to have them come.

15 MR. EVANS: Okay. Well, I understand
16 that. I think we're all -- I would understand if
17 these were affidavits, but these are depositions that
18 were taken with the township trustees or at least two
19 of the members of the trustees present, sworn
20 testimony. This being an administrative proceeding
21 my understanding would have been that this would be
22 acceptable to read into evidence given the fact that
23 they were filed. Obviously, you've indicated
24 otherwise. I'm sure we're all about trying to get to
25 what the facts are and that is the intent of these

1 depositions, obviously, was to make sure we get to
2 what the facts are.

3 THE EXAMINER: Well, you can have some
4 time to review it with your witness if you want to
5 take a short break.

6 MR. EVANS: I'd like to take a short
7 recess.

8 THE EXAMINER: Okay. How long would you
9 want?

10 MR. EVANS: Ten minutes or so.

11 THE EXAMINER: Okay. Let's recess for
12 ten minutes.

13 MR. WRIGHT: I'm sorry. How long?

14 THE EXAMINER: Ten.

15 (Recess taken.)

16 THE EXAMINER: Let's go back on the
17 record. Call your next witness.

18 MR. EVANS: Yes, your Honor. Give me a
19 moment to get my act together here. We would call
20 Terry Ludban.

21 THE EXAMINER: Okay. Raise your right
22 hand.

23 (Witness sworn.)

24 THE EXAMINER: You may be seated.

25 You may proceed.

1 MR. EVANS: Thank you.

2 - - -

3 TERRY MARTIN LUDBAN

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Evans:

8 Q. Mr. Ludban, would you state your full
9 name, please?

10 A. Terry Martin Ludban.

11 Q. And what is your business address?

12 A. 2973 West Pittsburgh Road in New Castle,
13 Pennsylvania, 16101.

14 Q. And by whom are you employed?

15 A. CSX Transportation. I'm the manager of
16 Community Affairs and Safety.

17 MR. WRIGHT: Excuse me, Mr. Evans. Is it
18 Ludban or --

19 THE WITNESS: Ludban, L-u-d-b-a-n.

20 MR. WRIGHT: Thank you.

21 Q. You just indicated for us your title. Do
22 you have a certain territory that you cover?

23 A. Yes. I handle issues for CSX in Ohio,
24 Pennsylvania, Maryland, Delaware, and parts of DC.

25 Q. Again, you told us your title, but in a

1 nutshell what does your job involve? What do you do?

2 A. I oversee a lot of the safety training we
3 do in those states. I attend crossing, whether it be
4 closure issues or diagnostic reviews like we've been
5 talking about today in those states. I also deal
6 with other issues that might be brought to us by
7 townships, cities, states, drainage issues, property
8 issues. The complaint department I guess would be
9 the short answer.

10 Q. Okay. Thank you.

11 And have you had occasion to travel to
12 the Ulsh Road crossing?

13 A. Yes, I've been there several times.

14 Q. And do you from time to time get involved
15 on behalf of the railroad in diagnostic surveys as
16 we've discussed?

17 A. Yes, I do.

18 Q. Okay. I want to just briefly run through
19 with you the closure factors or considerations that
20 are set forth in the Ohio Revised Code that's
21 applicable to closure of grade crossings, information
22 that's contained in our petition and ask you, you
23 know, some questions about that.

24 The first category for consideration is
25 daily -- well, it's a combined category, daily

1 vehicular traffic and daily train traffic. What is
2 your understanding, first of all, as to the daily
3 vehicular traffic at this crossing?

4 A. As we've heard before, the most recent
5 that I understand was taken was 137 cars per day.
6 And the 19 trains per day is a current number.

7 Q. Another category, second category, is
8 daily vehicular traffic and daily train traffic at
9 the adjacent crossings, and before I ask you that, at
10 my request did you measure the distance from -- the
11 linear distance from the Ulsh Road crossing, first of
12 all, to the Route 98 crossing?

13 A. From Ulsh Road to Route 98, yes, I did.

14 Q. Do you recall what that distance was?

15 A. Yes, it's roughly 1 mile using the same
16 method as was testified before. I used the odometer
17 on my vehicle.

18 Q. At my request did you review track charts
19 at some point to determine distance along the track?

20 A. Yes, I did.

21 Q. And what was that distance from Ulsh Road
22 crossing to the Route 98 crossing?

23 A. I believe it was .8 miles. I'd have to
24 look it up. It was less than a mile.

25 Q. Okay. And similarly did you use the

1 track chart to determine the linear distance along
2 the track from Ulsh Road to Nesbitt Road?

3 A. Yes.

4 Q. Do you recall what that was?

5 A. 1.3 miles.

6 Q. All right. And now getting back to the
7 second category, the daily vehicular traffic at
8 Nesbitt Road, do you know what that number is?

9 A. Yes. It's 287 vehicles.

10 Q. And how about at the State Route 98
11 crossing, how many there?

12 A. 3,450.

13 Q. And where was that information obtained?

14 A. Those are PUCO numbers.

15 Q. And again, the number of trains at those
16 adjacent crossings would be how many?

17 A. They'd be 19 trains, again. It's the
18 exact same line.

19 Q. Same trains.

20 The third consideration under the Revised
21 Code has to do with the daily increase in vehicular
22 traffic at alternate crossings if the Ulsh Road
23 crossing is closed. And do you know how that, as set
24 forth in our petition, was derived upon?

25 A. Yes. The 132 to 137, which is the newest

1 number, the majority would probably go to Route 98.

2 Q. But is it accurate to state that the
3 thought is that the total number of vehicles that
4 used Ulsh Road would be dispersed somehow between
5 those two crossings at most 137 to one and zero to
6 the other, correct?

7 A. Yes, that's correct.

8 Q. And what is the nature of the roadway at
9 the alternative crossings based upon your
10 observations?

11 A. Both roads are two-lane roads. Both
12 Nesbitt and State Route 98 have lights and gates.
13 Both are crossings that are more of a 90-degree, so
14 the sight lines are not an issue.

15 Q. That was the fourth consideration under
16 the statute. The fifth consideration is the total
17 number of crossings in one linear mile, and I think
18 you've already indicated Route 98 is less than 1
19 linear mile; is that correct?

20 A. Yes.

21 Q. And the next consideration, No. 6, is
22 advance warning devices at alternative crossings, and
23 you've already indicated both alternative crossings
24 have those; is that correct?

25 A. That's correct.

1 Q. And how would you describe, you've touch
2 on this, but the seventh consideration is the sight
3 distance at alternative crossings, how would you
4 describe that sight distance?

5 A. Sight distances are not a problem at all
6 at either crossing, not only can you see both ways
7 because it's much straighter track, easier to see,
8 but they both have lights and gates.

9 Q. In terms of the impact of closure on
10 vehicular traffic, emergency vehicles and commercial
11 vehicles, first of all, you were here and heard the
12 testimony of Mr. Darfus earlier regarding
13 measurements he did as he drove around the vicinity
14 of the crossing?

15 A. Yes.

16 Q. And you've done similar measurements
17 yourself; is that correct?

18 A. Yes.

19 Q. And your numbers were consistent similar
20 to what he came up with.

21 A. Yes.

22 Q. I'm not going to ask you to address the
23 emergency vehicles issue because the chief is to
24 testify later, but in terms of the impact of closure
25 on vehicular traffic and commercial vehicles, given

1 those distances that were testified to earlier by
2 Mr. Darfus, what would your understanding be as to
3 the extent of any impact on vehicular traffic were
4 Ulsh Road closed?

5 THE EXAMINER: Let me stop you for a
6 second. Are you asking him as an expert to give an
7 opinion on that?

8 MR. EVANS: No, just based on his
9 experience at the crossing.

10 THE EXAMINER: Okay.

11 A. Having driven the same routes that
12 Mr. Darfus did, actually as recently as last Tuesday,
13 the impact is minimal. The distances are so small
14 and the fact that Ulsh Road is just used as a
15 shortcut, that it just, it makes good sense to, you
16 know, consider those very small distances and use the
17 other routes.

18 Q. Mr. Ludban, why is CSX interested in
19 closing this crossing?

20 A. We have the same way of looking at
21 crossings as the ORDC does, and when we look at a
22 crossing and we go to a diagnostic, we are one of
23 those people, just like all the other folks that are
24 invited, and one of the things that we look at is is
25 this a good candidate for closure. And we feel that

1 Ulsh Road is.

2 MR. EVANS: That's all the questions I
3 have.

4 THE EXAMINER: Okay. Do you have any
5 questions?

6 MR. WRIGHT: Maybe one or two. Your
7 Honor, do you object if I approach the map that's up
8 there.

9 THE EXAMINER: No.

10 MR. WRIGHT: I need to ask something to
11 make sure I understand.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Wright:

15 Q. Good afternoon, Mr. Ludban.

16 A. Good afternoon.

17 Q. Did you testify, I believe you testified
18 a minute ago that the linear distance between the
19 Route 98 crossing and the Ulsh Road crossing is a
20 mile, roughly; is that what you said?

21 A. It's actually .83 miles.

22 Q. Okay. But we're basically talking about
23 from here to here.

24 A. Yes.

25 Q. All right. That's what I thought. I

1 just wanted to make sure.

2 Now, does CSX serve any industry in the
3 near vicinity that would need to be switched on any
4 kind of regular basis?

5 A. To my knowledge -- I apologize. The next
6 industry would be down closer to Marion, I believe.

7 Q. Do you know what the average length of
8 CSX trains is that would be coming down this main
9 line?

10 A. That's something that could be found, but
11 I don't have knowledge of that.

12 MR. WRIGHT: Your Honor, could we request
13 that that be just submitted later into the record?

14 THE EXAMINER: Yes.

15 MR. WRIGHT: Thank you.

16 Q. To your knowledge, then, Mr. Ludban, do
17 you know whether or not blocking has ever been a
18 problem at either of these crossings?

19 A. We have a call-in and we keep records of
20 when we get calls in for blocked crossings. We have
21 no records in our TELL-CSX about blocked crossings in
22 this area in either of the three crossings that are
23 in question.

24 MR. WRIGHT: That's all I have. Thank
25 you.

EXAMINATION

By The Examiner:

Q. And that's dating from when?

A. Our TELL-CSX has been around, I believe this is the third year that we've actually been doing it this way, and those are the only ones that I would have knowledge of.

Q. And those are based on the townships calling in to say there's a blocked crossing or what?

A. Could be the township, could be a private citizen, could be, you know, somebody from the county that observed that blockage.

Q. And how does somebody know to call and where to call when there's a blocked crossing?

A. There are emergency signs and a phone number on the crossings. And the 800 number, that's where people call us.

Q. Is this something that's widely disseminated to the public around the crossings, like do you believe that the township that's opposing this crossing knows that there's a phone number to call and what the number is?

A. I can't speak for the township, but I would be very surprised if they didn't know that. It's posted on every single crossing on both sides.

1 Q. Okay. But you don't have any record of
2 anybody calling in to record a blocked crossing in
3 the last three years is what you're saying.

4 A. No.

5 Q. Okay.

6 MR. WRIGHT: Excuse me, your Honor.
7 Would you indulge me, I think I do have one more
8 question.

9 THE EXAMINER: Yes.

10 MR. WRIGHT: Would you have any idea,
11 Mr. Ludban, how often or with what kind of frequency
12 the crossing on Route 98 could be closed for
13 maintenance purposes?

14 THE WITNESS: Yes. I checked with our
15 maintenance department and they have it on a schedule
16 of roughly every seven years, and the crossing during
17 that construction would be closed an average of three
18 days. And that would be for any crossing on this
19 line.

20 MR. WRIGHT: Okay.

21 THE EXAMINER: Okay.

22 MR. WRIGHT: Thank you.

23 Q. (By The Examiner) All right. Would CSX
24 have any opposition to a private crossing where Ulsh
25 Road is?

1 A. Actually, that was brought up at a
2 township meeting and the discussion did not go
3 forward.

4 Q. But that's something that, what, the
5 railroad brought up?

6 A. Yes.

7 Q. So you would -- CSX would not oppose
8 that.

9 A. Under certain conditions I would have to
10 say we wouldn't oppose it. Putting a crossing at the
11 same location with the same skew and that is really
12 not something we would want to do.

13 Q. But you would be -- CSX would be open to
14 consider alternative locations in the vicinity of
15 where the existing Ulsh Road crossing is now as a
16 private crossing.

17 A. We'd be very open to that discussion,
18 yes.

19 Q. And in terms of funding, would CSX be
20 willing to -- well, strike that.

21 Is the only reason that CSX filed a
22 petition to close the crossing related to the
23 diagnostic survey or are there other reasons why CSX
24 filed the petition in the first place?

25 A. Well, again, the criteria that CSX uses

1 to look at crossings and that I would use if I was
2 coming upon a crossing just in my daily travels are
3 basically the same as the ORDC uses. If you look at
4 a crossing and the, in this case the angle of the
5 crossing, the skew of the crossing, obviously it was
6 brought to the attention of the state of Ohio so
7 that's how we all got here, but looking at that
8 particular crossing we're in total agreement with the
9 ORDC that it's a crossing that is an excellent
10 candidate for closure and that's why we went ahead
11 and petitioned.

12 Q. How many other crossings currently is CSX
13 looking at to close in Ohio?

14 A. Boy, that's a difficult question. I can
15 tell you that we're looking at other crossings on a
16 daily basis. I really can't give you a number.

17 Q. And is the basis on which you determine
18 which crossings to file a petition on, what's the --
19 how do you determine when to file a petition?

20 A. I think in this case this was petitioned
21 because it met every criteria both of the railroad
22 and ORDC and it was one that we felt we needed to
23 follow through the system.

24 Q. Okay. And do you know where Ulsh Road
25 would rank in relation to other crossings in terms of

1 as a candidate for a petition to close? Are there
2 other crossings that you've also considered that --

3 A. We've gone through this process one other
4 time that I'm aware of; I was not involved.

5 Q. But none currently.

6 A. Not to my knowledge.

7 THE EXAMINER: That's all I have.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Mooney:

11 Q. One question if I may. I don't think I
12 got the response from when you were asked what
13 initiated the petition to close this crossing.

14 A. I guess what initiated it was the fact
15 that we came to the township and worked with ORDC and
16 talked through that process, came to a position
17 where -- the township trustees and the process had
18 gotten to the point where you had voted that you did
19 not want to go forward with the closure, so the next
20 step in the process for us is to petition for
21 closure.

22 Q. What created the petition for closure?
23 What created the circumstance that that be petitioned
24 for closure?

25 A. The circumstance for petition for

1 closure, again, came about through as part of a
2 process, but the crossing itself and the ORDC process
3 is, again, the same process basically that we use,
4 makes this a candidate for closure. And after the
5 vote the next step for us is to, if we choose, go
6 ahead and petition for closure.

7 Q. If there had not been an accident at this
8 crossing and it was currently in the 70s somewhere
9 74, 75 as far as the crossing went, and then all of a
10 sudden it went to 12th, is that what created the
11 situation to petition for closure?

12 A. I think the --

13 Q. Was it the accident that created the
14 situation to say, okay, instead of us upgrading we're
15 just going to close it? I'm just asking that.

16 A. Yeah. I can't say that 70 to 12 is what
17 actually caught our attention although, obviously, we
18 work with the ORDC. And we don't make decisions
19 about what kind of warning systems are put up.

20 Q. Correct.

21 A. So we're more a part of that process than
22 being the catalyst, if you will. I'm not real sure
23 if that answers your question.

24 Q. I guess my question is, would this
25 petition for closure have been made had there not

1 been that accident if this crossing was hovering in
2 the 70s as far as being, you know, a problem
3 crossing? Had there not been an accident, would this
4 petition have never been filed?

5 A. I can only answer that in that we have
6 many crossings that we're currently looking at that
7 could be upgrades or could be closures, and even if
8 it was ranked No. 70 and we had been in dealings with
9 the township and said "Gee, this is really a crossing
10 that we've identified as a possible closure," my best
11 guess is we would still have petitioned for this
12 closure.

13 Q. Okay. So you're telling me that
14 eventually this probably would have come up for this
15 petition for closure, but the accident then created a
16 situation where it brought it to petition for
17 closure, it expedited that petition.

18 A. That's a fair statement.

19 MR. MOONEY: Okay. That's all I have.
20 Thank you.

21 THE EXAMINER: Do you have any redirect?

22 MR. EVANS: No, I don't.

23 THE EXAMINER: You're excused. Thank
24 you.

25 (Witness excused.)

1 THE EXAMINER: The only other witness --

2 MR. EVANS: Is the fire chief.

3 THE EXAMINER: -- is the fire chief.

4 MR. EVANS: Still waiting to hear from
5 him. I hope he's on his way now from Marion.

6 THE EXAMINER: Okay. Let's go off the
7 record.

8 (At 12:19 p.m. a lunch recess was taken
9 until 1:30 p.m.)

10 - - -

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Wednesday Afternoon Session,
2 August 12, 2009.

3 - - -

4 THE EXAMINER: Let's go back on the
5 record. Do you want to come up here. Do you want to
6 raise your right hand.

7 (Witness sworn.)

8 THE EXAMINER: Be seated.

9 - - -

10 CHIEF CLINT E. CANTERBURY
11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Evans:

15 Q. Good afternoon, Chief. First, thanks for
16 rushing down here, we appreciate you doing that. I'm
17 sure it wasn't convenient, necessarily.

18 For the record, would you state your full
19 name.

20 A. Clint E. Canterbury.

21 Q. And by whom are you employed?

22 A. First Consolidated Fire District.

23 Q. And again, for the record, what is the
24 business address for First Consolidated?

25 A. 115 North High Street, Caledonia, Ohio

1 43314.

2 Q. You have been the fire chief there since
3 February 1 of this year, correct?

4 A. That is correct.

5 Q. Prior to that you were the administrative
6 chief for about one year.

7 A. That's correct.

8 Q. And prior to that you were a part-time
9 firefighter in that --

10 A. That is correct.

11 Q. -- district, correct?

12 In September of 2008 there was, we've had
13 testimony about this this morning while you were busy
14 doing other things, but there was a diagnostic review
15 team survey meaning, for all intents and purposes, a
16 meeting that occurred at the crossing involving
17 people from the railroad, township trustees were
18 there, and based upon the record created of that it
19 appears that you were in attendance at that; is that
20 correct?

21 A. That's correct.

22 Q. Your territory covers 110 square miles,
23 correct?

24 A. Roughly, that is correct.

25 Q. Roughly.

1 A. Yeah.

2 Q. And that encompasses four townships which
3 include Scott, Tully, Canaan, and Claridon, correct?

4 A. Correct.

5 Q. And within that there is one village, the
6 village of Caledonia.

7 A. That is correct.

8 Q. And Caledonia is actually within Claridon
9 Township.

10 A. Correct.

11 Q. I want to show you what we've marked as
12 Exhibit 6 for identification.

13 MR. EVANS: And I apologize, I don't have
14 anything larger than this, but I do have smaller
15 copies for everyone.

16 THE EXAMINER: Sure.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. I'll represent to you, Chief, that that
19 is a section taken out of this Ohio DeLorme Atlas and
20 Gazetteer, Ohio Maps by County, and we specifically
21 tried to encompass what appeared to us to be the four
22 townships that you deal with, specifically Scott,
23 Tully, Canaan, and Claridon. Are you able to
24 recognize what you're looking at there?

25 A. Correct.

1 Q. I wanted to find out from you in terms of
2 the outer boundaries of your territory, have we
3 captured enough of the map here essentially to get
4 the outer boundaries of your 110 square mile
5 territory?

6 A. Everything is there except the southern
7 tip. The southern, it doesn't go down south far
8 enough.

9 Q. Okay.

10 A. But yes, it is, I mean, very accurate.

11 Q. So Canaan Township would go down a little
12 bit further to the south, your territory there?

13 A. I believe Claridon Township, unless
14 that's the line that's just cut off on this sheet.

15 Q. Okay.

16 A. Because I can't see the road.

17 Q. Is there a roadway at the south end that
18 would be the southern border of your territory?

19 A. No.

20 Q. Okay.

21 A. And you know, to be honest with you, I
22 probably wouldn't know, you know what I'm saying, I
23 don't know exactly where it stops like on Kauffman
24 Road. So it may be, the dotted line right here at
25 the bottom, I guess I am assuming that this is the

1 township line.

2 Q. Well, that was I think our assumption as
3 we made this, but --

4 A. Okay. Yeah, I would go along with that.

5 Q. So to the south I guess we're working
6 under the understanding that we captured your
7 territory as far as it goes to the south where
8 there's a dotted line and I can see where it says
9 Haas or Haas Road.

10 A. Yeah.

11 Q. And to the east is there a roadway there
12 or, again, I think I see some dotted lines along the
13 right side of the map, is that the easternmost
14 portion of your territory?

15 A. No. Canaan Township is cut up very
16 immensely throughout the whole township. We only
17 cover about a third of it and, again, there's road
18 names on this map, I couldn't -- to be honest, I
19 can't tell you because -- I'm assuming
20 Cardington-Denmark Martel Road is County Road 28, I
21 believe.

22 Q. Okay.

23 A. We go by county road numbers out there,
24 not by road names. This is the first time I've ever
25 seen road names. That was a learning process I had

1 when I took the job is use the road names in Marion
2 County then they go to county road numbers in Morrow
3 County.

4 Q. So is the Cardington-Denmark Martel Road,
5 based on where it's located on this map and your
6 general familiarity with the area, is that -- are you
7 indicating that's approximately where you think your
8 territory ends in Canaan Township?

9 A. That's like a main line road and then we
10 go clear over to Township Road 9 which is the very --
11 the T9, because we have Caledonia-Bellville, we have
12 North Road, Township Road 9. So it's all, it's
13 jagged up through there. It goes through fields.
14 There's no road boundaries per se.

15 Q. Okay.

16 A. My understanding, it was defined as the
17 River Valley School District, and you may have that
18 in your records. To my knowledge, that is the
19 district, is the River Valley School District.

20 Q. Okay. Well, we can say from what you're
21 indicating that the map that we've copied here that
22 shows Canaan Township going over as far as the last
23 road I can read that's on the map is
24 Cardington-Edison Iberia Road, that actually goes
25 further east than what your --

1 A. Well, that turns into township road, or
2 that is Township Road 9 I'm assuming.

3 Q. Okay. So some part of your territory
4 does go over that far.

5 A. Yeah.

6 Q. And other parts do not go that far.

7 A. Right. Because down at 95 and the
8 Claridon Township line, the Township 60 is ours. I
9 know 67 and 66 is ours. And then from there it just
10 kind of zigzags up at an angle until it gets to
11 Township Road 9 which is the Cardington Iberia or
12 Cardington-Edison Iberia Road, I suppose.

13 Q. And your territory includes that road as
14 it goes on up into Tully --

15 A. Yes, sir.

16 Q. -- Township?

17 A. Yes.

18 Q. And your coverage of Tully and Scott
19 Township to the north, have we --

20 A. The Crawford Marion line is correct.

21 Q. So that's a fairly straight line across
22 the north end; is that right?

23 A. Yeah.

24 Q. And on the west side, how far -- does
25 your territory include Pole Lane Road?

1 A. The centerline of Pole Lane Road is our
2 boundary.

3 Q. Houses on the east of Pole Lane Road
4 would be --

5 A. First Consolidated west line is Marion
6 Township.

7 Q. Okay. So with the understanding that
8 Canaan Township, in terms of your coverage, is a bit
9 cut up and jagged, for the most part I think you
10 would agree we've captured the territory that --

11 A. Absolutely.

12 Q. -- you cover; is that fair?

13 A. Absolutely.

14 Q. All right. You have, in your department,
15 eight vehicles including your chief's vehicle,
16 correct?

17 A. We have dispersed some of those vehicles.
18 We're down to five.

19 Q. You may remember your deposition was
20 taken a few weeks ago. Is that since that time
21 you've --

22 A. Yes, sir, that just happened in the last
23 few days or a week or so.

24 Q. Okay. So currently five vehicles
25 including your vehicle?

1 A. Let me recount. I got two medics, two
2 engines, a tanker, a grass truck, and a chief's
3 vehicle. So we've gotten rid of our rescue truck,
4 we're in the process of buying a new rescue truck.

5 Q. What else did you get rid of?

6 A. We've gotten rid of a tanker and another
7 rescue truck. How many does that add up to? I'm
8 sorry.

9 Q. Well, if you add in a rescue truck and a
10 tanker and the second rescue truck that would be
11 three more vehicles which would get you up to eight.

12 A. Yeah, we've got rid of the two rescues
13 and a tanker.

14 THE EXAMINER: So can you just clarify
15 for the record, what vehicles do you have right now?

16 THE WITNESS: We have two medics.

17 THE EXAMINER: Two medics.

18 THE WITNESS: Two engines.

19 THE EXAMINER: What is a medic?

20 THE WITNESS: Squad. Ambulance.

21 THE EXAMINER: Okay. Two ambulances.

22 THE WITNESS: Two engines.

23 THE EXAMINER: Two engines. You mean a
24 fire engine?

25 THE WITNESS: Fire engine. A tanker.

1 THE EXAMINER: Okay.

2 THE WITNESS: A grass truck.

3 THE EXAMINER: What's a grass truck?

4 THE WITNESS: It's a pickup truck used to
5 fight field fires.

6 THE EXAMINER: Okay.

7 MR. EVANS: Field fires, did you say?

8 THE WITNESS: (Witness nods head.)

9 And a chief's vehicle.

10 THE EXAMINER: And a pickup truck, is
11 this like an F150 pickup, that size, or smaller?

12 THE WITNESS: No; it's a Chevy pickup,
13 but yeah.

14 THE EXAMINER: Just for the record, I
15 want clarified the tanker truck. How big is a tanker
16 truck?

17 THE WITNESS: It's a tandem-axle vehicle,
18 hauls 3,000 gallons of water. It's a very large
19 truck, it's almost the size of, say, a ladder truck.

20 THE EXAMINER: And the engines.

21 THE WITNESS: They're single-axle
22 vehicles but very large, probably similar to what you
23 see around here.

24 THE EXAMINER: Thank you.

25 MR. EVANS: Sure.

1 Q. (By Mr. Evans) Your fire station is
2 located in Caledonia, correct?

3 A. Yes.

4 Q. And it's at the, essentially the corner
5 of High Street and May Street just north of the
6 tracks, CSX tracks.

7 A. Would be Marion Street.

8 Q. Marion Street. I couldn't read my own
9 writing I guess. High Street and Marion Street just
10 north of the tracks.

11 A. Yes, sir.

12 Q. And the village of Caledonia is located
13 within Claridon Township, correct?

14 A. Yes.

15 Q. And approximately 90 percent of your
16 calls that the fire department receives are to
17 Claridon Township.

18 A. If it's not 90, it's pretty darn close.

19 Q. And that 90 or approximately 90 percent
20 would include runs that are within Caledonia itself,
21 correct?

22 A. Yeah.

23 Q. So approximately 10 percent of your runs
24 are to the other three townships, Scott, Tully, and
25 Canaan combined, correct?

1 A. Correct. And then are, again, then are
2 rough estimates, and I've offered to show exact
3 figures, but I've not . . .

4 Q. I understand. But you're comfortable
5 with those approximations, correct?

6 A. Sure.

7 Q. You have to -- I don't know if the court
8 reporter -- you got it, okay.

9 Now, there was a directive or verbal
10 policy, if you will, issued by the prior chief, I
11 think I understand that to be Chief Stafford --

12 A. Correct.

13 Q. -- which you have continued since you've
14 been in charge that fire department personnel are
15 generally not to use the Ulsh Road crossing to
16 respond to an incident, correct?

17 A. Correct.

18 Q. And in fact, there's also a policy in
19 place when you're responding from the station that
20 for calls north that are locations north of the
21 tracks, the CSX tracks, in responding you try to stay
22 north of the tracks, and in calls for calls south of
23 the tracks you would obviously cross the tracks and
24 respond to the south, correct?

25 A. That is correct.

1 Q. And the reason or at least one reason
2 that you would have a policy that would say that if
3 it's a call that is north of the tracks, you respond
4 by going -- staying north of the tracks is as a fire
5 department you don't want to get caught on the
6 opposite side of the tracks if you can help it with a
7 train coming through or, even worse, a train stopped
8 or somehow blocking your method of getting through.

9 A. That is correct.

10 Q. Okay. And you also generally want your
11 trucks and ambulances to travel primarily on the main
12 highways to the extent they can. Obviously, they
13 have to get off those at some point to respond, but
14 they tend to travel more on the main roadways.

15 A. That is correct.

16 Q. And going east and west within -- if
17 we're, first of all, talking south of the CSX tracks,
18 your main east-west corridor is Route 309.

19 A. That is correct.

20 Q. We talked about if the call requires you
21 to go to somewhere that is north of the tracks, your
22 policy is that you try to stay north of the tracks in
23 responding. So I just want to go through a couple of
24 examples to make sure I understand how the fire
25 department would operate.

1 If you're responding from the station,
2 your call would require you to go to Scott Township,
3 which would be kind of the top left quadrant if you
4 will of the territory, correct?

5 A. Yes.

6 Q. Am I correct that typically you would go
7 over Caledonia Mud Pike to Route 98 and then head in
8 the direction to Scott Township?

9 A. Depending, but Caledonia Mud Pike is used
10 very often along with Linn Hipsher Road.

11 Q. From your station, if you were going to
12 use Linn Hipsher, how would you get to Linn Hipsher?

13 A. Caledonia-Northern goes out to the north
14 end of town there. As you can see on the map,
15 there's a road right out of the north side of the
16 village.

17 Q. You would take that to Linn Hipsher and
18 go east or west depending on where you were headed.

19 A. And most generally that's the way they
20 would probably go. Again, assuming this because I
21 don't have definite directions to send my men, it's
22 their own discussion, that's why they're officers.

23 Q. Okay. Other than the general things we
24 talked about in terms of staying north of the tracks
25 if they're headed north, we also talked about

1 generally avoiding the Ulsh Road crossing as another
2 directive, correct?

3 A. Right.

4 Q. If, and I think you probably have
5 answered this in some ways, but if the call was from
6 the station and you were going to Tully Township,
7 again, you would leave Caledonia in a northerly
8 direction, correct?

9 A. Caledonia Northern Road, that is correct.

10 Q. And if you're responding to Claridon
11 Township -- but there's a portion of Claridon
12 Township that is north of the tracks, correct?

13 A. Correct.

14 Q. If you're responding to Claridon Township
15 north of the tracks, say for example a location on
16 Likens Road, typically from what you describe in
17 terms of the general approach to things you would --
18 your men would typically go over Caledonia Mud Pike
19 from the station to get to Likens Road.

20 A. That is correct.

21 Q. And you're familiar with Ulsh Road,
22 correct?

23 A. Yes.

24 Q. You've been there at one time or another.

25 A. Yes.

1 Q. There are two residences on Ulsh Road; do
2 you recall that?

3 A. Yes.

4 Q. One is on the north side of Ulsh Road,
5 and we had testimony earlier from Mr. Darfus of the
6 Ohio Rail Development Commission that he had measured
7 the distance to that first residence from Route 98
8 and found it approximately to be 3/10 of a mile in.
9 Can you in your mind picture that first residence on
10 the left as you're going in Ulsh Road?

11 A. Yes. For the most part. I mean, I know
12 it's there, I'm not sure exactly the distance, but I
13 believe you.

14 Q. If he measured it to be 3/10 of a mile in
15 from Route 98 to that residence on Ulsh Road, do you
16 have any reason to dispute that?

17 A. No.

18 Q. And then going further in, again, from
19 Ulsh Road -- I'm sorry, from Route 98 on Ulsh Road
20 there's a second residence, this one being on the
21 south side of Ulsh Road. Can you picture that
22 residence?

23 A. Yes.

24 Q. It will be closer to the track? Yes?

25 A. Yes. I'm sorry.

1 Q. And again, if he measured that distance
2 to that residence coming in from Route 98 to be
3 approximately 6/10 of a mile, would you have any
4 reason to dispute that?

5 A. No.

6 Q. Both of those residences on Ulsh Road
7 that we've just talked about would be on the north
8 side of the tracks.

9 A. That is correct.

10 Q. It would be consistent with your
11 department's policy in responding to those residences
12 north of the tracks to stay north of the tracks;
13 would it not?

14 A. Responding from the station that is
15 correct.

16 Q. So from the station, consistent with your
17 policy, you would typically respond to those
18 residences, if you're going to abide by that policy,
19 by going a route that takes you -- keeps your men
20 north of the railroad tracks.

21 A. That's correct.

22 Q. And, therefore, going that route they
23 would not have to go across the Ulsh Road crossing.

24 A. That is correct.

25 Q. Now, if you, again, are responding from

1 the station and if you're responding to Canaan
2 Township, and I know that's the jagged one that's
3 kind of a little bit all over the place, but you
4 would go south out of Caledonia using one of the
5 crossings in Caledonia, correct?

6 A. The one on High Street right in front of
7 the station.

8 Q. Typically that, I assume, okay. And you
9 would take that down to Route 309 and then it would
10 depend on where you were going within the township as
11 to where you would go from there, correct?

12 A. That is correct.

13 Q. So when you're responding to Canaan
14 Township from the station, to Tully Township from the
15 station, to Scott Township from the station, and to
16 any part of Claridon Township that is north of the
17 tracks, you would agree that the Ulsh Road crossing
18 is not involved if you're responding from the
19 station.

20 A. I would agree with that.

21 Q. Now, if you're responding to Claridon
22 Township south of the CSX tracks, that portion which
23 is to the south, from what you've said to this point
24 in your testimony it would be my understanding that
25 you would, again, leave Caledonia to the south

1 probably using the High Street crossing, correct?

2 A. That's correct.

3 Q. And you would take that to Route 309.

4 A. Correct.

5 Q. If you're trying to get over to the
6 southern parts of Claridon Township. And you would
7 go west on 309 to get over in that general area,
8 correct?

9 A. That's correct.

10 Q. So again, if you're responding from the
11 station to Claridon Township south of the tracks, the
12 Ulsh Road crossing would not be a factor in making
13 that response, correct?

14 A. That is correct.

15 Q. From time to time it happens that fire
16 trucks or EMS vehicles are required to respond to an
17 incident from another location having already
18 completed a run or finishing up one run and they get
19 another call; is that fair?

20 A. That is correct.

21 Q. In fact, before I forget to ask you this,
22 we talked about percentages of runs that are in one
23 township versus another, but I didn't ask you, I
24 think you have a fairly good estimate as to the
25 number of runs your department made in, I believe it

1 was 2008. I think it was 670 runs total.

2 Thereabouts.

3 A. On emergency calls, that is correct.

4 Q. Emergency calls.

5 MR. WRIGHT: Excuse me, the 670 are just
6 emergency calls?

7 THE WITNESS: Right. It could be --
8 calls for service may not be included in that. Just
9 incidental calls that people call the firehouse and
10 say I need help doing this or that would be
11 considered a service call.

12 Q. The 670 would include, though, EMS runs?

13 A. Yes.

14 Q. Fire department --

15 A. Correct.

16 Q. -- runs, most of the things that we would
17 think of as far as the types of things fire
18 departments do, correct?

19 A. Correct.

20 Q. And would I be correct in stating that
21 when your department responds to a run or call, that
22 an effort is made to try to send only the vehicles
23 that are needed to respond to whatever that situation
24 is? In other words, you don't send every truck if
25 you don't think you're going to need every truck.

1 A. No. We send the trucks that are required
2 to handle the call.

3 Q. Right.

4 A. And that depends on manpower and the type
5 of call.

6 Q. Okay. So conversely, there are -- when
7 some runs are made, there are times when trucks or
8 EMS squads or whatever remain back at the station
9 because they aren't needed on a particular call.

10 A. That's fair to say.

11 Q. And if vehicles, if members of your
12 department are out on a run and another call comes in
13 and you have sufficient vehicles back at the station
14 that can respond to the run more quickly, would I be
15 correct in understanding or assuming that you would
16 send those that are at the run -- or, I'm sorry, at
17 the station to the second call?

18 A. Yes, that would be fair to say.

19 Q. Now I want to talk to you about a few
20 situations much like we did in terms of responding
21 from the station but now looking at it in terms of
22 responding from out in the field somewhere. And if
23 you are in Canaan Township or your men are in Canaan
24 Township and they get another call that requires
25 someone to go to Tully Township, and for whatever

1 reason it's necessary for your men in the field to
2 respond as opposed to somebody back at the station,
3 you would agree that the route they would take to get
4 from Canaan Township to Tully Township would not in
5 any way involve Ulsh Road?

6 A. No.

7 Q. All right. And similarly, if they're in
8 Canaan Township and they need to go to Scott
9 Township, again, the response -- and they're doing
10 that from the field, their response is not going to
11 involve Ulsh Road.

12 A. It may.

13 Q. Well, if they're in Canaan Township,
14 they're going to get to Nesbitt Road first, aren't
15 they? If they're heading west on 309.

16 A. That's fair to say.

17 Q. And Nesbitt Road is an improved crossing
18 with flashers and gates, correct?

19 A. Yes.

20 Q. And you've indicated before when I took
21 your deposition that Nesbitt Road is used from time
22 to time by your department, correct?

23 A. Yes.

24 Q. And the members of your department would,
25 I presume, have in their mind that they're generally

1 prohibited, or requested at least, not to use the
2 Ulsh Road crossing, correct?

3 A. Yes.

4 Q. So then another example would be if
5 they're in Tully Township and there's a need to
6 respond to Scott or vice versa, in Scott and they
7 need to respond to Tully, there's not going to be any
8 reason in making that response from one location to
9 another to use Ulsh Road.

10 A. Again, depending on the crossings.

11 Q. Well, can you foresee any reason if
12 they're in Scott Township and trying to get to Tully
13 why they would go down --

14 A. Oh, to Tully. I'm sorry. You're
15 correct. You're correct. Scott to Tully it does not
16 affect.

17 Q. All right. If they're in Claridon
18 Township south of the tracks and they need to respond
19 to somewhere else in Claridon Township south of the
20 tracks, Ulsh Road is not an issue.

21 A. Again, it depends --

22 Q. Well, if they're trying to go from
23 somewhere south of the tracks --

24 A. To somewhere north.

25 Q. -- hang on, to somewhere else south of

1 the tracks --

2 A. Oh.

3 Q. -- there's no reason they'd go on Ulsh
4 Road.

5 A. That is correct.

6 Q. And that would include if they're south
7 of the tracks in Claridon Township, let's say in the
8 vicinity of the southwest quadrant -- corner of
9 Claridon Township and they need to go to Caledonia to
10 respond to an incident, they would not need to deal
11 with Ulsh Road to make that trip, would they?

12 A. That is correct.

13 Q. And similarly, if they're in Claridon
14 Township south of the tracks and they need to go
15 somewhere in Canaan Township, the Ulsh Road crossing
16 would never be an issue.

17 A. Correct.

18 Q. So the only time that the use of Ulsh
19 Road would become potentially a factor in trying to
20 go from point A to point B when out in the field to
21 respond to a second call or a second run would be if
22 they are in Claridon Township and they need to
23 respond -- Claridon Township south of the tracks and
24 they need to respond to Claridon Township north of
25 the tracks.

1 A. That's true.

2 Q. And the Ulsh Road issue would only come
3 up if Route 98 was for some reason closed. The Route
4 98 crossing was closed?

5 A. Closed or an accident happened at that
6 crossing.

7 Q. Right.

8 A. Or in that vicinity.

9 Q. Well, in terms of the -- okay. But in
10 terms of getting from this point in the southwestern
11 portions of your territory to the northern part of
12 Claridon Township, that would be primarily only --
13 the use of Ulsh Road would only become a factor if
14 you couldn't get through the Route 98 crossing for
15 some reason, correct?

16 A. That's true.

17 Q. And you weren't here earlier, obviously,
18 because you were busy doing other things for
19 testimony, but there's been testimony that the Route
20 98 crossing would be closed on average approximately
21 every seven years for about three days at a time.
22 Are you aware of that?

23 A. No, I was not aware of that.

24 Q. Okay. When I deposed you, you indicated
25 you couldn't estimate exact -- how many times Route

1 98 had been closed since you were chief. I think at
2 the public hearing in May you indicated it may have
3 been a couple of times. Does that seem right from
4 your recollection?

5 A. Whether it was closed or blocked due to
6 trains stopped. My concern with this is with the
7 intermodal system that's just now in place, with them
8 increasing 300 intermodals a day in and out of that
9 facility, you know, there is potential that the
10 crossing is going to be blocked.

11 Q. You're not talking about an increase of
12 300 trains.

13 A. No. It would be 300 intermodals which
14 carries the -- the trains carry the intermodals.
15 There's 300 trucks, so if they're bringing 300 semis
16 in and 300 semis out every day, those intermodals
17 have got to come from somewhere.

18 Q. The only evidence before us that I'm
19 aware of is there's 19 trains a day that goes through
20 this general area that includes Ulsh Road, and you're
21 not aware of anything to the contrary there.

22 A. There's at least that that goes through
23 there.

24 Q. Well, do you have any evidence, any
25 indication, anything that's been specifically

1 provided to you by a railroad or some other public
2 entity that the number of trains per day is more than
3 19?

4 A. As far as a number of trains, no, I have
5 not.

6 Q. And it's been your experience that if a
7 grade crossing is closed or is going to be closed for
8 something other than an emergency, in other words, if
9 there's an anticipated closure of a crossing, from
10 your experience the railroad is good, very good about
11 letting the community in general know that this is
12 coming and that information, from your experience,
13 filters to you as the fire chief.

14 A. That is correct. Anytime I have known
15 any crossing to be closed it has gotten to the fire
16 department in some form.

17 Q. And as the fire chief, if you became
18 aware that there was a planned closure of whatever
19 crossing it may be for a day or two days or three
20 days, I assume it would be part of your
21 responsibility, which you would take seriously, to
22 plan accordingly and look at, Okay, what are we as a
23 department going to do knowing about this particular
24 situation.

25 A. Absolutely.

1 Q. And one of the things you might do, if
2 you knew, for example, that the Ulsh Road crossing
3 was closed and that Route 98 was going to be closed
4 for a day or two or three would be to try to, when
5 you send trucks and people out on a run, to try to,
6 to the extent you can, keep vehicles back at the
7 station that would be of assistance to you if a
8 second call came in while they were out.

9 A. That's true.

10 Q. As you look at this map you would agree
11 that Route 98 as it passes through your territory
12 angles in somewhat of a northeast-easterly direction?

13 A. That's correct.

14 Q. And you've already indicated that Pole
15 Lane Road is, at least the eastern side of Pole Lane
16 Road is part of your territory, correct?

17 A. That is correct.

18 Q. And just because of the geographics here
19 and the way 98 angles to the northeast you would
20 agree with me that the distance from Route 98, for
21 example, over to Pole Lane Road on 95 is shorter
22 than, again, for example if you were to go up to Linn
23 Hipsher Road or Marseilles-Galion Road if you were
24 trying to go from 98 over to Pole Lane Road there; is
25 that fair?

1 A. Yes.

2 Q. So if there's a situation where you have
3 manpower that is located in the southern portions of
4 Claridon Township and they for some reason need to
5 get to the northern portions of Claridon Township or
6 even into Scott Township, you would agree with me
7 that it may -- because Pole Lane Road goes
8 essentially more due north-south, that it may
9 actually be as fast or faster to go over to Pole Lane
10 Road and go due north to get to that area of your
11 territory; isn't that fair?

12 A. Depending on the call, I would say you're
13 correct.

14 Q. Now, as far as responding to Ulsh Road
15 itself, you estimated when you gave your deposition
16 that in 2008 there may have been as many as five to
17 ten runs to that road. Do you recall that?

18 A. Yes.

19 Q. And I know that was an estimate, and you
20 seemed to recall that one of, I guess one of the two
21 residences there had I guess what you could say would
22 be sort of more than their share of calls during that
23 particular year, I understood them to be EMS runs as
24 opposed to fire department runs.

25 A. That is correct.

1 Q. Or fire runs. Is that accurate?

2 A. I didn't research that data, but my
3 recollection is yes, they were all EMS calls outside
4 of the car versus train MVAs that we had there.

5 Q. Right. And if we had a situation where
6 somebody needs to respond to one of the two houses on
7 Ulsh Road, if it's one of these situations where
8 there's manpower that's already out having responded
9 to an incident such that they'd be approaching it
10 either from the north or west, then Ulsh Road
11 wouldn't be an issue in terms of responding to -- I'm
12 sorry, that Ulsh Road crossing closure wouldn't be an
13 issue in terms of their response.

14 A. Repeat your question.

15 Q. Sure. That was -- we're now focusing on
16 the occasion where they would have to respond to Ulsh
17 Road and one possibility is that they would have to
18 respond from somewhere else and that somewhere else
19 could be another run that had them either north of
20 Ulsh Road or west of where Ulsh Road meets Route 98,
21 okay?

22 A. Okay.

23 Q. And if that were the case and they're
24 responding from the north or west, in other words so
25 that they'd be going onto Ulsh Road from Route 98,

1 then the closure of the crossing would have no
2 bearing on that response time, correct?

3 A. Correct.

4 Q. And of course we've already talked about
5 the fact that if they're responding from the station
6 or actually if they're responding from anywhere north
7 of the tracks, the policy is to try to respond by
8 staying north of the tracks and it wouldn't make
9 sense to go south of the tracks and come across the
10 Ulsh Road crossing, correct?

11 A. As the way the crossing is now, that is
12 correct, what you're saying.

13 Q. At any point in time as your department
14 responds to incidents that occur, there's always
15 the -- there is the possibility that in responding
16 they are going to run into a situation where there is
17 a train going through where they want to go.

18 A. You're asking if there's a possibility of
19 that?

20 Q. Yeah.

21 A. Sure. Yes.

22 Q. To your knowledge, has that happened?

23 A. It happens a lot.

24 Q. So without crossing closures and so forth
25 there, there are situations that occur that, when

1 you're responding, where just the travel of train
2 traffic through your territory has an impact on your
3 response and your ability to -- the time it takes you
4 to get to a particular location.

5 A. That's true.

6 Q. And we can agree -- can we agree that if
7 for some reason -- well, let me strike that.

8 Whichever direction your department
9 approached Ulsh Road, be it if it was for some reason
10 from the southeast such that they were going over the
11 Ulsh Road crossing or if they were around to the
12 other end of Ulsh Road and approaching from the Route
13 98 side, that the response time from your department,
14 station, would be quicker to Ulsh Road than it would
15 be to many parts of your territory that are even
16 further away. Do you understand what I'm saying?

17 THE EXAMINER: Why don't you rephrase the
18 question.

19 MR. EVANS: Sure. It was a little
20 convoluted.

21 Q. The response time to Ulsh Road -- let's
22 just stick with from the station first of all. From
23 the station, kind of irrespective of which end of
24 Ulsh Road you approached from, so even if your men
25 had to go around to what would be the further end

1 from the station, that response time to Ulsh Road is
2 going to be quicker than what you can do to other
3 portions of your territory simply because they are
4 geographically further away.

5 A. That is correct.

6 Q. Now, in terms of fighting structure
7 fires, well, let's talk about fires in general for a
8 second along Ulsh Road. As we sit here today or at
9 least as of the time of your deposition I don't think
10 you could recall any situation where there was a
11 structure fire involving one of the structures or
12 houses on Ulsh Road.

13 A. That's correct.

14 Q. You seemed to have a vague, somewhat
15 vague thought that there may have been a field fire
16 or two that you responded to -- that your department
17 responded to along Ulsh Road.

18 A. Field fires are more common, so . . .

19 Q. Do you know for a fact there was a field
20 fire along there?

21 A. I did not research the data; no.

22 Q. If there were a field fire in that
23 vicinity, you talked about the kinds of vehicles you
24 have, one such vehicle is the, I think you referred
25 to it as the field fire --

1 A. Grass truck.

2 Q. Grass truck. And that's what you would
3 generally use to respond to a field fire?

4 A. Keeping in mind that the grass truck only
5 has 200 gallons of water on it and we'd have to call
6 tanker trucks in to supply those vehicles, and we
7 only have one grass rig, so there would be multiple
8 fire departments called in to help us with that.

9 Q. Depending on the size of the fire.

10 A. Absolutely.

11 Q. Right. But the vehicle, from your
12 department that would be responding in going, I take
13 it that you described it as a pickup truck earlier
14 essentially, that actually goes out into the field
15 potentially to fight the fire.

16 A. That's correct.

17 Q. In terms of the structure fires, one of
18 the residences there, you're not aware that that's
19 happened at least during any memory you have of, you
20 know, being involved with the fire department and
21 Ulsh Road.

22 A. Again, I didn't research it from last
23 year's calls, from '08 fire calls, but I do believe
24 we had one or two calls down there for -- now,
25 whether it ended up being an illegal burn or an

1 actual field fire, I'm not sure.

2 Q. Okay. Let me rephrase my question. I
3 think you said earlier you're not aware of any
4 structure fires --

5 A. Oh, that's correct.

6 Q. -- that you dealt with on Ulsh Road also.

7 A. That's correct.

8 Q. And if there were a structure fire on
9 Ulsh Road, and if the Ulsh Road crossing was closed,
10 it would not be your testimony that you couldn't
11 fight the fire on Ulsh Road, the structure fire on
12 Ulsh Road, you'd have to simply stand there and watch
13 it burn; that's not what you're saying, is it?

14 A. No.

15 Q. You're saying and have said in your
16 deposition, and I'll give you a chance to say it here
17 today, that if the Ulsh Road crossing were closed, it
18 would make your job as fire chief and your job as a
19 fire department in fighting a fire at one of those
20 structures more difficult --

21 A. Yes.

22 Q. -- correct? And one of your primary
23 concerns in relation to the ability to fight a
24 structure fire on Ulsh Road has to do with the
25 cycling of tanker trucks in and out with water.

1 A. That is correct.

2 Q. As of right now, if my notes are right,
3 you're down to one tanker truck.

4 A. That is correct.

5 Q. But I take it if there was a big enough
6 fire, you would involve other departments potentially
7 that would -- such that there might be other tanker
8 trucks involved.

9 A. Absolutely. Ulsh Road requires two
10 engines, three tankers, a medic, and a chief on a
11 response. That's a typical structure fire response.

12 Q. Okay.

13 A. If it involves -- depending on the water
14 supply, depending on, you know, the type -- we can
15 throw all kinds of what-ifs into it, but you can get
16 as many as four, five, six tanker trucks depending on
17 what's on fire and how large the fire is.

18 Q. And you've never had to do this that you
19 can recall because you haven't, in your time, haven't
20 had to fight a structure fire on Ulsh Road, but if
21 the Ulsh Road crossing were open, you would have the
22 tanker trucks come in one end of Ulsh Road and cycle
23 around using this crossing to go out the other or
24 come in that way, one way or the other, to cycle
25 around to get more water.

1 A. Well, the fire hydrant is located right
2 at -- just east of Marion-Williamsport -- or
3 Marion-Galion Road, I apologize, Marion-Galion Road
4 and 309, so that is the closest hydrant. If we would
5 have went -- our protocol is to have a structure fire
6 on Ulsh Road, the railroad is notified and they shut
7 down the -- we don't allow them to cross. That's a
8 typical -- we do that and every fire department I've
9 been involved with, if the water supply -- if a train
10 can hinder our water supply, we shut the tracks down.

11 Q. Okay. And so if the crossing were
12 closed, again, you're not saying you couldn't fight
13 the fire, but you wouldn't be able to obviously go
14 across a crossing that's no longer open, correct?

15 A. That is correct, because your water
16 supply now went from less than a mile or right at a
17 mile, if you'd go from the hydrant to 98 would be
18 fair to say it's a mile, to -- you would have to go
19 to somewhere on Marion-Williamsport Road south of 309
20 on 98 or clear up on Likens Road.

21 Q. If you're fighting a fire and the Ulsh
22 Road crossing is closed, you could still use the
23 hydrant that's at Marion-Galion and Route 98,
24 couldn't you?

25 A. No. No. No. It's at Marion-Galion Road

1 and 309. There is no hydrant at 98 and
2 Marion-Galion.

3 Q. Okay. I misunderstood your testimony.
4 So you're saying that the hydrant --

5 A. Right there where the 309 is, between --
6 keep traveling east, where it comes out on 309. Just
7 right there about, guessing, you know, a hundred,
8 200 feet off that road right there.

9 Q. Okay. Earlier Mr. Darfus from ORDC also
10 had done some measurements, driving distance
11 measurements, and he testified that the driving
12 distance from 309 and Marion-Galion Road around to
13 the Route 98 - Ulsh Road intersection using
14 Marion-Galion Road is only a tenth of a mile longer
15 than if you go from this location to the intersection
16 on Ulsh Road. Do you have any reason to dispute that
17 measurement?

18 A. No sir.

19 MR. WRIGHT: Excuse me. For the record,
20 Leland, when you say "this location," what were you
21 referring to?

22 MR. EVANS: By "this location" -- I'm
23 sorry. By "this location" I was referring to the
24 Route 309 - Marion-Galion Road intersection.

25 THE EXAMINER: Thanks.

1 A. You're saying that as a distance
2 measurement, not as a time measurement because
3 Marion-Galion Road, again, is a narrow road and when
4 we are stopping and starting these tanker trucks, you
5 know, they don't go very fast.

6 Q. Okay. It was indicated earlier that
7 Marion-Galion Road and Ulsh Road I guess from just
8 eyeballing them are similar looking country roads,
9 correct?

10 A. I agree with that.

11 Q. The width of Marion-Galion Road, however,
12 when measured, turns out to be about 24 feet wide,
13 this is again based upon Mr. Darfus's testimony
14 earlier, 24 feet wide on Marion-Galion Road as
15 compared to 15 feet wide on Ulsh Road. Do you have
16 any reason to dispute that Marion-Galion is somewhat
17 wider than Ulsh?

18 A. I would believe that because
19 Marion-Galion used to be the old state route, to my
20 knowledge, so it would naturally be wider than an old
21 country road.

22 Q. Now, in terms of getting the tanker truck
23 down Ulsh Road if the crossing were closed, you would
24 be able to drive down Ulsh Road just as you would if
25 the crossing were open from the Route 98 side,

1 correct?

2 A. That is correct.

3 Q. And then I guess you would have two
4 choices when you needed that tanker truck to go get
5 more water, it would either need to back out,
6 correct?

7 A. That is correct.

8 Q. Or it would need to turn around. Right?
9 Those are the two --

10 A. Yeah, a 15 foot wide road, it wouldn't
11 happen.

12 Q. Well, let me show you a photograph, it's
13 actually two photographs which we've marked as
14 Petitioner's Exhibit 7.

15 MR. EVANS: And I unfortunately don't
16 have more than one of these.

17 THE EXAMINER: That's okay.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. EVANS: May I stand next to the
20 witness?

21 THE EXAMINER: Yes.

22 MR. EVANS: Let me show this to folks
23 over here first.

24 THE EXAMINER: Let me look at it too.

25 MR. EVANS: I'm sorry.

1 THE EXAMINER: Okay.

2 Q. (By Mr. Evans) Chief, are you familiar
3 enough with the crossing to be able to determine in
4 looking at that picture that as they're labeled, I
5 guess at the bottom right corner of each, that the
6 top one is the Ulsh Road crossing looking northwest
7 or in other words in the -- this would be, you can
8 barely see where Marion-Galion Road would split off
9 here and we're looking in the direction of what would
10 be the residences on Ulsh Road and ultimately Route
11 98 out at the end of it, correct?

12 A. That is correct. They are labeled
13 correctly.

14 Q. Okay. So the bottom one, which is the
15 one I wanted you to more focus on, is Ulsh Road
16 looking southeast in the direction of, well, off to
17 the right. You can see the tracks and just on the
18 other side of the tracks to the right you would agree
19 that's where Marion-Galion Road would be.

20 A. That is correct.

21 Q. All right. And you can see that before
22 you get to the tracks on the left side there's a
23 fairly wide right-of-way area with ballast and rock.
24 Do you see where I'm talking about?

25 A. The old railroad bed, that's correct.

1 Q. The old railroad bed. And there's also
2 railroad bed to the right as we look at the picture.

3 A. That's correct.

4 Q. All right. And you would agree with me,
5 wouldn't you, that a fire truck, specifically a
6 tanker truck, it may not be the ideal situation, but
7 if it needed to turn around, it could pull, for
8 example, into that right-of-way area to the left,
9 back out across the roadway, potentially, if it
10 needed to, back onto the gravel to the right and turn
11 itself around to go back out Ulsh Road.

12 A. You're asking me if I agree with you the
13 truck will turn around. Yes, the truck will be able
14 to turn around.

15 Q. Yeah.

16 A. Yes.

17 Q. Okay.

18 A. The truck ain't going to be able to pass
19 another truck on a 15-foot wide road.

20 Q. Okay.

21 A. Once he turns around, where's he going?

22 Q. Well, are you saying it's not possible to
23 position the truck over sufficiently, potentially
24 partially off the roadway, in order to make room for
25 a passing truck?

1 A. I'm saying these trucks are 99 inches
2 wide, minus the mirrors and accessories on the
3 trucks.

4 Q. Okay.

5 A. So we take that on a bermless road --
6 would you agree with me on that? You've been down
7 Ulsh Road.

8 Q. Yes, I have.

9 A. On a bermless road. A 56,000-pound truck
10 on a bermless road. I would disagree that we can
11 pass.

12 Q. Okay. You wouldn't disagree that the
13 trucks can back out.

14 A. Absolutely not. What I, I mean, again,
15 if the road is crossing -- if the crossing is closed,
16 we will have to do what we have to do, and to back an
17 apparatus .6 miles, if the other testimony was
18 correct, is a long way. And we're talking road
19 conditions as in that photograph; not a problem.

20 Q. So it would be --

21 A. In Ohio winters . . .

22 Q. .6 miles from the furthest crossing or,
23 I'm sorry, residence in from Route 98, .3 miles from
24 the other residence closer to Route 98.

25 A. That is correct.

1 Q. And I take it from what you've said that
2 you've agreed that if a fire were to occur on Ulsh
3 Road, it's not a situation where the fire department
4 would just stand there and watch it burn for lack of
5 ability to fight the fire, correct?

6 A. No; that's correct.

7 Q. So from what you're saying, your chosen
8 method of dealing with the shuttle of the tankers
9 would be to have the tankers back out onto Route 98
10 and head to where they need to go to get more water,
11 correct? That's what you would do.

12 A. I'm not sure of any other options we can
13 do if the crossing is closed and whether they back
14 off of 98, which we would close 98 at that point, and
15 back them down Ulsh Road, or if they pull in Ulsh
16 Road and back back off, either way 98 would get shut
17 down.

18 Q. Right.

19 MR. EVANS: Give me one second, your
20 Honor. I think that's all I have.

21 THE EXAMINER: Okay.

22 MR. EVANS: That's all the questions I
23 have. Thank you.

24 THE EXAMINER: Do you have any questions?

25 MR. WRIGHT: Yes, your Honor. Before I

1 start -- Lee, can I see those pictures? Do you still
2 have them?

3 MR. EVANS: Right here.

4 MR. WRIGHT: I don't know if I'll use
5 them or not.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Wright:

9 Q. Good afternoon, Mr. -- Canterbury?
10 Canterbury?

11 A. Canterbury. I'm sorry; I forgot your
12 name.

13 Q. I'm Bill Wright with the attorney
14 general's office, and I have just a couple questions
15 for you.

16 Early on in your examination by Mr. Evans
17 there was a reference to this verbal policy that
18 currently you use for response purposes relative to
19 using Ulsh Road. What exactly is that policy?

20 A. The policy was always -- was in effect
21 prior to me being hired at the fire department from
22 the previous chief, that the idea is when they're
23 heading northwest off of 309, they can't look back to
24 the east. You know, they can, it just takes a lot of
25 communication between the driver and the passenger to

1 do that.

2 This whole -- so therefore it's not
3 practical, and the crossing grade is pretty steep
4 there and it's just a really bad angle. And I don't
5 disagree this is a bad crossing at all; it is. But
6 when we're talking saving lives, it doesn't do my men
7 any good to get hurt or be in harm's way to help
8 somebody else, now we've got double the problems, so
9 that's why the crossing was never used.

10 If the crossing had gates, it would be
11 used. All this testimony is based on the First
12 Consolidated Fire District being at the station. Our
13 station is located on the north side of the tracks.
14 The village of Caledonia and the town square is south
15 of the tracks. Everything you do in Caledonia
16 village is south of the tracks. So why, again, would
17 we cross the tracks -- we have to cross the tracks at
18 some point no matter how you look at it.

19 And I think we can put a very good
20 argument that when we're talking a heart attack, a
21 structure fire, people trapped, whether it's a
22 railroad crossing or whatever it is, seconds and
23 minutes count. If we're on the south side of the
24 tracks, we'd stay on 309 and we'd use the Ulsh Road
25 crossing, if it had gates. If it's a safe crossing.

1 If it's warning lights, we would use it. That's a
2 safety device there better than what's there now.

3 Q. I guess I want to follow up with that.
4 Are you saying, then, particularly your heavier fire
5 equipment, if you had to get that into Ulsh Road,
6 that there's no difficulty currently maneuvering over
7 that crossing or negotiating that crossing with your
8 heavier traffic?

9 A. No, there's no problem with our apparatus
10 crossing the crossing.

11 Q. Okay.

12 A. It's the angle of the road to the
13 crossing -- to the railroad tracks. I think that's
14 what this whole argument is about is the angle of the
15 road versus the railroad.

16 Q. Now, I can certainly appreciate someone
17 in your position wanting to have as many response
18 options as possible whether it's EMT or fire,
19 correct?

20 A. Absolutely.

21 Q. If Ulsh Road were to be closed, how would
22 you, in your opinion, how would that affect -- strike
23 that.

24 If Ulsh Road were to be closed, would
25 that, in your mind, seriously or significantly

1 compromise your response effectiveness?

2 A. To answer your question correctly, would
3 it affect my response, I would have to say no. Will
4 it affect my ability to provide the adequate
5 response, yes. Does that make sense to you?

6 Q. Well, let me ask you a question to make
7 sure I understand your answer. When you're saying
8 ability to respond, you're referring to time?

9 A. Time, that's correct.

10 Q. And the second part of that would be
11 necessary equipment?

12 A. Yes.

13 Q. Okay. I think I understand what you
14 mean. Okay.

15 A. When we talk about -- again, Lee, I think
16 it would be fair to say you're a statistics type guy
17 with the percentages and stuff on these call
18 volumes -- the 89 percent of the calls that we have
19 in Claridon Township is between -- if you take --
20 looking on my map, if you take Pole Lane Road, 309,
21 95 and as it goes out to 98 is the majority of our
22 calls. You see what I'm saying?

23 Q. So are you saying that --

24 A. There's a block right here just like a
25 two-square mile block or, I'm not sure how many

1 square miles, just a guess, but I'm just saying that
2 block right there is a huge chunk of our call volume.

3 Q. Are you saying -- not seeing where Pole
4 Lane is on here. Are you saying in essence, and I
5 forget percentages, you said roughly 90, 95 percent
6 of your calls.

7 A. Eighty to 90 percent.

8 Q. Eighty to 90 percent of your calls. Are
9 you saying that 80 to 90 percent of your calls, that
10 the Ulsh Road crossing for purposes of response is
11 irrelevant? Is that what you're saying, basically?

12 A. It is relevant, right? That's what
13 you're asking me.

14 THE EXAMINER: No; is irrelevant.

15 Q. Is it or is it not relevant for that 80
16 to 90 percent?

17 A. No, it's not.

18 Q. That was my question.

19 A. But my point being that's another access
20 that I have north of the tracks. When we travel from
21 Marion-Galion Road to Nesbitt Road, you know, that
22 takes us way out of the realm because Nesbitt Road
23 goes up to Caledonia Mud Pike, we don't have the
24 shortcut around to 98 and Likens Road at that point.

25 Q. Back to your policy for a moment, policy

1 began by a prior fire chief, you've seen fit to
2 continue that policy, correct, as it relates to Ulsh
3 Road?

4 A. I would agree with that just because my
5 men, they agree with the policy. Would that be fair
6 to say?

7 Q. Okay. No; that's fine.

8 Let me ask you a hypothetical. Can you
9 see that map up there?

10 A. Yeah.

11 Q. What?

12 A. Yes.

13 Q. You can, okay. Again, your station is
14 located in Caledonia north of the tracks, correct?

15 A. Yes.

16 Q. Now let's assume that you were responding
17 to a fire at River Valley School. Do you see where
18 that is on the map?

19 A. Yes.

20 THE EXAMINER: We should just note that
21 the identification of River Valley School on there is
22 not actually -- that was an error.

23 MR. WRIGHT: I must have missed that.

24 MR. WICKERSHOM: Former.

25 MR. MOONEY: That's the old River Valley

1 Schools.

2 MR. WRIGHT: But no one's in there?

3 MR. WICKERSHOM: Yes, it's occupied.

4 THE EXAMINER: So there are children in
5 that school.

6 MR. WICKERSHOM: No, not children. It's
7 a business.

8 THE EXAMINER: Okay. Thank you.

9 Q. (By Mr. Wright) All right. The business
10 at the former River Valley School, if a fire were to
11 occur there, let's say it's a pretty good size fire,
12 what would be, using the larger map, if you could
13 outline for me what would be, in your mind, from the
14 station your best or most efficient, in your mind,
15 way to respond to that. What route would you take?

16 A. High Street to 309.

17 Q. Okay.

18 A. To 98.

19 Q. And then 309 down to 98, is that what
20 you're saying?

21 A. Yes.

22 Q. Okay. There was some brief discussion
23 about, and I missed this, an intermodal facility? Do
24 you recall that?

25 A. Yes, sir.

1 Q. How does that relate to the proceeding
2 today?

3 A. It's only a single track between -- I'm
4 not sure where it starts. The map also has a
5 discrepancy. There's not a dual track down through
6 there. It's only a dual track once -- and I'm not
7 really sure where it starts or where it ends because
8 I've never been down the track, but I do know through
9 Caledonia and Ulsh Road for sure, as the pictures
10 show, that it's only a single track.

11 So with the intermodal system through
12 Schneider Trucking has increased from -- they were
13 doing 50 semis in and out every day, 50 in, 50 out,
14 as far as these intermodal systems.

15 Q. Excuse me. Can you tell me roughly where
16 that's located?

17 A. It's not, well, it takes up where the
18 River Valley School is, they own that facility too.
19 So it goes from 98 clear down to -- the map I got
20 shows a picture of it. Does your map? Have you guys
21 got the same map as this?

22 Q. I do have the same map as that, and it
23 does not show that. But I have the general idea of
24 where you are.

25 A. Because it actually shows it on this map.

1 Q. Okay. Petitioner's Exhibit 6 apparently
2 does indicate where that is. Pretty good size
3 facility.

4 A. Absolutely. It's probably a couple
5 square miles itself, I would say.

6 Q. So was your testimony that the traffic in
7 there is starting to increase, then?

8 A. It's increased tremendously. As far as
9 road traffic has increased, and my concern is once
10 this thing gears up to 300, up to 300 intermodals a
11 day, they've got to get those intermodals in and out
12 at some point, okay? So what does this do to the
13 train traffic on a single track as far as a train
14 stopped at 98, Nesbitt, in the village of Caledonia,
15 what does that do there? I don't know what the
16 answer is. I don't know if it's increased, but I do
17 know it has to increase because the intermodals have
18 to increase.

19 Q. So to make sure I understand your answer,
20 are you saying that because of an increase in traffic
21 your concern would be that there might -- we might
22 start experiencing blocking of some of these other
23 crossings?

24 A. Right.

25 Q. Is that what you're --

1 A. That is correct. Because as in -- I'm
2 also involved with another fire department south of
3 town in Pleasant Township and with the increase in
4 train traffic east and west the north and south
5 trains have to stop, therefore, these block -- the
6 north and south train blocks the Pleasant Fire
7 Department response on a regular basis.

8 And we have an actual handshake agreement
9 or a verbal agreement with N&S that they don't block
10 the Owens Road crossing, they block all other
11 crossings, because the Owens Road crossing would be
12 like blocking the crossing in front of the station.
13 It's the same principle. So once we start backing
14 these trains up, where are we going to back up to?
15 So now we start looking at railroad crossings, now
16 you're eliminating my availability to respond, now
17 you're really putting me in a tight situation.

18 Q. Did I understand you to testify, sir,
19 that, I think maybe it was -- there was a scenario
20 about if there were a fire on Ulsh, I think it might
21 have been in the context of a structure fire on Ulsh
22 Road, that depending on how you had to come in, you
23 have an arrangement -- you could work with the
24 railroad to shut the tracks down?

25 A. We just call the number, the emergency

1 line number and tell them that no trains -- to stop
2 the trains at this area.

3 Q. Okay. And that works, that arrangement
4 has worked reasonably well when you've had to do
5 that?

6 A. It has never not worked.

7 Q. Okay. Have you ever had to do it?

8 A. Oh, we've done it a lot.

9 Q. Okay.

10 A. I mean, I'm not sure I've done it as a
11 fire chief at First Consolidated if that's what
12 you're asking me, I don't mean to mislead you that
13 way. We have -- obviously, the railroad stops the
14 trains themselves if there's an accident involving
15 the train, but other departments and other --
16 involving that rail line we've had stop the trains.

17 MR. WRIGHT: If I could have just a
18 minute, your Honor.

19 THE EXAMINER: Yes.

20 Q. And again, just to make sure I understand
21 something I think you indicated earlier in my
22 questioning, your testimony is that if some sort of
23 automated devices were placed at the crossing, would
24 that remove the policy or eliminate your policy
25 with regard to use of Ulsh Road?

1 A. I would -- yes. Absolutely. Because now
2 we've got a safety device or a warning system there
3 to alleviate the possibility of a truck getting hit.

4 Q. If you know, Mr. Canterbury, do you know
5 whether or not the larger population base is north or
6 south of these tracks within the townships serviced
7 by your station?

8 A. I would have no clue on population. I
9 mean, just guessing, all the major subdivisions are
10 south of the tracks; I think that's fair to say. The
11 trustees would have a better answer on that than I
12 would. I just know the industry population would be
13 centered there south of the tracks. But as far as
14 living population, you'd have to ask the trustees
15 that.

16 Q. Okay. But again, you understand we're
17 talking about your service area.

18 A. Absolutely.

19 Q. Okay.

20 A. I mean, all the schools are located south
21 of the tracks. I got to go with the idea that that's
22 more heavily populated, south of the tracks.

23 Q. I believe I wrote a note down here to
24 myself, to be honest with you I'm not sure, it must
25 have been something I heard; during the winter months

1 would Ulsh Road potentially become an even less
2 attractive option in terms of response, or is that
3 affected at all by weather?

4 A. Again, I believe the Claridon Township
5 road department does a fine job clearing the snow.

6 Q. I wasn't trying to suggest otherwise.

7 A. By all means, we all know how Ohio
8 winters are, there's a lot of snow and then there's
9 no snow, so we like to keep our trucks on nice wide
10 roads, safe roads, and typically our state highways
11 are the first to be cleared. I mean, we can't deny
12 that fact.

13 So the biggest concern is how are we
14 going to accommodate the Ulsh Road residents and
15 future residents when this crossing is closed as far
16 as fire, EMS, and any type of rescue need down
17 through there.

18 MR. WRIGHT: That's all I have. Thank
19 you.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Mooney:

23 Q. Chief Canterbury, I'd like to ask you a
24 few questions if I may. You had stated that probably
25 around approximately 90 percent of the calls that are

1 made are made south of the railroad tracks; is that
2 correct? South to the west.

3 A. The numbers that we've been throwing out,
4 like I said, we haven't -- I have not researched the
5 exact data, right? So I'm saying Claridon Township
6 is close to 90 percent of our call volume. Of those
7 90 percent of the calls I would say 80 to 90 percent
8 in Claridon Township is south of the railroad tracks.

9 Q. Okay.

10 A. Does that clarify that?

11 Q. Yes. That's fine.

12 And since we're throwing out scenarios, I
13 would like to give you a scenario. Typically most of
14 your runs are going to be southwest of the railroad
15 tracks and there is a potential that the railroad
16 crossings could be blocked. If the State Route 98
17 railroad crossing was blocked or was closed down for
18 maintenance, how would you get to Ulsh Road if you
19 were at the southwest corner of the territory? You
20 had all of your vehicles out, you had nobody at the
21 station north of the tracks, if 98 railroad crossing
22 was closed, how would you get to Ulsh Road?

23 A. Tim, that's a very good question because
24 that is likely to happen because of the call volume.
25 We would have no choice but to go clear up to Nesbitt

1 Road and back around, or Pole Lane Road to Likens
2 Road to 98 to Ulsh Road.

3 Q. Okay. So to say approximately -- once
4 you get to State Route 98, let's say you're coming up
5 State Route 98, how would you get to Nesbitt Road?
6 Would you have to travel 309 east?

7 A. Correct. 309 east to Nesbitt Road, cut
8 up to Caledonia Mud Pike.

9 Q. Now can you give me an approximate time
10 that it would take to go from State Route 98 and 309
11 over to Nesbitt north I believe to Mud Pike and back
12 over and back to Ulsh Road, back to 98 and back to
13 Ulsh Road? Can you give me an approximate time with
14 large equipment?

15 A. I'm thinking --

16 Q. Response time.

17 A. I'm thinking ten minutes.

18 Q. Additional.

19 A. Oh, yeah.

20 Q. Okay. Just a scenario, if you have a
21 house fire, let's say you have a structure fire on
22 Ulsh Road and you are southwest in the fire district
23 and you get called to this structure fire, can you
24 give me an idea of what the consumption rate of
25 material is for a fire, typical house fire?

1 A. A fire doubles every minute; is that what
2 you're looking for?

3 Q. Can you give me some idea of how that
4 would be, how that works, or how they come to this
5 conclusion? I mean, what --

6 A. It's what we were always taught in
7 school. It doubles every minute so once it doubles,
8 that doubles, and then that doubles. So it just
9 keeps doubling what you've already doubled
10 previously.

11 Q. On a structure fire what's a typical burn
12 time? Do you have any idea? From the time it's
13 called in until it's uncontrollable. I realize
14 there's different scenarios --

15 A. No; absolutely. With the new lightweight
16 construction with the trusses, they're saying 12 to
17 15 minutes burn time before a roof collapse. So if
18 we're out there and we're traveling, it takes us
19 eight to ten minutes to get there, we've only got a
20 short window to make a rescue before the roof starts
21 collapsing under the seat of the fire.

22 And the same way with the floor joists.
23 These I-joists are what they're called now, these
24 laminated floor joists, it's the same thing, it's the
25 glue that's failing on these joists at the eight to

1 ten minute range. So if these houses have basements
2 in them, we're dealing with the same issue.

3 We've only got 12 minutes is what they're
4 saying is our rescue time. From the time of a call
5 to the time we get there is 12 minutes to make an
6 attempt at a rescue, you know, for a -- victimwise.
7 Now, if the call is delayed, that obviously takes in
8 our time too.

9 Q. So let's say potentially all your
10 equipment was at State Route 98 and 309, you got the
11 call for Ulsh Road and the crossing was closed at
12 State Route 98, you would say it would take you
13 approximately an additional eight minutes to even
14 respond from that area where it would normally take
15 two to three minutes.

16 A. Yes, that is correct.

17 Q. I'm just --

18 A. Yes.

19 Q. That would be correct, okay. So
20 potentially you could lose that structure --

21 A. Or life.

22 Q. -- because you could not --

23 A. That's correct.

24 Q. Or a life because you could not get
25 there, okay. What is the protocol at the scene of a

1 fire? Let's say you have pieces of equipment on the
2 south side of the tracks in the southwest corner
3 where 90 percent of your runs are, you do have a
4 piece of equipment at the firehouse on the north side
5 of the tracks, you have a structure fire on Ulsh
6 Road. The piece of equipment on the north side of
7 the tracks responds, is able to go Caledonia Mud Pike
8 to 98 to Ulsh Road and get to the structure. Your
9 other vehicles are south of the tracks.

10 Okay, let's say the Ulsh Road railroad
11 crossing is closed at that particular time, 98
12 crossing, this is just a hypothetical, 98 crossing is
13 blocked with a train or whatever, what is the
14 protocol of let's say the two firefighters that show
15 up in that piece of apparatus? What can they do at
16 the scene of that particular structure fire?

17 A. Legally, nothing, unless there's a life
18 at stake. In that case they would watch the
19 structure burn. We have to abide by OSHA rules,
20 two in and two out, meaning every two firefighters
21 that go in to fight a burning structure, we have to
22 have two firefighters ready to rescue those two
23 firefighters.

24 Q. How would you know if there was a life?

25 A. If there was a call. If there was -- if

1 the caller states there should be somebody home or a
2 confirmed person. Otherwise, if it's just -- if we
3 don't have any calls on it, our protocol is to go
4 perform a search immediately for life.

5 Q. Would the two be allowed to do that on
6 their own? I'm just hypothetical.

7 A. I know. That's a judgment call of the
8 two guys sitting there because we have to assess the
9 time of day, obviously if it's 10 o'clock at night
10 and it's, you know, and it's a known residence where
11 it's an elderly lady that she probably should be
12 home, I don't think anybody here would fault some
13 guys going to go looking for somebody, but it better
14 be a good judgment call.

15 Q. Thank you.

16 Chief, do you know how wide Ulsh Road is?

17 A. I believe Mr. Lee -- 15 feet, I think.

18 Q. 15 feet.

19 MR. MOONEY: Is that what we had
20 established?

21 MR. EVANS: That was the testimony
22 earlier.

23 Q. 15 feet. Could you turn a vehicle
24 around, let's say a fire truck or an emergency squad
25 vehicle on Ulsh Road without using a driveway or some

1 kind of a field access type? Would it be possible to
2 turn a vehicle around without using any driveway or
3 anything like that?

4 A. I'm sure if we took 10, 15 minutes, I'm
5 sure it could take a considerable amount of time to
6 sit there and do a 20-point turnaround on that thing.

7 Q. Feasibly.

8 A. It's not feasible.

9 Q. Not possible.

10 Can you tell me how much the average fire
11 truck weighs, approximately?

12 A. I do believe our squads are rated about
13 24,000 GVW. The engines are 27,000. The tanker is
14 56,000. Ladder truck's 56,000.

15 Q. Now, the tanker, is that 56,000 including
16 the water?

17 A. Yeah.

18 Q. Okay.

19 A. That would be the GVW, gross vehicle
20 weight, loaded.

21 Q. If lights and gates were installed at the
22 Ulsh Road crossing, would you then allow that
23 crossing to be used?

24 A. Absolutely.

25 Q. Unrestricted.

1 A. Unrestricted.

2 Q. We do know with the angle that it's still
3 going to be a high-risk crossing as far as --

4 A. Right.

5 Q. -- you better use a lot of caution; would
6 that be correct to assume?

7 A. That is absolutely correct.

8 MR. MOONEY: That's all I have. Thank
9 you.

10 THE EXAMINER: Any questions?

11 MR. FLING: No, thank you.

12 - - -

13 EXAMINATION

14 By The Examiner:

15 Q. I have a few questions for you, Chief.
16 Are you familiar -- we've established that there are
17 two houses on Ulsh Road. Do you know who lives in
18 those two houses?

19 A. I personally do not know them.

20 Q. Do you know how many people are in those
21 houses?

22 A. No. I have no clue.

23 Q. And where's the nearest hospital for
24 taking someone in an emergency situation, where is
25 that located?

1 A. The only hospital in Marion County is
2 located in the center of the city, which none of
3 these maps show, but it would be like this way.

4 Q. So in --

5 THE WITNESS: Type that.

6 Q. If you're taking somebody to the
7 hospital, which I assume you do that on a regular
8 basis when you're responding to an emergency --

9 A. Absolutely.

10 Q. Okay. Do you take 309 or 98, or how do
11 you get there?

12 A. 309 is the main route to the hospital.

13 Q. So that's where you want to get to as
14 quick as possible.

15 A. (Witness nods head.)

16 Q. Okay. How long does it take for a --
17 before I get to that, where are the schools located
18 for Caledonia?

19 A. The schools which is the River Valley
20 School District is located at 95 -- the high school
21 and the middle school is located at 95 and Brocklesby
22 Road.

23 Q. Okay.

24 A. One elementary school is located north of
25 Marion-Edison on 98, it's between Marion-Edison and

1 95.

2 Q. But they're all south of 309?

3 A. That is correct.

4 Q. And in terms of the trucks that hold
5 water that you use to fight a fire, how long does it
6 take for one of those trucks to empty?

7 A. Typically on a house fire we try to
8 flow -- we get two attack teams flowing 200 gallon a
9 minute each, so we can be flowing 400 gallon a
10 minute.

11 Q. Okay.

12 A. That's just a standard. If it's a big
13 fire, we can pull another line that would flow an
14 additional 500 gallon a minute.

15 Q. So how many minutes?

16 A. 3,000 gallon tankers, we're looking at
17 six minutes of water if we're flowing if we say just
18 roughly 500 gallon a minute, and that's using every
19 drop of water. The engines carry a thousand gallons
20 on them so we'd have seven minutes of water. And
21 that seven minutes has to last until the tanker goes
22 and gets more water and comes back.

23 Q. Okay.

24 A. That's why it's so important to have the
25 loop in tankers versus the backing and the -- the

1 backing up and dumping and going.

2 Q. Right. And when a fire is called in, do
3 other departments respond?

4 A. Absolutely.

5 Q. Okay. So if there was a fire in one of
6 the dwellings on Ulsh Road, more than one water
7 tanker would show up; is that true?

8 A. Yes. Three.

9 Q. How many water tankers could come down
10 Ulsh Road to fight a fire at the same time?

11 A. One if it's blocked.

12 Q. Let's say you --

13 A. Do you understand how the tanker works?
14 We got to drop the water out of the tanker then the
15 tanker leaves to go get more water, right?

16 Q. But you're using the water in the tanker
17 first, aren't you?

18 A. No. We dump the water in a portable
19 tank, like probably a 12-by-12 swimming pool 3 foot
20 deep, that dumps the water there, then we draft out
21 of there into the engine to pump it onto the fire.

22 Q. Okay.

23 A. The tanker drops the water and then
24 leaves because that stores that little pond there
25 with water. Then it goes and gets more water. As

1 the first truck is getting water, the second truck
2 pulls up and is dumping, and when he dumps, they go
3 forward, you know, they go for water, then the next
4 truck would come.

5 Q. So the procedure is you take the water
6 off the truck and put it in a pond?

7 A. Absolutely.

8 Q. And you pump out of the pond.

9 A. Yes.

10 Q. Okay. So if there was another tanker
11 truck getting ready or right behind the first one, it
12 couldn't empty its contents until the other truck got
13 out of its way and then the second truck could come
14 in and empty its water into the pond and you could
15 then use it.

16 A. Correct.

17 Q. Okay.

18 A. If the crossing was closed and we have to
19 back the rigs down Ulsh Road, all other tankers have
20 to stage on 98. The first truck would back down, he
21 would have to back down and dump --

22 Q. Okay.

23 A. -- and then pull out, and then the next
24 truck would have to back down, dump, and then pull
25 out, then the next truck. It just keeps --

1 Q. Okay. And you had indicated there was a
2 12 to 15 minute burn time. What would that -- can
3 you go over that again? What is that?

4 A. What we call lightweight construction in
5 the fire service is trusses, truss roofs. I'm sure
6 you see ordinary construction where they set the
7 trusses already premade on these houses. The gusset
8 plating on those, statistically that's what's killing
9 firefighters because the burn time on these trusses
10 are less than -- around eight minutes, so we'll say
11 eight to ten minutes.

12 Q. Okay. And how long does it take from the
13 time a tanker truck shows up to empty its contents
14 until the contents from the pond would be used in
15 fighting the fire, how long would that whole process
16 take? There's a fire on Ulsh Road in one of the
17 houses --

18 A. Correct.

19 Q. -- a tanker responds, it gets there, four
20 minutes have elapsed let's say, now you have a eight
21 to ten minute burn time you said. So you have four
22 minutes left, is that what you're saying, to fight
23 the fire?

24 A. Well, the first truck there is an engine,
25 is a fire truck, that would be fighting the fire.

1 The two guys would be fighting the fire while the
2 tanker guys are setting up their operation.

3 Q. Okay.

4 A. So it's going on simultaneously.

5 Q. Okay.

6 A. So I guess I'm not sure. Your question
7 is how long would it take to set up the drop tank to
8 go get water?

9 Q. No. How long would it take to use all
10 the water from the first truck?

11 A. Right, that's where --

12 Q. From the time it arrived.

13 A. It could be, like I said, each line we
14 pull is a minimum 200 gallon a minute. You know each
15 8-inch fire hose you pull off the rig is 200 gallon a
16 minute, so that's where my officers --

17 Q. So in ten minutes you can use
18 2,000 gallons; is that what you're saying?

19 A. Yeah. One line, 200 gallon a minute, but
20 that one line is not going to put a fire out.

21 Q. Right. I understand that.

22 A. Okay.

23 Q. I'm just trying to understand if there's
24 a fire, in the time it takes to get a truck down Ulsh
25 Road to fight one of the houses if they were on fire,

1 where you would be in that eight to ten minute range.

2 Would you have emptied a tanker truck already?

3 A. Yeah.

4 Q. You would.

5 A. Oh, yeah.

6 Q. Okay. And another one would be on its
7 way or --

8 A. Right. We got what we call automatic
9 mutual aid. Ulsh Road would get a response out of
10 Marion Township which would come up 309 --

11 Q. From the south?

12 A. I'm sorry?

13 Q. From the south up 309?

14 A. Be coming from the west, 309 west.

15 Q. West, right. And they would come to Ulsh
16 Road and head east. Is that right? Or where would
17 they go off 309?

18 A. Yeah, 98 to Ulsh Road.

19 Q. Okay.

20 A. And the reason why I say that is because
21 our protocol is to have the tankers pointing to the
22 east because, again, the hydrant is located in the
23 other picture, you can -- I can show you with the
24 other picture, you can almost see it. So the idea
25 would be to dump and then go to the hydrant empty and

1 then come loop back around 309.

2 Q. Okay.

3 A. We'd have a tanker coming out of Waldo
4 which you use 98, would come out of 98 from the south
5 heading north, and then Iberia would probably be the
6 third tanker come in straight down 309 to there.

7 It's like a cutoff point for us, so I'm not sure if
8 it would be Iberia. It could be Pleasant Township or
9 it could be Salt Rock coming.

10 Q. But in any event, your department
11 included, no fire department responding to a fire
12 initially at a dwelling on Ulsh Road would use the
13 Ulsh Road crossing as it stands right now under your
14 policy.

15 A. I don't have a direction for the
16 automatic aid departments to -- that's their
17 discretion how they get to the fire. But we would be
18 directing them off of the 98 to Ulsh Road just
19 because, again, the hydrant's located at
20 Marion-Galion and 309.

21 Q. Right. Now, on the other side of Ulsh
22 Road and 98 where is the nearest hydrant? Where Ulsh
23 Road meets 98, where is the nearest hydrant?

24 A. I know there's one at Linn Hipsher Road
25 and 98 and there's one at New Road and Likens Road.

1 Q. Okay.

2 A. The one at Linn Hipsher Road and 98 is a
3 Del-Co Water. We have two water companies that
4 service our area, Ohio American Water which put in
5 water mains for fire fighting purposes, meaning
6 8-inch mains or larger, Del-Co Water is only for
7 residential purposes and it could be 2-inch up to
8 6-inch line.

9 Q. So you're not sure of the size of the --

10 A. Well, I know the one at Linn Hipsher Road
11 is a 6-inch line. The one at New Road and Likens
12 Road is a 12-inch line.

13 Q. All right.

14 A. One system operates off of volume, the
15 other system is high pressure.

16 THE EXAMINER: Thank you. That's all I
17 have.

18 Do you have any redirect?

19 MR. EVANS: I do have a little bit, a few
20 questions.

21 THE EXAMINER: Okay.

22 - - -

23 REDIRECT EXAMINATION

24 By Mr. Evans:

25 Q. So, Chief, just so I understand, in

1 addition to the hydrant that you've been talking
2 about that's at 309 and Marion-Galion Road, there are
3 the two others you've just mentioned, and you already
4 indicated where those are, Likens Road and New Road,
5 at that intersection, and the other one being up at
6 98 and Linn Hipsher; is that correct?

7 A. Yes.

8 Q. The tanker trucks, whether it's your
9 tanker truck or one of the other mutual aid trucks
10 responding, when they show up to a fire, they show up
11 loaded with --

12 A. Absolutely.

13 Q. -- water, right? It's not something -- I
14 assume when you keep them at your station, you keep
15 them in a loaded condition there, correct?

16 A. Absolutely.

17 Q. And I don't know if you know for a fact
18 one way or another here, but would it be fair to say
19 that within this roughly 110 square miles of
20 territory that there are, in all likelihood, other
21 dead-end streets that exist that don't have fire
22 hydrants that you deal with tanker trucks?

23 A. I only know of one other road, and
24 actually it's the Marion-Williamsport Road that
25 goes -- it's on the map up there, it's a blue road.

1 Any other dead-end road would probably be in a
2 subdivision which is hydrants which doesn't really
3 make a difference because there's a fire hydrant. So
4 to truthfully -- I don't know of any, but I'm not
5 aware of any, how's that.

6 Q. That's fair. There may be some, but
7 you're not sure. I understand.

8 A. I mean, I can't think of anything right
9 off the top of my head that is a dead-end road.

10 Q. There was testimony earlier that the
11 linear distance from the Ulsh Road crossing to the
12 Route 98 crossing is .83 miles, just over 8/10 of a
13 mile. You're probably aware just from seeing trains
14 that it's not unusual for a train to be as much as a
15 mile or even on occasion a mile and a half long. Are
16 you familiar with that?

17 A. Yes.

18 Q. And so when we're talking about scenarios
19 about, you know, blocked crossings and how that might
20 effect your department, as we sit here today if there
21 was -- if nothing was done with respect to the Ulsh
22 Road crossing and it was just business as usual, if
23 there was a train that had to stop for some reason,
24 broke down, whatever the case may be, you would agree
25 with me it's entirely possible that this Route 98

1 crossing and the Ulsh Road crossing could be closed
2 at a time when you're needing to respond to an
3 incident; isn't that possible?

4 A. I suppose if you're telling me it's a
5 mile or longer between Nesbitt -- or, between Ulsh
6 Road and 98, yes.

7 Q. It's less than a mile. It's just over
8 8/10. And if a train can be a mile or more, a mile
9 and a half on occasion --

10 A. So you're saying it's 8/10 from 98
11 crossing to the Ulsh Road crossing.

12 Q. That's correct.

13 A. I misunderstood.

14 Q. So if a train were stopped for some
15 reason, you could be presented with something very
16 similar to the situation we're talking about because
17 of a stopped train.

18 A. Right. That's correct.

19 Q. All right. You've said a couple times in
20 response to questions that if there are flashers and
21 gates, were flashers and gates at the Ulsh Road
22 crossing, you would remove the prohibition, if you
23 will, or directive that they shouldn't use that
24 crossing, correct?

25 A. Yes.

1 Q. You wouldn't change the fact, though, or
2 remove the prohibition that -- it's not a
3 prohibition, remove the policy that's in place that
4 if they are north of the tracks and they're
5 responding somewhere north, they are to stay north as
6 they respond and, similarly, if they're south of the
7 tracks and they're responding south, they stay south,
8 correct?

9 A. That is correct to the sense of if
10 it's -- one thing that the guys do, and again it's
11 depending on the call, if it's a heart condition or a
12 structure fire, what they would do at that point is
13 because it's such a tremendous shorter distance
14 between -- to come south of 309 and go over Ulsh Road
15 than it is to go Caledonia Mud Pike to 98, they can
16 send one truck both ways, and we have done that.
17 Especially the squad, if it's a squad call, the squad
18 always stays north of the tracks; fair to say that.

19 But what we do is we back that squad up,
20 depending on my manpower, if we take two trucks,
21 because we run ALS engine and a rescue, that it would
22 go down 309 because it is a tremendous amount of
23 shorter time.

24 Q. Okay. But in terms of the -- and I
25 appreciate and understand what you're saying, but in

1 terms of the general rule and in terms of responding
2 to an incident, if you're north of the tracks for a
3 prime example being from the station, your response
4 is typically going to be to stay north of the track.

5 A. That is correct.

6 Q. And even if there were flashers and gates
7 put in at route, I'm sorry, at the Ulsh Road
8 crossing, that doesn't change the fact that there
9 could be a train come through whether the flashers
10 and gates are located and you'd have the same problem
11 with being blocked, correct?

12 A. That is correct.

13 Q. You talked a little bit about the
14 intermodal facility and I think it's fair to say you
15 have some concerns there, but you really don't have
16 any actual information to indicate that there's going
17 to be an increase in train traffic as a result of
18 what you perceive as an increase in the truck
19 traffic, correct?

20 A. I do not have any facts on the issue, no.

21 Q. Would you agree with me that if
22 intermodal trains come in and they -- it wouldn't be
23 unusual to have a train that consisted of 70, 80, 90
24 cars; is that fair?

25 A. I --

1 Q. You don't know?

2 A. I have no clue. I just know they're long
3 and they're a lot.

4 Q. Fair enough. If you would, you talked
5 about an increase of as much as 300 trucks. Do you
6 have any way of understanding how many -- how few
7 trains, additional trains or train traffic would be
8 required to increase from I think you said 50 or 70
9 trucks up to 300 trucks given the number of rail cars
10 that are on a train?

11 A. No. I had this conversation with, I
12 can't think of the gentleman's name but from the
13 Marion Industrial Center on this issue because I have
14 concern with the increase of semi traffic, the heavy
15 truck traffic. He did not have the number of the
16 increased trains or length of trains because, again,
17 I was trying to research that as far as what you're
18 saying, the 8/10 of a mile, and if these trains are
19 getting longer or is there a limit on that, and I
20 have not had a chance to call CSX to see what that
21 data is either.

22 MR. EVANS: I think that's all the
23 questions I have. Thanks.

24 THE EXAMINER: Do you have anything?

25 - - -

RECROSS-EXAMINATION

By Mr. Wright:

Q. One question about the intermodal you were just asked about. Is that something, this expansion that you reference that increases the truck traffic, that is currently going on or that is something that is expected to occur?

A. That is currently going on. My understanding, that the Marion Industrial Center got about a \$3 million grant from the stimulus package from the federal government so this facility is currently expanding, you know, as we speak.

Q. Have you seen any evidence of that in terms of the amount of truck traffic?

A. Semi traffic is, I mean, I've stressed to my board about every board meeting now that it's just another concern I have as a fire chief that we're geared to handle motor vehicles, right, cars, pickup trucks, we're not geared to handle these semi accidents. And we're starting to see a tremendous increase in truck traffic and it's not even up to -- they're saying 200 rigs a day in and out by September 1. So it went from 50, and it's amazing the truck traffic.

And the train -- we also have another

1 problem with the crossing down at 309 by Pole Lane
2 Road that blocks our access too that we have to take
3 98 to 95. So . . .

4 Q. I'm sorry, the problem at Pole Lane Road
5 would do what? How does that affect --

6 A. The intermodals came off the main line
7 into the industrial center -- Tim, if you can show
8 him that on the map -- it's got a little loop, at
9 least mine does.

10 Q. All right.

11 A. So we're taking 98 to 95 to the hospital
12 now which adds a lot of time to us, because we can't
13 predict the train traffic coming in. I've actually
14 tried to, as soon as they get -- my understanding, as
15 soon as Marion Industrial Center gets leveled out,
16 they'll have pretty much a schedule, my
17 understanding, when these trucks will be blocking
18 that crossing, but that doesn't help me on the other
19 main crossings because I can't count on other trains
20 because it's only one line.

21 Q. I understand.

22 A. So they can't go by each other. One has
23 to stop in order to switch, however they do that.

24 MR. WRIGHT: I understand. That's all I
25 have. Thank you.

1 THE EXAMINER: Okay.

2 Did you have a follow-up question in
3 relation to what he asked; Mr. Evans?

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Mooney:

7 Q. The only thing is the railroad crossing
8 on State Route 309 which is just east of Pole Lane
9 Road which is on the west side of the intermodal or
10 Marion Industrial Center, that particular crossing
11 also creates a problem too with fire and EMS service;
12 is that correct?

13 A. Absolutely.

14 Q. Because of the unknown times and the
15 amount of time --

16 A. That is correct.

17 Q. -- that the crossing is closed.

18 A. That is correct.

19 MR. MOONEY: Okay. That's all I had.

20 THE EXAMINER: All right. I believe
21 that's all.

22 THE WITNESS: Thank you.

23 THE EXAMINER: Thank you for your
24 testimony.

25 (Witness excused.)

1 THE EXAMINER: Any objection to the
2 admission of Petitioner's Exhibits 6 and 7? Hearing
3 none, they will be admitted.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 THE EXAMINER: I don't believe there was
6 an Exhibit 5.

7 MR. EVANS: There wasn't, no.

8 MR. WRIGHT: I was going to ask.

9 MR. EVANS: There is no Exhibit 5.

10 MR. WRIGHT: Your Honor, I have just a
11 question. Is there a need to mark the petition as an
12 exhibit or not? The petition itself.

13 I don't believe you marked that, did you,
14 Lee?

15 MR. EVANS: I did not. I'd certainly be
16 glad to submit it as an exhibit if that would be
17 advisable.

18 THE EXAMINER: Let's do that. We'll mark
19 the petition. You can mark it. We'll have the
20 petition and amended petition.

21 MR. EVANS: Okay. So they would be --

22 THE EXAMINER: Exhibits 8 and 9.

23 MR. EVANS: -- 8 and 9.

24 THE EXAMINER: Eight will be the initial
25 petition, and 9 will be the amended petition.

1 MR. EVANS: Yes. Do you want those
2 submitted today or can we get them labeled and sent
3 over?

4 THE EXAMINER: Yeah, why don't you do
5 that.

6 MR. EVANS: Okay.

7 THE EXAMINER: Any objection?

8 MR. WRIGHT: No objections.

9 THE EXAMINER: Then they'll be admitted.

10 (EXHIBITS IDENTIFIED AND ADMITTED INTO
11 EVIDENCE.)

12 MR. WRIGHT: One other question, and I
13 guess I direct this to Mr. Evans, again, the
14 undertaking by CSX to supplement the record with some
15 indication of average train length that's going
16 through this crossing, that came up this morning in
17 questioning perhaps with Mr. Darfus or, no, Mr. --
18 this gentleman over here. I'm sorry, Mr. Ludban.

19 MR. LUDBAN: We can get those.

20 Those will come through your office, Lee,
21 or you'll tell me how to work that?

22 MR. EVANS: Give them to me and I'll make
23 sure they get submitted.

24 THE EXAMINER: Okay. I think that's all
25 we have. So we'll submit it on the record. Thank

1 you.

2 (The hearing concluded at 3:23 p.m.)

3 - - -

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Wednesday, August 12, 2009,
5 and carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2011.

11 (MDJ-3428)

12 - - -
13
14
15
16
17
18
19
20
21
22
23
24
25

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/26/2009 1:43:59 PM

in

Case No(s). 09-0125-RR-UNC

Summary: Transcript CSX 8/12/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.