

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
 Petition of Norfolk :
 Southern Railway Company :
 to Close to Vehicular :
 Traffic the Shores :
 Road/Township Road 159 : Case No. 12-2145-RR-UNC
 Grade Crossing (DOT No. :
 472543T), Located in :
 Brown Township, Paulding :
 County, Ohio. :

- - -

PROCEEDINGS

before Mr. Jim Lynn, Hearing Examiner, at the Public
 Utilities Commission of Ohio, 180 East Broad Street,
 Room 11-D, Columbus, Ohio, called at 1:00 p.m. on
 Thursday, March 6, 2014.

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1 APPEARANCES:

2 Eastman & Smith, Ltd.
3 By Mr. D. Casey Talbott
4 One SeaGate, 24th Floor
5 Toledo, Ohio 43604

6 On behalf of Norfolk Southern Railway
7 Company.

8 Mr. Joseph R. Burkard
9 Paulding County Prosecuting Attorney
10 112 North Water Street
11 Paulding, Ohio 45879

12 On behalf of Brown Township.

13 ALSO PRESENT:

14 Mike DeWine, Ohio Attorney General
15 By Mr. Alan H. Klodell
16 Associate Assistant Attorney General
17 Transportation Section
18 150 East Gay Street, 22nd Floor
19 Columbus, Ohio 43215

20 On behalf of the Ohio Department of
21 Transportation.

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1 Thursday Afternoon Session,
2 March 6, 2014.

3 - - -

4 HEARING EXAMINER LYNN: Let's go on the
5 record at this time. The Public Utilities Commission
6 of Ohio has assigned for evidentiary hearing at this
7 time and place Case No. 12-2145-RR-UNC, In the Matter
8 of the Petition of Norfolk Southern Railroad Company
9 to Close to Vehicular Traffic Stores Road/Township
10 Road 159 Grade Crossing, Located in Brown Township,
11 Paulding County, Ohio.

12 I'm Jim Lynn, the attorney examiner
13 assigned to hear this case. At this time we'll have
14 the appearances of the parties. We'll begin with
15 Norfolk Southern Railway.

16 Mr. Talbott.

17 MR. TALBOTT: Thank you, Mr. Lynn. Casey
18 Talbott of Eastman and Smith here on behalf of
19 Norfolk Southern Railway Company, and I'm accompanied
20 by our corporate representative, Bill Barringer, who
21 is the director of Grade Crossing Safety.

22 HEARING EXAMINER LYNN: Thank you.

23 And, Mr. Burkard.

24 MR. BURKARD: Sir, my name is Joe
25 Burkard, I'm the Paulding County Prosecuting Attorney

1 representing Brown Township. Today I have with me
2 Marty Adams, who is one of our township trustees, and
3 then also Mike Porter, who is one of the residents in
4 Brown Township.

5 HEARING EXAMINER LYNN: Fine. Thank you.

6 Mr. Burkard, given that you have brought
7 some persons from the community with you, we'll
8 actually begin with them.

9 MR. BURKARD: That would be fine.

10 HEARING EXAMINER LYNN: So whoever you'd
11 like to call as a witness first.

12 MR. BURKARD: Thank you. At this time
13 we'd like to call Marty Adams. Would you like him --

14 HEARING EXAMINER LYNN: Yes.

15 Mr. Adams, come up here to the witness
16 stand, please. Mr. Adams, if you would raise your
17 right hand.

18 (Witness sworn.)

19 HEARING EXAMINER LYNN: Thank you. Have
20 a seat and, again, could you indicate your role up
21 there in Paulding County.

22 THE WITNESS: My name's Marty Adams and
23 I'm a Brown Township trustee.

24 HEARING EXAMINER LYNN: Okay. Thank you.

25 Mr. Burkard, go ahead with any questions

1 you may have.

2 MR. BURKARD: Thank you, Mr. Lynn.

3 - - -

4 MARTY ADAMS

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

7 DIRECT EXAMINATION

8 By Mr. Burkard:

9 Q. Mr. Adams, I'm going to ask you, how long
10 have you lived there in Brown Township in Paulding
11 County, Ohio?

12 A. My entire life; 50 years.

13 Q. How long have you been a trustee for
14 Brown Township?

15 A. Two-and-a-half years.

16 Q. During your tenure as Brown Township
17 trustee you've got to know the voice of the people in
18 your township, correct?

19 A. Correct.

20 Q. Okay. And it's my understanding that you
21 feel there is a demonstrable need for that crossing
22 on Road 159 to continue in existence; is that also
23 correct?

24 A. Yes.

25 Q. Okay. Can you --

1 HEARING EXAMINER LYNN: Go ahead, please.

2 Q. Can you tell me some of the reasons that
3 you as trustee and a resident of Brown Township feel
4 that there's a need for that crossing at Road 159 to
5 continue in existence?

6 A. Yeah. Actually, several. One being
7 future expansion. You never really know, industrial
8 or housing, what's going to be there. You know, we
9 don't know what's going to be there 50 years from
10 now. Once that road is closed and that field -- it
11 will never be opened again for, you know, future
12 expansion.

13 Also, I serve as a firefighter in that
14 community and I know the other roads and that would
15 be the preferred route to the house down there on
16 that road for emergency access.

17 Q. Could you maybe expand a little bit on
18 that, the need for that access to the sole house on
19 that road.

20 A. The other route, which was pointed out to
21 me before and I commented on that, it's actually a
22 little longer, on a map it doesn't look a big
23 difference, but I drive that truck with 1500 gallons
24 of water on it and I know the waviness, the poor
25 condition of the other road, your response time would

1 be cut by, only an estimation, two, three minutes,
2 and then two minutes is a lot, that's a whole lot in
3 a heart attack condition, house on fire.

4 Q. Okay. Can you describe the condition of
5 the Road 159 there in Brown Township?

6 A. That is actually a stone road, but it is
7 a smooth road as opposed to the other route we would
8 have to travel, as a fire. There's a lot of dips,
9 curves. Both roads are narrow, so.

10 Q. So is there a concern about speed but
11 also safety of the road that you have to travel?

12 A. Correct. Yeah.

13 Q. Okay. What other concerns do you have
14 for this body as far as the need for this to continue
15 to be in existence?

16 A. Like I said, the future expansion of it
17 and the emergency access really. I just, I don't
18 want to see our community held back because we closed
19 a road that possibly in the future we'd be wishing
20 was open.

21 HEARING EXAMINER LYNN: I have a
22 question. You mentioned an alternate road or other
23 road and how many more minutes it would take to go
24 that route. What road is that? What's the name of
25 it?

1 THE WITNESS: I believe it is Township
2 Road 82.

3 HEARING EXAMINER LYNN: And the name of
4 it, just Township Road --

5 THE WITNESS: The name, it's just
6 "Township Road 82."

7 HEARING EXAMINER LYNN: Again, the reason
8 you would go to that road would be if the crossing at
9 issue is closed, the other road would be used for
10 what, just deliveries, or you mentioned you drive a
11 water vehicle and so on.

12 THE WITNESS: For fire. I'm on the Fire
13 Department.

14 HEARING EXAMINER LYNN: Okay.

15 THE WITNESS: And we've actually
16 responded to an auto accident down that road in
17 question.

18 HEARING EXAMINER LYNN: On?

19 THE WITNESS: On 82. And we could travel
20 at like 35, 40 mile an hour to be safe in the fire
21 truck, otherwise, you stand a chance of being -- the
22 road dips right, left, right, left, and you'll end up
23 with the vehicle in the ditch.

24 HEARING EXAMINER LYNN: Okay. I don't
25 have any more questions at this time. Mr. Burkard,

1 any more questions?

2 Q (By Mr. Burkard) Any other concerns,
3 Marty, that you have that you haven't already shared
4 today?

5 A. As far as the farmer access, I think the
6 farmer that uses that now possibly could be
7 landlocked into his farm, I'm not real sure if
8 there's another access to that field, and this could
9 create him to go maybe three, four miles around with
10 the farm equipment.

11 MR. BURKARD: Okay. At this time I have
12 no other questions for this witness.

13 HEARING EXAMINER LYNN: Okay.
14 Mr. Talbott.

15 MR. TALBOTT: Sure.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Talbott

19 Q. Mr. Adams, Casey Talbott. We had a
20 chance to meet sometime previously. Nice to see you
21 again.

22 A. Nice to see you.

23 Q. I have a few questions for you. So the
24 record's clear --

25 MR. TALBOTT: And may I approach, your

1 Honor?

2 HEARING EXAMINER LYNN: Yes.

3 MR. TALBOTT: May I put this up here?

4 Thank you.

5 Mr. Lynn, I'm not sure if you have a
6 great view of that, but it's Exhibit E.

7 HEARING EXAMINER LYNN: I can't see it,
8 but I have a smaller copy.

9 MR. TALBOTT: Joe, can you see this?

10 MR. BURKARD: Thank you.

11 Q (By Mr. Talbott) So the record's clear,
12 Mr. Adams, the Township Road 159 we're talking about,
13 closing this crossing here, that's the one at issue,
14 correct?

15 A. Correct.

16 Q. Okay. And when you say that Township
17 Road 159 is a stone and dirt road, that's actually
18 only accurate from 613 to the Porter residence,
19 correct?

20 A. Correct.

21 Q. Okay. Meaning it's stone for about
22 two-thirds of a mile to the north, correct?

23 A. Right. Correct.

24 Q. Correct?

25 A. Yes.

1 Q. And if we go to the south, it's actually
2 paved heading down to 82, correct?

3 A. Yes, sir, that is correct.

4 Q. Okay. And, again so the record's clear,
5 when you're talking about the possibility of future
6 expansion, you do have one singular residence on this
7 roadway currently, correct?

8 A. Correct.

9 Q. All right.

10 A. There was two. Someone lived there but
11 he's moved out.

12 Q. Somewhere in the past there was a
13 trailer, correct?

14 A. Yes.

15 Q. So currently you have one single
16 residence there, right?

17 A. (Witness nods.)

18 Q. Okay. When you say -- when you're
19 talking about -- let's talk about the EMS for a
20 second. EMS service is provided out of Oakwood,
21 correct?

22 A. Yes, sir.

23 Q. A nice new facility on Sixth Street,
24 right?

25 A. Yes.

1 Q. All right. So when EMS is coming in and
2 they come in due west on 613, they get to the main
3 intersection here in Melrose, correct?

4 A. Correct.

5 Q. And that is the intersection marked here
6 by where the orange and the yellow come together,
7 correct?

8 A. Yes.

9 Q. And at that point as an EMS provider
10 you're acknowledging that you have a choice, your
11 choice is you can go north and take -- you could go
12 north, correct?

13 A. Correct.

14 Q. Or you could go south, correct?

15 A. Correct.

16 Q. If you go north, the first thing you're
17 doing is you're having to cross a railroad track,
18 correct?

19 A. Yes.

20 Q. Okay. And then you head west on 613, you
21 get to 159 and you need to take a left, correct?

22 A. Yes.

23 Q. Onto a dirt/stone road, correct?

24 A. Actually, the first part of it I believe
25 is also paved.

1 Q. It's not. Have you been out there?

2 A. I was thinking that was paved on that
3 side too.

4 Q. But you're not sure of that, correct?

5 A. Right.

6 Q. Okay. It's not.

7 And immediately, when you turn, you've
8 got to go over another railroad track, correct?

9 A. Correct.

10 Q. With a relatively high profile, correct?

11 A. Yes.

12 Q. Okay. Higher profile than 165 or 151,
13 correct?

14 A. Yeah, I believe so.

15 Q. Okay. And then -- and then you've got to
16 drive two-thirds of a mile on a stone and dirt road
17 to this house, correct?

18 A. Stone, yes.

19 Q. Okay. An alternative would be, if you
20 come south on 177, you take a right on 282 and then
21 you take a right on 159 and you're at this house,
22 correct?

23 A. Correct.

24 Q. Okay. When you make that trek, all three
25 of the roads we just named are paved, correct?

1 A. Paved but Township Road 82 is very poorly
2 paved and a lot of dips in it.

3 Q. Okay. And I've driven it recently. You
4 talked about how wide these roads are. Have you
5 yourself before coming in here today actually taken
6 measurements of 151, 159, 165, 82, or 177?

7 A. No.

8 Q. Have you measured them?

9 A. I have not measured them.

10 HEARING EXAMINER LYNN: Mr. Talbott, just
11 for the record, I'll note you mentioned I believe
12 282, it's Township Road 82.

13 MR. TALBOTT: And I apologize if I
14 misspoke, your Honor. Call you "your Honor"?

15 HEARING EXAMINER LYNN: Yes.

16 MR. TALBOTT: All right.

17 Q. Yeah, Township Road 82 there.

18 And when you say, you did testify when
19 there was a, there was a public -- the PUCO
20 facilitated a public meeting some time ago regarding
21 this case, correct?

22 A. Yes.

23 Q. Okay. And at that public meeting
24 Mr. Lynn was there, Hearing Officer Lynn was there,
25 correct?

1 A. Yeah.

2 Q. I was there, right?

3 A. Yep.

4 Q. Mr. Burkard was there?

5 A. Yep.

6 Q. ORC may have had a representative present
7 I don't recall, but on behalf of the township there
8 were three trustees there, right?

9 A. Yeah. This is the one that was held at
10 our trustee building.

11 Q. Yes. But there were not any residents
12 present, correct?

13 A. No, I don't believe there was at that
14 time.

15 Q. Right. So none of the farmers or none of
16 the, you know, local residents, not one person came
17 in, correct?

18 A. Correct.

19 Q. All right. And you did -- you did make
20 some remarks to Hearing Officer Lynn, right?

21 A. Yes.

22 Q. And what you said is with regard to EMS,
23 your quote was, quote: The shortest route is always
24 the best route. Correct?

25 A. Normally, yes.

1 Q. Okay. Well, here you said the shortest
2 route is, quote, always the best route. Did I read
3 that part correctly? Quote: The shortest route is
4 always the best route.

5 A. Yes.

6 Q. And by "shortest" I'm assuming you're
7 talking about shortest in time as opposed to shortest
8 in distance; that's common sense, correct?

9 A. Correct.

10 Q. All right. Because if you've got a mile
11 that's flat, it's very different than a half a mile
12 that's up over a mountain, right?

13 A. Right.

14 Q. And so the record's clear, if you go --
15 well, strike that.

16 Have you actually ever with a stopwatch
17 timed from this critical juncture in Melrose, Ohio,
18 timed going to the north heading to the singular
19 residence versus going to the south on 177 and going
20 to the singular residence?

21 A. No, sir, never with a stopwatch.

22 Q. Would you be surprised that actually the
23 time -- well, strike that.

24 MR. TALBOTT: That's it.

25 HEARING EXAMINER LYNN: I'll note for the

1 record, Mr. Talbott, when he refers to going north
2 and south, it looks as though it's County Road
3 170- --

4 MR. TALBOTT: Seven.

5 HEARING EXAMINER LYNN: -- 7, okay.

6 MR. TALBOTT: Correct, your Honor.

7 Q. And you're clear on that, right? When
8 EMS gets to this point, you acknowledge that your
9 preferred route, you're telling us your preferred
10 route would be to go north on 177, correct?

11 A. Yes.

12 Q. Your alternate route, your first
13 alternate route would be to go south on 177 to
14 Township Road 82 to Township Road 159 --

15 A. Correct.

16 Q. -- correct? Okay.

17 MR. TALBOTT: Your Honor, that's all I
18 have at this point.

19 HEARING EXAMINER LYNN: Thank you.

20 MR. TALBOTT: Thank you.

21 HEARING EXAMINER LYNN: Any additional
22 questions, Mr. Burkard?

23 MR. BURKARD: I have no other questions
24 at this time.

25 HEARING EXAMINER LYNN: All right.

1 Mr. Adams, thank you. You may take your seat. If I
2 have further questions I'll be asking you, you will
3 still be under oath. Thank you, though.

4 (Witness excused.)

5 MR. BURKARD: Your Honor, we would next
6 call Mike Porter.

7 HEARING EXAMINER LYNN: All right.

8 Mr. Porter, raise your right hand, please.

9 (Witness sworn.)

10 HEARING EXAMINER LYNN: Thank you,
11 Mr. Porter. Please take a seat.

12 Mr. Burkard.

13 MR. BURKARD: Thank you.

14 - - -

15 MICHAEL L. PORTER

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

18 DIRECT EXAMINATION

19 By Mr. Burkard:

20 Q. I'm going to ask you to state your full
21 name.

22 A. Michael L. Porter.

23 Q. Mike, where do you live at?

24 A. I live on 613 between Oakwood and
25 Melrose.

1 Q. Is that in Brown Township?

2 A. Yes.

3 Q. How long have you lived there?

4 A. Nineteen years.

5 Q. Okay. Are you familiar with the Road 159
6 railroad crossing?

7 A. Yeah.

8 Q. Can you give me some of your feelings of
9 whether or not it would be appropriate to close that
10 railroad crossing.

11 A. I don't think any of them should be
12 closed along there. They were put there for a reason
13 to begin with, that's to get from one side to the
14 other, and once they're closed, like Marty said, they
15 don't open again.

16 I got friends over in Putnam County that
17 farm and they closed the one down there, it's on Road
18 18 on the west side of Kiefernville, and I knew, like
19 I said, several friends that farm on both sides of
20 the railroad tracks, big machinery; everybody knows
21 that's what we all run now.

22 So you go across that crossing to stay
23 out of traffic on 613 and State Route 15, now they
24 got to go three miles around through town to
25 Kiefernville into heavy traffic on State Route 15,

1 into heavy traffic on State Route 613 and, you know,
2 that's the only way they got to travel.

3 Besides the aggravation of going around
4 three miles there's also, you know, a lot more
5 traffic and people don't watch for machinery. I
6 mean, unless you've operated the stuff and know how
7 it is, you can't understand.

8 Q. So your concerns are safety, number one.

9 A. Absolutely.

10 Q. And also convenience to get to the area
11 that's being farmed or being accessed.

12 A. Yes.

13 Q. Are you a farmer?

14 A. Yes.

15 Q. Okay. How important is that to you as a
16 farmer, to be able to get directly to the field as
17 quickly as you can?

18 A. I had formerly bought hay and straw and I
19 bought from everybody around in Brown Township and
20 Auglaize and that, and to be able to make crossings
21 and stuff like that and stay off of main roads when I
22 pull a wagon or two wagon loads of hay stacked seven
23 high, it's not just convenient for all the traffic
24 going down 613 because I don't have -- 15 cars backed
25 up behind me that I can't see, you know, when I'm

1 pulling two wagons with a tractor, I got old stuff, I
2 don't have mirrors, I don't have all that kind of
3 stuff, so it's convenient for me to stay out of
4 traffic.

5 Maybe it's a mile or two farther to go
6 across that crossing from time to time, but it keeps
7 me out of traffic. Keeps everybody else safe.

8 Q. Are you familiar with Township Road 82?

9 A. Yep.

10 Q. Have you driven that?

11 A. Yeah.

12 Q. Okay. Tell me, your reaction to that
13 is --

14 A. It sucks.

15 Q. Okay. Tell me what you mean by that.

16 A. Plain English. It's rough. I mean, our
17 township's not made of a lot of money. I mean, we
18 don't get repaved roads every year, two years, three
19 years, they get patched in here, they get patched in
20 there, they get patched what needs to be patched and
21 then they go on and patch the next one. We just, our
22 township's not made of money.

23 Q. By comparison State Route 613, how does
24 that compare?

25 A. Much smoother.

1 Q. The state maintains it?

2 A. Wider, traffic can see either side of you
3 to get around it and, you know, like I said, it does
4 make for convenience.

5 Q. Are you familiar enough with that area to
6 know if you've ever known of or been witness to any
7 accidents at that railroad site crossing?

8 A. None of I know of. I been there, like I
9 said, 19 years and I never heard of anybody hurt
10 there.

11 Q. No problem.

12 A. No.

13 Q. In your mind does that railroad crossing
14 need to continue in existence?

15 A. Absolutely.

16 Q. And that best serves the township and the
17 community?

18 A. Yep.

19 MR. BURKARD: Thank you. I have no
20 further questions.

21 HEARING EXAMINER LYNN: Mr. Porter, I
22 have a question. Is that crossing one that you use
23 yourself?

24 THE WITNESS: In the past I used it
25 pretty regular when I was pulling hay wagons.

1 HEARING EXAMINER LYNN: I see.

2 THE WITNESS: But I just, I recently quit
3 bailing hay and straw, but I'm not the only one that
4 does this.

5 HEARING EXAMINER LYNN: Sure.

6 THE WITNESS: I'm also looking, you know,
7 some of my friends that still do and, you know,
8 safety of the kids that work for them and everything
9 just like where I was.

10 HEARING EXAMINER LYNN: Thank you.

11 Mr. Talbott, do you have any questions of
12 the witness?

13 MR. TALBOTT: Very few.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Talbott:

17 Q. Mr. Porter, you don't farm in the -- I'll
18 come up -- you don't farm in this quadrant here,
19 correct?

20 A. No.

21 Q. Okay. You live somewhere over here,
22 right?

23 A. Yes.

24 HEARING EXAMINER LYNN: For the record,
25 Mr. Talbott is pointing to the, approximately the

1 area where Township Road 159 and the railroad tracks
2 intersect.

3 MR. TALBOTT: Correct.

4 THE WITNESS: Yep.

5 Q. So when you say that in the past you used
6 to use the 159 crossing, how long ago are we talking
7 about?

8 A. Within the last two years.

9 Q. Okay. So within the past two years
10 what's your best estimate as to how many times you've
11 actually crossed that track?

12 A. Probably half a dozen.

13 Q. So in the past two years you've used this
14 crossing probably six times?

15 A. Yeah.

16 Q. Okay. And by "this crossing" I'm talking
17 about the TR 159 crossing, correct?

18 A. Uh-huh.

19 Q. Right?

20 A. (Witness nods.)

21 Q. You have to say --

22 A. Yes.

23 Q. Thank you.

24 MR. TALBOTT: I think we're all set, your
25 Honor. Thank you.

1 HEARING EXAMINER LYNN: Thank you,
2 Mr. Talbott.

3 Mr. Burkard, any other questions?

4 MR. BURKARD: Your Honor, I don't have
5 any other questions for Mr. Porter, but I do have one
6 other witness that I didn't know was going to be here
7 today, but a very brief witness if I could.

8 HEARING EXAMINER LYNN: Okay. Before we
9 go to that person, Mr. Adams, I had an additional
10 question for you. The land on the north and south
11 side of the tracks here at Township Road 159, is that
12 all owned by the same person, do you have any idea?

13 MR. ADAMS: I believe there's two
14 different owners there.

15 HEARING EXAMINER LYNN: That is one
16 person on the north side, one on the south side?

17 MR. ADAMS: Yes. I believe so. I
18 haven't looked at a plot map to verify.

19 MR. TALBOTT: Could you repeat the
20 question, your Honor?

21 HEARING EXAMINER LYNN: My question was
22 where Township Road 159 intersects the railroad
23 tracks, is the land on both the north and south side
24 of the track -- the tracks run east and west, is the
25 land on the north and south side of the tracks all

1 owned by the same person or different persons.

2 MR. TALBOTT: Yeah, the answer is that it
3 is owned by the same person but -- I know I'm not
4 testifying.

5 HEARING EXAMINER LYNN: Sure.

6 MR. TALBOTT: He's not on the stand, but
7 he said to a possibility.

8 HEARING EXAMINER LYNN: Well, he's still
9 under oath, though.

10 MR. TALBOTT: Okay. But he's wrong.

11 HEARING EXAMINER LYNN: Well, Mr. Adams,
12 at any rate, could you repeat that again, please, to
13 your knowledge.

14 MR. ADAMS: To my knowledge, I wasn't
15 sure, and he's very possibly correct, I know Morris
16 Dobbelaere farm's there, but I'm not sure of the
17 ownership of it.

18 HEARING EXAMINER LYNN: Okay. Thank you.

19 THE WITNESS: Could I say something?

20 HEARING EXAMINER LYNN: Certainly.

21 THE WITNESS: Okay. One of the other
22 reasons I don't want to see this crossing closed, our
23 biggest employee in Paulding County is Cooper Farms,
24 and I know for a fact there was a farm that was
25 40 acres right across from where John Porter lives

1 and Coopers tried to buy it. John bought it because
2 he didn't want to have a turkey barn across from his
3 house; that's what his decision was on that.

4 But John's 60-some years old, he's I
5 think two or three years older than me so probably
6 about 62 or 63, sometime in the future there's a good
7 chance he could retire. If that ground comes up for
8 sale and Cooper Farms would happen to buy that,
9 having that access to 613 would be critical for an
10 operation for them to have that out there.

11 And the reason why I want to see
12 something like that stay open, jobs number one, our
13 county relies on Coopers for jobs and if they close
14 that crossing off and they've got no access to haul
15 feed to turkey or hog farms that they put in over
16 there and they've got -- if they put in a feed
17 grinding plant or something like that, just like
18 they're doing on the east side of Oakwood right now,
19 if they put some sort of building or something in to
20 process for their business and they have no access to
21 get out to 613, that could mean, you know, who knows
22 how many jobs.

23 And I've got kids and grandkids and they
24 need work, you know. This is an industry that we
25 always need because, you know, food, everybody's got

1 to eat and Coopers is in the food business and as
2 long as they're treating our county good like they do
3 I don't want to see them cut off, you know.

4 And there's a good chance, like I said,
5 they look in their future of adding buildings or
6 something like that they could look at this area
7 because it's not right in a town. Nobody wants hog
8 barns or turkey barns in their backyard so they look
9 at places like this to buy, and if they've got access
10 to be able to go put them buildings up and stuff like
11 that, they're going to look at a place like that
12 before they'll move somewhere 30, 40 miles away from
13 the rest of their operation.

14 HEARING EXAMINER LYNN: Mr. Talbott.

15 MR. TALBOTT: Yes, if I may.

16 Q. Sir, you're not employed by Cooper Farms,
17 correct?

18 A. I'm not employed by Coopers.

19 Q. And you're not here --

20 A. No.

21 Q. -- as Cooper's representative, correct?

22 A. That's correct.

23 Q. As you sit here today you don't have any
24 clue as to Cooper's position as to this closure,
25 correct?

1 A. I have no position -- no idea what their
2 position is on that --

3 Q. And let me ask you --

4 A. -- but I'm just saying, we, you know, we
5 have our one supplier there and one business there in
6 our township and they've been, you know, they've been
7 very good to us so anything we can do to try to keep
8 them there rather than take it somewhere else we'd
9 rather do.

10 Q. You're talking about commercial vehicles
11 accessing the facility, okay?

12 A. (Witness nods.)

13 Q. I assume you've driven --

14 A. I know how that grade is, but it could be
15 repaired if you put something in.

16 Q. Let me ask a question. I assume you've
17 driven the three crossings at 151, 159, and at 165,
18 correct?

19 A. Yes.

20 Q. Have you ever -- have you -- and would
21 you agree with me, 151 is a paved roadway? Correct?

22 A. Okay.

23 Q. Is that right?

24 A. Yes.

25 Q. Okay. 165 is a paved roadway, correct?

1 A. Okay.

2 Q. Is that right?

3 A. Yeah.

4 Q. Okay. 159 is a dirt and stone roadway,
5 correct?

6 A. Pretty much.

7 Q. Okay. Have you measured any of those
8 roadways to determine which one is the widest and
9 which one is the narrowest?

10 A. I'm not an engineer, no, and I haven't
11 measured it, no.

12 Q. Okay. Do you know as you sit here today
13 which is the narrowest of the three?

14 A. I haven't got a clue.

15 Q. Okay.

16 A. And I'm sure you know.

17 Q. I do.

18 And I think you volunteered this, that
19 the profile on 151 and 165 is lower than the profile
20 on 159, correct?

21 A. Probably.

22 Q. Okay. Do you know as you sit here, 151,
23 does that have active lights and gates?

24 A. Yeah, I think it does.

25 Q. Okay. 165, does that have active lights

1 and gates?

2 A. That's the one past? No, that's got
3 crossbucks.

4 Q. So your recollection, and you live right
5 in this area, correct?

6 A. I live just -- I live just east of
7 Melrose right on 613.

8 Q. Okay. And so your recollection is 151
9 has lights and gates, 165 has crossbucks, what about
10 159, does that have crossbucks or lights and gates?

11 A. That's the one you're talking about
12 closing?

13 Q. Right.

14 A. It's got -- just got crossbucks.

15 Q. Just got crossbucks.

16 MR. TALBOTT: That's all I have. Thank
17 you.

18 HEARING EXAMINER LYNN: Thank you.

19 Mr. Burkard, any follow-up to that?

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Burkard:

23 Q. Mr. Porter, you indicated on Road 159
24 you've actually used that crossing multiple times --

25 A. Sure.

1 Q. -- during your operation?

2 A. Yeah.

3 Q. Ever had any problems going up and over
4 it with your equipment?

5 A. No.

6 Q. Know of any of the farmers in the
7 community that have ever had any problems going over
8 that grade --

9 A. None that I've ever heard of.

10 Q. -- being slightly higher?

11 MR. BURKARD: No other questions.

12 HEARING EXAMINER LYNN: Thank you.

13 Mr. Porter, you may take your seat, thank you.

14 (Witness excused.)

15 HEARING EXAMINER LYNN: Mr. Talbott, if
16 you would like to call your first witness.

17 MR. TALBOTT: We would, your Honor. We
18 would call Cathy Stout with the Ohio Rail Development
19 Commission.

20 HEARING EXAMINER LYNN: Thank you. If
21 you'd like to raise your right hand.

22 (Witness sworn.)

23 HEARING EXAMINER LYNN: Thank you.

24 Please have a seat.

25 Mr. Talbott, please continue.

1 MR. TALBOTT: Thank you, your Honor.

2 - - -

3 CATHERINE MARY STOUT

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

6 DIRECT EXAMINATION

7 By Mr. Talbott:

8 Q. Good afternoon, Ms. Stout.

9 A. Good afternoon.

10 Q. Would you state your full name for the
11 record.

12 A. Catherine Mary Stout.

13 Q. I did not know your middle name was Mary,
14 so I know now.

15 Would you tell us where you're employed.

16 A. I'm sorry?

17 Q. Yes, would you tell us where you're
18 employed.

19 A. State of Ohio, Ohio Rail Development
20 Commission.

21 Q. Okay. And, Miss Stout, how long have you
22 been with the Ohio Rail Development Commission?

23 A. Five years.

24 Q. All right. What is your current
25 position?

1 A. I am the manager for Safety Programs.

2 Q. Is that throughout the state of Ohio

3 or --

4 A. Correct.

5 Q. -- just in around --

6 A. State of Ohio.

7 Q. Okay. Miss Stout, what was your position
8 immediately before that?

9 A. Assistant manager, Safety Programs.

10 Q. Okay. And your former manager's Susan
11 Kirkland?

12 A. Correct.

13 Q. Just briefly, Miss Stout, would you
14 describe what those positions entail, in other words,
15 what responsibilities?

16 A. Okay. We manage federal highway safety
17 improvement funds for grade crossing safety
18 improvement and we evaluate grade crossings for
19 engineering solutions to improve safety at the grade
20 crossings. I'm also the environmental coordinator of
21 our development commission.

22 Q. Thank you, Miss Stout.

23 Miss Stout, do your responsibilities
24 include evaluating which, if any, of the state's
25 crossings might be appropriate for closure?

1 A. Yes, it does.

2 Q. Okay. And why is the Ohio Rail
3 Development Commission interested in that, making
4 that type of evaluation?

5 A. For a couple of reasons. First off, the
6 Federal Railroad Administration in 1991 established a
7 goal to eliminate up to 25 percent of redundant grade
8 crossings in the nation, and the ORDC supports the
9 Federal Rail Administration's goal. And the reason
10 we support that goal is safety. When you have
11 eliminated a grade crossing, there's no future
12 potential to have a train-vehicle crash at that
13 location; it saves lives.

14 Q. Thank you. Thank you, Miss Stout.

15 And, Miss Stout, is that a -- interested
16 in making that evaluation particular to Brown
17 Township or throughout the state of Ohio?

18 A. Well, throughout the state of Ohio we
19 evaluate crossings for that purpose.

20 Q. So it isn't -- okay. That's fine.

21 Miss Stout, when you look at a crossing,
22 when "you" I'm talking about the ORDC, when you look
23 at a crossing toward determining whether there's a
24 demonstrable need for it, what sort of factors do you
25 consider? What are you looking at?

1 A. Okay. We look at safety. We look at
2 alternate routes. We look at the access that folks
3 have; we certainly can't landlock folks so we look at
4 that. We look where nearby crossings are in relation
5 to the crossing they're considering. We look at
6 warning devices. We look at the average daily
7 traffic on the crossing. We look at train count and
8 speed. We look at economic influence and impact of
9 that crossing, and cultural and community impacts of
10 the crossing.

11 Q. Okay. Thank you. Thank you, Miss Stout.

12 Miss Stout, I want to direct your
13 attention to the Township Road 159 crossing in Brown
14 Township. Has the ORDC had the opportunity to
15 evaluate this crossing for closure more specifically
16 toward evaluating whether there's a demonstrable need
17 for the crossing to exist?

18 A. Yes.

19 Q. Okay. And what type of factors jumped
20 out at you when you evaluated the crossing for
21 closure?

22 A. Well, at the time we looked at it there
23 were two residences served by the crossing. There is
24 a crossing on half a mile either side of the crossing
25 we're reviewing, 159 crossing, both of those

1 crossings have active warning devices.

2 We looked at the fact that at the time
3 there was about 34 trains per day on that line, a
4 very high traffic train line, and it had a vehicle
5 count of only 26 vehicles and --

6 Q. Per day you're talking about.

7 A. Per day.

8 Q. Okay.

9 A. And then it looked like there were
10 alternative routes that it wouldn't landlock anyone
11 so we considered it a viable closure.

12 Q. Okay. Is this 159 a through route or is
13 it a -- do you know how long the roadway is,
14 approximately?

15 A. I think it's about a mile. I don't --
16 no, I didn't travel it when I was in the area.

17 Q. The ORDC assisted in putting the aerial
18 overview together that we're looking at there?

19 A. Yes.

20 Q. Miss Stout, as manager of Safety Programs
21 for the ORDC and based upon your experience and upon
22 the ORDC's analysis of the TR 159 crossing, do you
23 have an opinion, to a grade crossing safety
24 probability, with respect to whether there's a
25 demonstrable need for this crossing?

1 A. Yes.

2 Q. And what is your opinion?

3 A. Well, to me it certainly looks like a
4 viable closure. To me it looks like an extremely
5 hazardous crossing with potential for a serious and
6 possibly fatal accident to occur.

7 Q. And that's based on some of the factors
8 you've given us before?

9 A. Yes, based on the train speed, I believe
10 that there are alternate routes that are reasonable
11 and I believe the crossing should be closed.

12 Q. Okay. Thank you.

13 And, Miss Stout, you're aware as you sit
14 here today that Norfolk Southern has petitioned for
15 the closure of this crossing?

16 A. Yes.

17 Q. And let me ask you this, does the ORDC
18 always agree with every position advanced by Norfolk
19 Southern?

20 A. No.

21 Q. No? Okay. But in this instance you do.

22 A. Correct.

23 MR. TALBOTT: Okay. Thank you,
24 Miss Stout. That's all I have.

25 HEARING EXAMINER LYNN: Mr. Burkard.

1 MR. BURKARD: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Burkard:

5 Q. Miss Stout, you've indicated there's a
6 traffic count, a daily traffic count of 26 times that
7 road is used and when was that? I guess at what
8 point in the year was that actually taken?

9 A. That was the vehicle count that was in
10 the PUCO database at the time we were evaluating this
11 crossing, so that would have been around 2011. The
12 ORDC first became involved in reviewing this crossing
13 in 2005 and I know they -- I don't believe that
14 there's been any increase in traffic or usage since
15 that time. It may be less.

16 Q. Okay. And do you know what time of the
17 year that that vehicle count was taken?

18 A. No, I do not.

19 Q. Okay. So would you agree with me that if
20 it was taken probably in an off-farming season like
21 during the winter, it probably would be a lower count
22 than during the farming season when things are very
23 active in an agricultural community?

24 A. The traffic will change seasonally, but
25 based on what I observed in July of 2011 when I was

1 out there, I can't imagine that there would be
2 anything significantly more than what was in the
3 database at the time.

4 Q. Okay. But you don't know when or how
5 that database information was developed for that
6 crossing.

7 A. The database was developed around 1999
8 and the vehicle and train counts are updated as that
9 information is made available to us, so without
10 looking at that, the data for that particular
11 crossing, it will say -- it's a public database that
12 can be accessed and it will say when the train count
13 was updated last or when the vehicle count was
14 updated last.

15 HEARING EXAMINER LYNN: And, Miss Stout,
16 you're referring to the count of trains per day is
17 also from the Public Utilities Commission database.

18 THE WITNESS: Correct.

19 HEARING EXAMINER LYNN: Okay.

20 Q. Miss Stout, you'd indicated that this
21 particular crossing appears to be a hazardous
22 crossing. And do you know --

23 A. Every crossing is a hazardous crossing.

24 Q. I would agree.

25 Do you have any information or any

1 evidence that there have been motor vehicle or
2 farm-related vehicle accidents at this particular
3 crossing?

4 A. Not for this particular crossing, I don't
5 have the records with me for that crossing, however,
6 if I can state an observation based on my experience
7 with the Rail Commission, I have seen accidents occur
8 or heard of accidents that occur on crossings that
9 are not used very frequently. There was a recent
10 accident at a crossing that was a private crossing on
11 somebody's driveway, the people know those trains are
12 there, they live there, yet there was still a
13 fatality.

14 I think the hump, one of the things I
15 observed out at the crossing was the amount I had to
16 slow down for that hump, and given the speed and the
17 number of trains, if you're slowing down to negotiate
18 that hump, it's very similar to a crossing at Altz
19 Road (phonetic) that had a hump and there was a
20 fatality. But that was the first thing I thought of
21 as I crossed that crossing was how much it was like
22 the Altz Road crossing as far as the hump and how
23 much I had to slow down to cross it. And you've got
24 high-speed trains there.

25 HEARING EXAMINER LYNN: Again, when you

1 say "that crossing," you're referring to the one on
2 Township Road 159 --

3 THE WITNESS: Yes.

4 HEARING EXAMINER LYNN: -- that's at
5 issue here.

6 THE WITNESS: Yes.

7 Q. But at the 159 crossing we're talking
8 about today, no accidents that you're aware of?

9 A. Not that I'm aware of.

10 Q. Okay. Now in your position in the safety
11 arena, if this railroad crossing doesn't close, what
12 happens?

13 A. From the ORDC's perspective, we have no
14 further involvement with the crossing unless
15 something changes; if there is some development, if
16 there is a fatality. I believe that the ORDC's
17 position and my recommendation to the ORDC management
18 would be that we did not initiate any kind of grade
19 crossing safety improvement simply because of the
20 fact that it's been through this process and we still
21 believe that it's a redundant grade crossing.

22 Q. Okay. But it is possible, though, that
23 there could be some improvements to that railroad
24 crossing, correct?

25 A. There could always be improvements.

1 Q. Okay. And there could be lights, there
2 could be arms that go up and down that are actuated
3 by trains passing, that would be a safety improvement
4 that could possibly happen there rather than closure.

5 A. It could. It's not -- it is not an
6 improvement that I would recommend to my management.

7 Q. Okay. Does that come from your arena, or
8 does that come from another source?

9 A. There's a couple of options. It could
10 come from the ORDC, or it could come from the PUCO.
11 It could even come from Norfolk Southern itself.

12 Q. Okay.

13 A. It could come from the township if the
14 township decided that it believed the crossing was --
15 warranted lights and gates, they could enter into an
16 agreement with Norfolk Southern to have those lights
17 and gates put in place.

18 Q. Okay. So but if for today's purposes, if
19 the Public Utilities Commission decides this
20 shouldn't close, you would not recommend any changes
21 to that particular crossing on Road 159, correct?

22 A. No. Correct.

23 MR. BURKARD: Thank you. No further
24 questions.

25 HEARING EXAMINER LYNN: Mr. Talbott.

REDIRECT EXAMINATION

By Mr. Talbott:

Q. Just a quick follow-up. When you support Norfolk Southern's position, the petition here, and you advocate for the closure of this crossing, are you trying to be proactive as opposed to reactive? I mean, would you like --

A. Oh, absolutely.

Q. Okay. Why don't you just sit here and wait three years until a fatality occurs? Would that be a good move?

A. I don't believe so.

MR. TALBOTT: Okay. Thank you.

HEARING EXAMINER LYNN: Mr. Burkard?

MR. BURKARD: I have no further questions for this witness, your Honor.

HEARING EXAMINER LYNN: Just a minute. I may have some questions for you.

Mr. Talbott, do you have any additional witnesses?

MR. TALBOTT: I have Mr. Barringer.

HEARING EXAMINER LYNN: Okay.

Miss Stout, you can take your seat for now and Mr. Barringer can come up, and I may have some additional questions depending on what Mr. Barringer

1 says.

2 (Witness excused.)

3 MR. TALBOTT: So we call Bill Barringer
4 from Norfolk Southern.

5 HEARING EXAMINER LYNN: Yes.

6 Mr. Barringer, raise your right hand, please.

7 (Witness sworn.)

8 HEARING EXAMINER LYNN: Thank you. Take
9 a seat.

10 THE WITNESS: Thank you.

11 HEARING EXAMINER LYNN: Mr. Talbott,
12 please proceed.

13 Oh, one question. Mr. Barringer, again,
14 you represent?

15 THE WITNESS: Norfolk Southern.

16 HEARING EXAMINER LYNN: Okay. Go ahead.

17 MR. TALBOTT: Thank you.

18 - - -

19 WILLIAM L. BARRINGER, JR.

20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Talbott:

24 Q. Good afternoon, Mr. Barringer.

25 A. Good afternoon.

1 Q. Would you state your full name for the
2 record.

3 A. William Lee Barringer.

4 Q. Okay. Thank you.

5 And what, sir, is your professional
6 address?

7 A. 1200 Peachtree Street South -- Northwest,
8 Atlanta, Georgia.

9 Q. I understand you're employed by Norfolk
10 Southern.

11 A. I am, sir.

12 Q. Okay. And could you tell us in what
13 capacity?

14 A. I am director of Grade Crossing Safety
15 for the entire system.

16 Q. You say "the entire system" meaning
17 beyond the state of Ohio?

18 A. Twenty-two states in which we operate in,
19 yes, sir.

20 Q. Okay. Mr. Barringer, what does this
21 position involve? Just tell us a bit about your
22 responsibility.

23 A. Basically, our responsibility is we act
24 as liaisons between Norfolk Southern and communities,
25 state DOTs, citizens to improve grade crossing safety

1 across our 22-state system.

2 Q. Thank you.

3 Mr. Barringer, how long have you been
4 working in the railroad industry?

5 A. This month, 40 years.

6 Q. Congratulations.

7 A. Thank you.

8 Q. How long with Norfolk Southern?

9 A. Since 1998.

10 Q. Okay. Immediately before Norfolk
11 Southern you were --

12 A. I was director of Safety for Conrail out
13 of Philadelphia. Consolidated Rail Corporation,
14 Philadelphia.

15 Q. You mentioned -- how long have you been
16 involved in grade crossing safety?

17 A. Generally my entire railroad career I've
18 been in the safety office in one fashion or another
19 since I hired in in 1974. More recently coming to
20 Norfolk Southern in 2003 I was dedicated to fully
21 being involved in grade crossing safety issues.

22 Q. And you're currently the director of
23 Grade Crossing Safety for the entire Norfolk Southern
24 system.

25 A. Yes, sir, that's correct.

1 Q. All right. This grade crossing safety
2 has been your entire career it sounds like.

3 A. Pretty much.

4 Q. All right. And is it winding down as we
5 speak?

6 A. April 1.

7 Q. All right. Well, I thank you for coming
8 in from Atlanta for today's hearing and notably thank
9 you for your years of service toward improving rail
10 safety --

11 A. Thank you.

12 Q. -- throughout the system.

13 Mr. Barringer, is one of your
14 responsibilities evaluating what crossings throughout
15 the Norfolk Southern system may be appropriate for
16 closure?

17 A. Yes, sir, that's one of the areas in
18 which our group works and we work in areas of
19 education, engineering, enforcement.

20 Q. Okay. Let me, when you say "education,"
21 are you a member of any national leadership programs?

22 A. We are -- Norfolk Southern supports
23 Operation Lifesaver, it's a national program for
24 prevention of loss of life at highway-rail
25 intersections.

1 (Interruption.)

2 A. We support Operation Lifesaver, which is
3 a national program for -- nonprofit for the
4 prevention of loss of life on the nation's highway,
5 an education program. I've been involved in that
6 for -- since 1990 and recently I was elected as a
7 chairman of the board for the national office out of
8 Washington, DC.

9 Q. So you're the chairman of the board of
10 the National Operation --

11 A. Operation Lifesaver.

12 Q. -- Life Saver.

13 A. Yes, sir, I am.

14 Q. All right. Mr. Barringer, you stated
15 that one of your responsibilities is evaluating what
16 crossings throughout the system may be appropriate
17 for closure; why do you do this?

18 A. Miss Stout talked about a few of them.
19 There are many reasons. We're looking to provide
20 safety to the community, provide safety to the
21 traveling public, provide safety to the operations of
22 our trains. It's a joint partnership between all the
23 parties we are involved with.

24 Q. Okay. Miss Stout mentioned a federal
25 mandate, are you familiar with that?

1 A. We are part of the, you know, we're
2 governed by the Federal Railroad Administration. As
3 she said, in 1991 the Federal Railroad Administration
4 looked at accidents and the crossings we have in this
5 country and they said we have at least 25 percent too
6 many, you know, more crossings than what we need in
7 this country and they have mandated the railroads to
8 go out and look at their property and crossings and
9 look for opportunities to consolidate crossings where
10 they can and they gave us a mandate looking at
11 25 percent.

12 Q. Mr. Barringer, we're here today to talk
13 about primarily one crossing in particular, that is
14 Township Road 159 in Brown Township. Are you
15 familiar with this crossing?

16 A. Yes, sir, I'm very familiar with it.

17 Q. Okay. I'm not talking about looking at
18 photographs. Tell us how you're familiar with the
19 crossing.

20 A. I have been to this crossing many times,
21 driven over it, driven the area, looked at it, been
22 out on the street, you know, from the highway side,
23 the roadside, the field side, looked at the crossing
24 and surrounding crossings in adjacent area also.

25 Q. I think you answered that, so you've

1 actually evaluated not only Township Road 159 but you
2 have inspected and driven the other crossings and
3 roadways as well.

4 A. Yes, sir, that's correct.

5 Q. All right. Mr. Barringer, I'm hoping
6 that -- I want to run through some information with
7 you toward giving Mr. Lynn some greater information
8 regarding the TR 159 crossing and the surrounding
9 crossings and roadways. First let's talk about the
10 TR 159 crossing itself.

11 Miss Stout testified that the -- well,
12 first of all, what's the, to your understanding, the
13 approximate daily vehicle count at the crossing?

14 A. The Ohio PUCO record shows 26 trains a
15 day.

16 Q. No; talking vehicles.

17 A. Excuse me. Vehicles a day.

18 Q. Yes.

19 A. And as we prepared for this hearing we
20 took the opportunity to go out and do a traffic count
21 so we could have some kind of point of reference, so
22 the ORDC or the PUCO says 26 trains a day. When we
23 did our recent traffic count for vehicles, we did 15
24 per day.

25 Q. Okay. Are you taking issue with the

1 PUCO's number?

2 A. No, sir, I'm not.

3 Q. Okay. And can you tell us what the --
4 so, if I understood you, you erred on the side of
5 doing a traffic count just to make sure we're within
6 striking distance of the PUCO.

7 A. Having a point of reference, yes, sir.

8 HEARING EXAMINER LYNN: Mr. Talbott,
9 Mr. Barringer, when was that traffic count done by
10 Norfolk Southern?

11 THE WITNESS: Within the last two or
12 three weeks.

13 MR. TALBOTT: Just recent and that's one
14 of the exhibits.

15 HEARING EXAMINER LYNN: So approximately
16 what, February of 2014 I guess.

17 THE WITNESS: Maybe a little later than
18 that, but within the last three weeks I would say.

19 HEARING EXAMINER LYNN: All right.

20 THE WITNESS: And I think there's a paper
21 in the file that shows the traffic count; exhibits.

22 HEARING EXAMINER LYNN: Okay.

23 MR. TALBOTT: We'll come to that.

24 Q (By Mr. Talbott) Mr. Barringer, can you
25 tell us what the approximate train count is at this

1 crossing?

2 A. Over this line of track, this is our --
3 one of our main lines that runs from Buffalo,
4 New York, to Chicago. It's one of our key routes.
5 And currently we're running 32 to 34 trains a day at
6 maximum timetable speeds of 60 miles an hour.

7 Q. Okay. Let's talk for a moment about the
8 adjacent crossings, and you can feel free to look at
9 that chart if you'd like. The Township Road 165 and
10 151, can you tell us the approximate vehicle counts
11 at those crossings?

12 A. The next crossing east, which is Township
13 Road 165, PUCO has a count of 70 vehicles per day.
14 When we did our count, we counted nine per day.

15 Q. Okay.

16 A. On the adjacent west crossing, TR 151,
17 PUCO has a count of 332 vehicles per day, and we
18 measured 121 vehicles per day.

19 Q. Again, do you take issue with the PUCO's
20 count?

21 A. No, sir, I do not.

22 Q. And you do recognize that there could be
23 some seasonal difference and numbers.

24 A. Absolutely.

25 Q. Okay. And I assume that the train count

1 for the two adjacent crossings is identical to the
2 train count for 159?

3 A. It is. And it varies by season also.
4 The one thing we have to note is that rail traffic in
5 this country is projected to go up 50 to 70 percent
6 in the next five to ten years, so we could see this
7 as a core route, this train traffic increasing
8 dramatically.

9 Q. Thank you.

10 MR. TALBOTT: May I approach?

11 HEARING EXAMINER LYNN: Yes.

12 MR. TALBOTT: Thanks.

13 Q. Mr. Barringer, would you confirm --

14 A. If I may for point of reference, the
15 Chicago line, which is the next line up, is another
16 one of our core routes.

17 Q. Okay.

18 A. And they're running 126 trains a day
19 currently.

20 Q. Okay. Would you confirm what we've
21 marked for the record as Petitioner's Exhibit A are
22 the PUCO and FRA profiles or, pardon me, inventories
23 for these crossings, the three crossings you just
24 discussed.

25 A. Yes, sir, they are.

1 Q. Okay. Thank you.

2 And these contain information such as
3 traffic and train counts and other information as
4 well?

5 A. Yes. Basically, the inventory for the
6 state and also the federal database record for the
7 inventory.

8 Q. Okay. And, Mr. Barringer, I'm now
9 handing you -- you had referenced a more recent
10 traffic count. Can you confirm that that is what's
11 in Petitioner's Exhibit B.

12 A. Yes. It's the traffic count we
13 commissioned on March 5th of this year or, well,
14 February 25th dated March 5th of this year.

15 Q. Okay. The cover letter dated that.

16 A. Right.

17 Q. Okay. Mr. Barringer, so if, so we're on
18 the same page here, if the Township Road 159 crossing
19 was closed and vehicular traffic was redirected to
20 one of the two adjacent crossings, would we be
21 talking about a large number of vehicles being
22 redirected or a relatively low number?

23 A. In our methodology, the way we look at
24 crossings and crossing consolidations, the easiest
25 way to do it is divide the number of vehicles on a

1 given crossing and, you know, separate it and move to
2 the two additional crossings. So if the highest
3 number you've got is 26, so that would move 13 cars
4 to each one of the adjacent crossings.

5 Q. So you're talking about approximately one
6 vehicle every other hour --

7 A. About every other hour.

8 Q. -- at the adjacent crossings?

9 A. Yes, sir, I am.

10 Q. I want to chat for a second about the
11 involved roadways and the adjacent crossings.

12 A. Okay.

13 Q. First, would you describe the Township
14 Road 159 roadway for me?

15 A. 159 is a north-south cut-through road
16 that runs from SR 163 down to Township Road 82.

17 Q. Okay. Actually, from State Route 613.

18 A. 613. I'm sorry. A little glare there.
19 Sorry about that.

20 Q. Okay.

21 A. State Route 613.

22 Q. You may have said; approximately how long
23 is it?

24 A. About a mile long. Two-thirds of it is a
25 gravel compact road, the last one-third closer to TR

1 82 is a paved road.

2 Q. Okay. And so the record's clear, your
3 testimony is from State Route 613 down to the --
4 well, do you know how many residences are on this one
5 currently?

6 A. It's just one residence on the road
7 currently.

8 (Interruption.)

9 Q. Can you tell us, Mr. Barringer, how many
10 residences are located on TR 159?

11 A. Currently, there's one residence.

12 Q. Okay. At some point in the past there
13 was a trailer that's no longer there?

14 A. That's my understanding.

15 Q. Okay. And Mr. Adams I believe testified
16 that he thought that TR 159 was paved between 613 and
17 the track; is that accurate?

18 A. From my recollection of being out there
19 and the photographs, I remember it's a gravel road,
20 there may be a little pavement, you know, a runoff
21 from the state route, but it's basically a gravel
22 road.

23 Q. Okay. So you're talking about the
24 approximate two-thirds of a mile from State Route 613
25 to the Porter residence is a gravel, a gravel-dirt

1 roadway?

2 A. Yes, sir, that's correct.

3 Q. Okay. And then from the sole residence
4 to the south, to 282 [verbatim], that's a paved
5 roadway.

6 A. Yes, sir, that's correct.

7 Q. Okay. Mr. Barringer, can you confirm
8 that what we've marked as Defendant's Exhibit C are
9 true and accurate photographs depicting the roadway
10 condition on TR 159 to the north of the Porter
11 residence?

12 A. Yes, I can.

13 Q. Thank you.

14 Mr. Barringer, is TR 159 more narrow or
15 wider than the adjacent roadways?

16 A. In taking some basic measurements, TR 159
17 is about nine-foot wide going from edge to edge
18 along --

19 Q. Edge of the gravel to edge of the gravel?

20 A. Edge of the gravel to edge of the gravel,
21 yes, sir. About nine feet.

22 Q. Is that wider or more narrow than the
23 other roadways? And don't tell me the other
24 roadways' measurements yet.

25 A. It's the narrowest of the three crossings

1 in this area.

2 Q. Okay. Now let's talk about 165 and 151.

3 HEARING EXAMINER LYNN: Just a minute.

4 Mr. Talbott. I have a question or two for

5 Mr. Barringer.

6 Stores Road, how many vehicles would you
7 say would be able to travel on that road at one time
8 at any time?

9 THE WITNESS: Two at a slow pace. It's
10 not a high-speed road. Gravel. You know, two normal
11 vehicles could pass.

12 MR. TALBOTT: I think he's talking about
13 widthwise.

14 THE WITNESS: Yeah, they could pass.

15 HEARING EXAMINER LYNN: So two could pass
16 each other.

17 THE WITNESS: Yeah.

18 HEARING EXAMINER LYNN: Going in opposite
19 directions.

20 THE WITNESS: Right. That's correct.

21 Q (By Mr. Talbott) As long as they're
22 hugging the roadway?

23 A. Yes, sir.

24 Q. Hugging the edge?

25 A. Yes.

1 HEARING EXAMINER LYNN: And what about
2 the speed limit on that road, do you have any idea
3 what that is?

4 THE WITNESS: I didn't see a posted speed
5 limit, but it's got to be slow because of the gravel.

6 HEARING EXAMINER LYNN: Okay. All right.
7 Thank you.

8 Go ahead, Mr. Talbott.

9 Q. And regardless of the speed, gravel
10 creates limitations on how fast you can drive?

11 A. Yes, sir, it does.

12 Q. Mr. Barringer, we're just starting to
13 talk about the adjacent roadways, 165 and 151, are
14 they paved or unpaved?

15 A. TR 165 is a paved roadway, and TR 151 is
16 a paved roadway.

17 Q. Okay. And approximately how wide are
18 they?

19 A. Approximately, TR 165 is approximately
20 11 feet wide, and TR 151 is approximately 18 feet
21 wide.

22 Q. Okay. You're talking about from edge of
23 pavement to edge of pavement.

24 A. Yes, sir. Generally.

25 Q. And then plus a little stone berm on the

1 edges.

2 A. Right. That's correct.

3 Q. Okay. Mr. Barringer, let's talk a moment
4 about the crossings themselves. First, how far from
5 the Township Road 159 crossing are the immediately
6 adjacent crossings, TR 165 and TR 151?

7 A. About half a mile in each direction
8 equally spaced out.

9 Q. Okay. So you have one crossing
10 approximately half a mile to the east and the other
11 approximately a half mile to the west.

12 A. That's correct.

13 Q. All right. And so the record is -- or,
14 strike that.

15 Mr. Barringer, would you describe for me
16 the warning devices at each of the three crossings.

17 A. Sure. The east crossing, TR 165, has
18 gates, lights, and bells. The middle crossing here,
19 the TR 159, is a passive crossing with crossbucks and
20 a yield sign on it. And the far west crossing,
21 TR 151, has gates, lights, and bells on it.

22 Q. Okay.

23 A. Automatic warning devices.

24 Q. When Mr. Porter testified that at least
25 to his recollection TR 165 was passive, did not have

1 active lights and gates, he was just simply wrong in
2 that regard?

3 A. Yes, sir.

4 Q. Okay. So the record's clear, 165 and 151
5 have active warning devices, 159 has passive.

6 A. That's correct.

7 Q. So to the extent that closure results in
8 the redirection of the, you know, fairly low number
9 of vehicles to adjacent crossings, those vehicles are
10 going to be redirected to crossings with active
11 warning devices as opposed to passive?

12 A. That's correct.

13 Q. All right. Mr. Barringer, can you also
14 describe for me the profile of the -- the profiles of
15 the three respective crossings?

16 A. If you look at the three of them
17 together, 159 has the highest profile of the three.

18 Q. Okay. Thank you, Mr. Barringer.

19 So to the extent that closure resulted in
20 the redirection of a fairly low number of motor
21 vehicles to the adjacent crossing, they'd be
22 redirected to crossings with lower profiles.

23 A. Lower profiles, better geometry, and
24 gates, lights and bells, automatic warning devices.

25 Q. And paved roadways and wider --

1 A. Paved roadways, yes, sir.

2 Q. Mr. Barringer, can you speak briefly to
3 the sight distance at the three crossings.

4 A. This is a tangent level track and a motor
5 vehicle operator approaching the crossing, prepared
6 to comply with their duty under law, is going to be
7 able to see for a long way. No problem with sight
8 distance at all.

9 Q. See a country mile either way.

10 A. Yes, sir.

11 Q. And that's at all three crossings?

12 A. All three crossings, yes, sir.

13 Q. Now, two of them have active warning
14 devices --

15 A. Yes, sir.

16 Q. -- one has passive, but all three you can
17 see for a country mile.

18 A. That's correct.

19 Q. Mr. Barringer, I want to talk, well, I
20 want to hand you what we've marked as Defendant's
21 Exhibit D. Can you confirm that these are photos
22 which truly and accurately depict the three crossings
23 you've just discussed from the opposite sides?

24 A. Yes, sir, they depict the three crossings
25 we're talking about this afternoon.

1 Q. Thank you.

2 Mr. Barringer, I want to speak with you
3 for just a moment about the potential impact of
4 closing the TR 159 crossing. Have you had the
5 opportunity to review the transcript from the PUCO
6 public hearing?

7 A. Yes, sir, I did.

8 Q. You were present and had the opportunity
9 to hear Mr. Adams speak earlier today --

10 A. Yes.

11 Q. -- about it and specifically you're aware
12 as you sit here that a concern that has been voiced
13 is with respect to EMS response time.

14 A. Yes, that's correct.

15 Q. Okay. And specifically we're talking
16 about EMS response time to the Porter residence which
17 is the sole residence on 159.

18 A. That's correct.

19 Q. All right. Mr. Barringer, let's spend a
20 few minutes speaking to that concern. First, can you
21 confirm for the record where the safety service
22 building is located?

23 A. The EMS fire rescue is in Oakwood, which
24 is not depicted on the map, but it is further east on
25 this horizontal line that comes into the center of

1 Melrose.

2 Q. Approximately how far up 613 are we
3 talking?

4 A. I believe it's about two-and-a-half
5 miles, maybe 2.6 miles.

6 Q. Okay. And so we heard from Mr. Adams
7 that as EMS is coming in from Oakwood, they come to a
8 critical intersection in the middle of Melrose; is
9 that correct?

10 A. Yes, that's correct.

11 Q. All right. Mr. Barringer, just so we
12 know what we're identifying, can you confirm what
13 we've marked for the record as Petitioner's Exhibit E
14 is a true and accurate copy of an aerial and mileage
15 overview of the involved area.

16 A. Yes, sir, that's correct.

17 Q. Okay.

18 HEARING EXAMINER LYNN: Mr. Talbott,
19 please.

20 Mr. Barringer, again, you're saying it's
21 about 2.6 miles from Oakwood to Melrose.

22 THE WITNESS: From the fire station to
23 the center, what I call the main intersection of
24 Melrose.

25 HEARING EXAMINER LYNN: And that's along

1 Route 613.

2 THE WITNESS: Yes, sir, that's correct.

3 HEARING EXAMINER LYNN: Thank you.

4 Q (By Mr. Talbott) Okay. Mr. Barringer,
5 have you yourself actually confirmed the mileage set
6 forth on this chart?

7 A. Yes, sir, we have.

8 Q. All right. And have you, in fact, driven
9 each of these roadways?

10 A. Yes, sir, I have, numerous times and
11 compared the measurements and all came in close
12 proximity of each other.

13 Q. Mr. Barringer, we've heard -- we just
14 talked about with Mr. Lynn and confirmed that EMS
15 comes in from Oakwood to this critical intersection
16 in Melrose and specifically we're talking about the
17 intersection of State Route 613 and County Road 177,
18 correct?

19 A. That is correct.

20 Q. All right. And at that point,
21 Mr. Barringer, EMS has a choice of going to the
22 right, meaning the north, or going to the left,
23 meaning the south, correct?

24 A. That's correct.

25 Q. All right. Mr. Barringer, can you walk

1 us through each of those routes from a rail safety
2 perspective?

3 A. Sure.

4 Q. Let's start going north.

5 A. When you approach the intersection, you
6 make a right-hand turn onto a paved road, you go a
7 couple blocks, you approach the highway rail
8 intersection of the main line, cross over the tracks;
9 it's a crossing that has gates and lights on it. You
10 move around to the left, turn to the left and you go
11 a distance and you make a left-hand turn on TR 159.
12 So you come off a paved road onto the gravel road.
13 You immediately are faced with the grade crossing
14 there at the intersection. At the intersection
15 you've got another two-thirds of a mile down to the
16 residence on unpaved road.

17 Q. Okay. Thank you, Mr. Barringer.

18 Now, that's talking about if you go to
19 the north.

20 A. That's correct.

21 Q. And let's walk us through if you go to
22 the south.

23 A. Right. If you go to the south, you're
24 again on a paved road. You come down to TR 88, you
25 make a right-hand turn on TR 88.

1 Q. Eighty-two.

2 A. Eighty-two, I'm sorry.

3 HEARING EXAMINER LYNN: When you say
4 "come down," that's --

5 THE WITNESS: Going south, in a southerly
6 direction.

7 HEARING EXAMINER LYNN: -- County Road
8 177.

9 THE WITNESS: County Road 177.
10 Make a right-hand turn on TR 82 to
11 TR 159, make a right on 159 and about a third of a
12 mile to the residence there on that road, on a paved
13 roadway.

14 Q. Okay. Thank you, Mr. Barringer, so
15 that -- would you confirm -- strike that.

16 You mentioned 177 and 82. Are those both
17 paved roadways?

18 A. Yes, they are.

19 Q. Okay. Have you had -- can you tell us
20 how wide each of those roadways is?

21 A. Generally, they average between 17 and
22 18 feet wide each of them.

23 Q. You're talking pavement to pavement.

24 A. Pavement to pavement.

25 Q. And there's some additional berm on each

1 side.

2 A. Berm on each side, a little gravel maybe.

3 Q. All right. Mr. Barringer, have you --
4 have you actually driven each of those routes?

5 A. Yes, sir, I have, numerous times.

6 Q. Have you actually timed each of those
7 routes?

8 A. I have.

9 Q. Okay. And can you tell -- for the
10 purpose of today can you tell the hearing officer
11 which way is quicker?

12 A. The south route going down south on 177
13 to the residence is, on average, four minutes and six
14 seconds. Going the northern route, 177 to State
15 Route 613 and back down, averages about four minutes
16 and 32 seconds.

17 Q. That was based on your own driving and
18 timing of the roadway.

19 A. Yes, sir.

20 HEARING EXAMINER LYNN: And,
21 Mr. Barringer, you're referring to the time from, is
22 it from Melrose to the residence or from Oakwood?

23 THE WITNESS: From Melrose. From the
24 intersection there.

25 HEARING EXAMINER LYNN: Okay. All right.

1 MR. TALBOTT: And I should have done a
2 better job clarifying that.

3 Q. Mr. Barringer, you testified that from
4 the Oakwood safety services to the intersection in
5 Melrose, the critical intersection, that's
6 approximately two-and-a-half miles?

7 A. Two-and-a-half miles, correct.

8 Q. So that's a constant regardless --

9 A. Yes, sir.

10 Q. -- of which way they're going to go at
11 the critical intersection. But your testimony is if
12 you go to the right and head north and cross 159,
13 it's going to take you longer than if you go to the
14 south and come in the back way.

15 A. By timewise, yes, sir.

16 Q. Okay. So and it's actually, you made a
17 good point, the distance, when Mr. Adams testified
18 that -- or at the public meeting that the, quote,
19 shortest route is always the best route, in this
20 instance we have a little difference there because
21 the short, the, quote, shortest route distancewise is
22 heading north, correct?

23 A. Right. It's about two-tenths or
24 four-tenths of a mile difference between the two
25 routes.

1 Q. And that's depicted on the chart. I
2 think if you go to the north, it's 2.33 miles.

3 A. Yes.

4 Q. If you go to the south, it's 2.68 miles.

5 A. That's correct.

6 Q. But driving it, it's actually quicker to
7 go the south route?

8 A. Timewise, yes, sir.

9 Q. Okay. And the reason being is you've
10 got -- if you go north, you've got to cross the
11 railroad tracks not one time but two?

12 A. Right.

13 Q. And you've also got to drive on a dirt
14 and gravel road?

15 A. Right. And there is, you know, an
16 additional safety factor.

17 Q. What do you mean?

18 A. You know, we have seen this historically
19 within the United States, we work very hard and very
20 closely with our emergency response community
21 throughout the United States to try to prevent these
22 guys and gals out there, who we need to protect our
23 safety, to keep them from being involved in
24 train-vehicle accidents.

25 We've had some very tragic accidents in

1 this country and high speeds involved in them and the
2 guys and gals out there who ride the service have
3 adrenaline pumping and they get what's called tunnel
4 vision and, you know, they are so used to motoring
5 public yielding to their fire trucks and their police
6 vehicles and ambulances, well, trains don't yield.
7 Trains have no ability to steer away.

8 And so we work very hard to advise the
9 community at all possible when you're responding to
10 an incident, try not to have to cross railroad
11 tracks.

12 And one of the key points of this project
13 is by taking the south route going down 177 you avoid
14 that opportunity for emergency response vehicles to
15 have an accident with a train.

16 Q. Let me make sure the record's clear on
17 that. You're saying if they go, and what Mr. Adams
18 said was the preferred route which you've said is
19 actually longer timewise --

20 A. Yes, sir.

21 Q. -- if you go the one route, how many
22 opportunities does -- back up further.

23 You know, we're talking maybe once a year
24 EMS or safety service, or once every five years, has
25 to go out to this residence, whatever it is.

1 A. Yes.

2 Q. On the rare occasion that safety service
3 would have to go to this residence, if they go north,
4 how many times are they going to have to cross a
5 heavy mainline railroad track?

6 A. They're exposing their apparatus and
7 their men to two opportunities for a vehicle-train
8 collision.

9 Q. Okay. Specifically, one time on 613?

10 A. That's correct.

11 Q. And then the second time at the crossing
12 you discussed on 159.

13 A. Yes, sir, that's correct.

14 Q. And so the record's clear, if they go
15 south on 177 and come in the back way, it's quicker,
16 right?

17 A. Yes, sir, by time.

18 Q. And how many times do they interact with
19 the rail tracks doing that?

20 A. Zero.

21 Q. Okay.

22 HEARING EXAMINER LYNN: Mr. Talbott, when
23 you say "the back way," again, you're referring to
24 177 to County Road 82 and then on to 159 from there.

25 MR. TALBOTT: Yes, sir, your Honor.

1 HEARING EXAMINER LYNN: Okay.

2 MR. TALBOTT: Which I believe was the
3 testimony was the second preferred route of the EMS
4 folk.

5 HEARING EXAMINER LYNN: One other
6 question. Mr. Barringer, you mentioned -- you're
7 describing emergency management or --

8 THE WITNESS: Fire, ambulance, police.

9 HEARING EXAMINER LYNN: Fire, ambulance
10 as well?

11 THE WITNESS: Anything. Yes, sir.

12 HEARING EXAMINER LYNN: And they would
13 all come from Oakwood again.

14 THE WITNESS: Yes, sir. That's my, I
15 mean, the police I think in their area is the county
16 sheriff, so I don't know that they're headquartered
17 there, but this is --

18 HEARING EXAMINER LYNN: No you're
19 saying --

20 THE WITNESS: -- Oakwood would be fire
21 and emergency response to my understanding.

22 HEARING EXAMINER LYNN: All right. Thank
23 you.

24 Q (By Mr. Talbott) Mr. Barringer, at least
25 in passing at the PUCO public meeting and then here

1 today there's been a concern raised with respect to
2 the potential or possible impact closure would have
3 on local farmers; can you speak to that?

4 A. I had an opportunity to read the
5 transcript, it's my understanding that, you know,
6 very few people showed up at the meeting. There was
7 no farmers there that actually farm the territory
8 showed up at the meeting. You know, we've gone
9 through and looked at the parcels and the property to
10 see what would be impacted and from our look at the
11 parcels and the people on it, that there's alternate
12 access, people can cut through their farm fields to
13 get to the parcels. They're all able to be accessed,
14 their farm parcels.

15 Q. Because they own multiple parcels?

16 A. Yeah, they own multiple parcels.

17 Q. Let's say they don't. If they have to
18 drive around, where would you rather see commercial
19 and farm vehicles crossing? Would you rather see
20 them crossing the higher profile passive on 159 or
21 would you rather see the --

22 A. I would rather see these type of
23 vehicles, any vehicle, go to a crossing that has
24 automatic warning devices on it and has a lower
25 profile, less opportunity to get hung up and more

1 opportunity for the vehicle operator to be made aware
2 of an approaching train.

3 Q. And paved roads?

4 A. Paved roads, yes, sir.

5 Q. Wider roads?

6 A. Yes, sir, they're wider.

7 Q. Okay. Mr. Barringer, you referenced some
8 parcel information you looked at. Can you confirm
9 that Defendant's Exhibit F is a true and accurate
10 copy of that?

11 A. Yes, sir, that's correct.

12 Q. Okay. And then when you referenced
13 looking at the, reviewing the transcript from the
14 public, the PUCO's public meeting, you weren't there,
15 right?

16 A. No, I was not, sir.

17 Q. But from looking at the transcript there
18 were three trustees there, correct?

19 A. That's my understanding, yes.

20 Q. But no residents.

21 A. No residents, that's correct.

22 Q. All right. Mr. Barringer, as director of
23 Grade Crossing Safety for Norfolk Southern based on
24 your career-long experience in the railroad industry
25 and more notably your years in grade crossing

1 safety, in your review and analysis of the Township
2 Road 159 crossing in particular do you have an
3 opinion to a grade crossing safety probability with
4 respect to whether there is a demonstrable need for
5 this crossing?

6 A. This is a classic case for consolidation.
7 There's not a need for this crossing. It serves one
8 residence. It has alternate access on east and west
9 within half a mile to have roads that are paved,
10 gates, lights, and bells, better geometry on the
11 crossing, lower profiles, it is a crossing that has
12 very few vehicles on it, even using the highest
13 standard and even doubling it to a seasonal factor to
14 50, 60, a hundred cars a day, that still is well
15 below any factor that the industry, the FRA, would
16 use in looking at opportunities for consolidations.

17 Again, this is just a classic textbook
18 case where a crossing needs to be consolidated with
19 the adjacent crossings.

20 MR. TALBOTT: Thank you, Mr. Barringer.
21 That's all I have.

22 - - -

23 EXAMINATION

24 By Hearing Examiner Lynn:

25 Q. Mr. Barringer, I have a few additional

1 questions for you --

2 A. Yes, sir.

3 Q. -- just so we'll get this on the record.
4 Township Road 159 or Stores Road where the crossing
5 at issue is located we're talking about, just to
6 clarify, does Township Road 159, is it in any way a
7 through road or does it go south of Route 82 and
8 north of Route 613?

9 A. No, sir, it does not.

10 Q. Okay. And you've indicated there is one
11 residence on that road.

12 A. Yeah.

13 Q. One home. Or one homeowner. Do you have
14 any knowledge of whether they have any children,
15 whether they would be getting a school bus, any
16 knowledge of that?

17 A. No, I do not. I've thought about that
18 question and, again, you know, with my experience in
19 the industry, you know, the industry has had some
20 very tragic accidents involving children and school
21 buses and one of the recommendations that's been made
22 by the NTSB is that school buses should use routes
23 that have automatic warning devices.

24 So in this case, if I was the school bus
25 superintendent for this area, I would direct my

1 drivers not to use this crossing without --

2 Q. But you don't have any knowledge --

3 A. No, sir, I do not.

4 Q. -- of that particular residence.

5 A. Correct.

6 Q. Okay. Melrose apparently is the nearest
7 community. Do you have any idea whether any
8 businesses will be using that route, Township Road
9 159?

10 A. I would assume that the resident there
11 gets mail delivery, UPS package deliveries, the
12 normal commercial business that would go to any
13 residence. In the times that I've been out there
14 I've never seen any vehicles on the road when I've
15 been driving it, and I've been out there during the
16 week, during the days, morning, afternoons, and on
17 Sunday afternoons.

18 Q. So you were there on different days --

19 A. I've been to this crossing many times
20 over the last ten years or so looking at it and
21 trying to, you know, look at a plan on how we can
22 make this crossing and this area safe for the
23 community.

24 Q. When you say "many times," could you give
25 an estimate maybe?

1 A. I'd say at least five times, yes sir.

2 Q. Do you have any knowledge of what the
3 nearest school would be to that home owner?

4 A. Not as I sit here right now sir.

5 HEARING EXAMINER LYNN: Okay. All right.
6 Thank you.

7 Let's go off the record for a minute.

8 (Discussion off the record.)

9 HEARING EXAMINER LYNN: Back on the
10 record. Mr. Burkard, please go ahead with your
11 questions.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Burkard:

15 Q. Mr. Barringer, you indicated most of your
16 career has been with the railroad and then most
17 recently with Norfolk Southern?

18 A. All of my career. I graduated high
19 school, did two years of college, went to work for
20 Penn Central Railroad in 1974 in Cincinnati, Ohio.
21 So I've worked my way up through the ranks since
22 then.

23 Q. And with this federal directive you're
24 currently evaluating crossings for Norfolk Southern
25 to close.

1 A. Across the entire 22 states, yes, sir, we
2 are.

3 Q. Does Norfolk Southern or do you ever
4 reach out to an independent evaluator to look at
5 crossings to say should that crossing close or
6 shouldn't it close?

7 A. Our independent evaluation is with --
8 working with the state. It's a joint partnership.
9 So if we would go out and look at a line segment or a
10 crossing, we may have, you know, some thoughts on the
11 process but we are always looking for the partnership
12 with the state DOT involved with public crossings.
13 Communities, it's a joint partnership. We don't just
14 come in and unilaterally say this crossing looks like
15 it needs to be closed and proceed. We try to do it
16 in a partnership and work with the communities to
17 make, you know, the crossings safer in the
18 communities.

19 Q. You said one of your directives or one of
20 your core parts of the evaluation is prevent the loss
21 of life at these various locations --

22 A. Yes, sir.

23 Q. -- that you're evaluating, do you have
24 any knowledge of any accidents or collisions with
25 trains that occurred on Township 159?

1 A. No, there's never been an accident there.

2 Q. Okay. Is that unusual in the various
3 crossings that you're looking to close or is that
4 usually a precursor to that?

5 A. It's just one of the factors we use. You
6 know, surely if a crossing has more accidents, you
7 know, we're going to look at those at a faster level
8 than we would those that didn't have accidents.

9 But this particular line segment was part
10 of a overall project we did with the state of Ohio.
11 We went to the state of Ohio and said we wanted to do
12 a major improvement project for the entire state.

13 Ohio is very important to Norfolk
14 Southern. It's a key route for us both north, south,
15 east, and west. We've got five operating divisions
16 that operate here. There's major, major
17 through-traffic here and, you know, when you run
18 trains and you have vehicles in an intersection, you
19 have to do things to prevent that from happening. So
20 it's a great partnership for the citizens in the
21 state of Ohio.

22 Q. Now, you talked about the profile of
23 Township Road 159 versus the two adjoining roads to
24 the east --

25 A. Yes, sir.

1 Q. -- and to the west. Was there some
2 elevation taken by an engineer, or what's the basis
3 other than merely seeing it by eye?

4 A. There's -- in the PUCO there is a profile
5 diagram and it shows the profile, how narrow it is,
6 you know, and that's how high the crossing is from
7 the level roadway, and they've measured it out so
8 it's part of the PUCO inventory record.

9 Q. Okay. And as part of your observations
10 of not only the record but also personal observations
11 are we talking about two inches or are we talking
12 about two feet?

13 A. As far as profilewise?

14 Q. Elevation, yes.

15 A. I'm going to say it's probably four to
16 five feet and it's more pointed, if you would, than
17 the other two crossings. The other two crossings of
18 course have a profile too, but they're more level and
19 flat which is really what you try to obtain when you
20 have roads that have lots of vehicle traffic on it so
21 that you have that nice, even flow of service
22 whenever you can do that, possibly. If the current,
23 you know, geography of the area allows for it.

24 Q. That probably was as a result of the
25 improvements that were made with the lights and the

1 other things on the two adjoining roads?

2 A. It could be. It could be just the way
3 the geography of the land is over the years.

4 Q. Now, you had described as you're looking
5 from Township, excuse me, yeah, Township Road 159
6 looking west and also looking east, there are no
7 obstructions for a significant period of time, are
8 there?

9 A. That's correct. There's a couple bushes
10 and trees along the fence line maybe, you know, but
11 as far as sight obstructions, when you pull up to
12 where you're supposed to look for the train, you can
13 see a very long distance.

14 Q. Which is a positive for that location
15 versus having trees or --

16 A. Right.

17 Q. -- buildings or anything else?

18 A. It's a positive and a negative. One of
19 the things we teach in our education classes is that
20 people have a tendency to misjudge the speed of a
21 train.

22 If you've ever looked at a jet landing in
23 an airport and it looks like it's just barely
24 falling, you know, it looks like it's just barely
25 landing, it's going very slow, and that's because of

1 the triangulation of where you're standing looking at
2 that plane, when that plane is really doing 4-,
3 500 miles an hour into a landing. Maybe not that
4 much, but I guess 200, 300. That triangle makes that
5 plane look like it's barely floating along.

6 The same happens with railroad crossings.
7 If you stand and look at the crossing, the parallel
8 lines run together and then that train sits there at
9 the distance, and people have a very hard time
10 judging the speed, and that's one of the things that
11 we always look at to say is this a crossing that
12 needs to be consolidated or do we need to look at
13 doing other treatments at the crossing.

14 HEARING EXAMINER LYNN: Mr. Barringer,
15 I'll follow up on a question from Mr. Burkard. You
16 said there had been no fatalities at that crossing.
17 Have there been any collisions at that crossing?

18 THE WITNESS: No, I could not find any
19 record in our database or the FRA database.

20 HEARING EXAMINER LYNN: All right. Thank
21 you.

22 Q. Mr. Barringer, there were several
23 questions by Mr. Talbott regarding the alternative
24 route from the central point in Melrose, one going
25 north, one going south, and you indicated you had

1 actually driven both of those points.

2 A. Yes, many times.

3 Q. Is it fair to say that going north the
4 roadway is more stable, flat, and probably safer than
5 going to the south on the Road 177 to Township Road
6 82?

7 A. It is definitely a paved road, a little
8 bit nicer road than TR 82. I don't know if you could
9 say it's safer. I mean, you have to look at the
10 parameters of it.

11 You're definitely going to be exposed to
12 vehicle-train incidents, collisions, at the railroad
13 tracks. You're going to have more oncoming traffic.
14 In this day of distracted driving, you know, people
15 should yield to the lights and sirens but, you know,
16 I live in Atlanta, Georgia, so it's a different world
17 there.

18 So, you know, I mean safety is a matter
19 of that time and situation.

20 Q. But if you have about, I think you
21 estimated maybe 34 trains running across that track
22 per day; is that correct?

23 A. Thirty-two to 34 currently, yes, sir.

24 Q. So that's maybe 1 plus an hour.

25 A. One an hour, right. As it stands today.

1 HEARING EXAMINER LYNN: Just to clarify
2 for the record, Mr. Barringer indicated 82 as a
3 township road. It's a county road, actually. County
4 Road 82.

5 MR. BURKARD: Oh, township road, sure.

6 I have no other questions for this
7 witness at this time.

8 HEARING EXAMINER LYNN: Mr. Talbott, any
9 additional questions?

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Talbott:

13 Q. Mr. Barringer, I'll ask you the same
14 thing I asked Miss Stout, are you trying to be
15 proactive here with regard to closing this crossing
16 notwithstanding that there has never, to your
17 knowledge, been an accident or fatality?

18 A. That is the primary mission of our grade
19 crossing report is to be as proactive as we can to
20 look at opportunities to make grade crossings safer.

21 MR. TALBOTT: Thank you.

22 HEARING EXAMINER LYNN: Mr. Talbott, do
23 you have any additional witnesses?

24 MR. TALBOTT: We do not, your Honor.

25 HEARING EXAMINER LYNN: Mr. Burkard, I

1 believe you said you had one additional witness.

2 MR. BURKARD: I did if we could --

3 HEARING EXAMINER LYNN: If you want to
4 call him to the stand, fine. I neglected to do that
5 earlier.

6 MR. BURKARD: That's fine. It was a last
7 minute thing. Call Tony Burkley.

8 HEARING EXAMINER LYNN: Mr. Barringer,
9 thank you.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 HEARING EXAMINER LYNN: Mr. Burkley,
13 raise your right hand please.

14 (Witness sworn.)

15 HEARING EXAMINER LYNN: Mr. Burkard, go
16 ahead.

17 MR. BURKARD: Thank you. I appreciate
18 that.

19 - - -

20 ANTHONY J. BURKLEY

21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Burkard:

25 Q. Mr. Burkley, I'm going to ask you to

1 state your name.

2 A. Anthony J. Burkley. Tony Burkley.

3 Q. And, Mr. Burkley, where do you live at?

4 A. Payne, Ohio.

5 Q. How long have you lived there?

6 A. Pretty much all my life. I mean, I lived
7 in Paulding for a while, but I grew up in Paulding
8 County.

9 Q. Okay. You've held a couple of elected
10 positions there in Paulding County, correct?

11 A. Yeah. I was county commissioner for 16
12 years and now state representative.

13 Q. Okay. Mr. Burkley, are you familiar with
14 this Township Road 159?

15 A. Yeah, like I mentioned earlier, I'd grown
16 up in Paulding County and I traveled the back roads
17 of Paulding County quite often, especially when
18 you're campaigning in a small community, that's what
19 you do.

20 Q. Okay. Now, in your current position you
21 represent the constituents in a number of different
22 counties including Paulding, correct?

23 A. Yeah. I represent four different
24 counties, Defiance County, Paulding County, Van Wert
25 County, and part of Auglaize County.

1 Q. As part of your job has this Township
2 Road 159 issue been on your radar?

3 A. Yeah, it was brought to my attention by
4 the trustees previously and they made me aware of
5 what was wanting to transpire and so I kind of
6 followed it as it's gone through the process.

7 Q. In your opinion, not only as a resident
8 but also as a representative, is there a necessity to
9 close this Township Road 159?

10 A. I could see how -- when the federal
11 government mandates something, there's a reward and
12 then there's a penalty for not achieves those goals,
13 and I can understand where the Rail Commission and
14 the railroad may feel this is low-hanging fruit and
15 it would be an easy close, but it's my view that it
16 is not in the best interest of Brown Township and the
17 residents that they serve.

18 There's made mention earlier that when
19 they held public meetings, that there was not a lot
20 of residents that showed up to those meetings. I
21 would submit that the township trustees are the
22 representatives for the people in their township. As
23 we know, sometimes the meetings are held when farmers
24 tend to fly south for the wintertime and so they
25 aren't easily accessible to a meeting, but it's

1 always been my view that they represent the people in
2 their district. It's a few thousand people that
3 they're responsible to.

4 I as a representative, on the other hand,
5 am responsible for 120,000 people in the district and
6 it's a part of my district that I have a concern
7 about, and I don't think it's in the best interest of
8 Brown Township to -- for this to be closed.

9 MR. BURKARD: Thank you. I have no
10 further questions.

11 HEARING EXAMINER LYNN: Mr. Talbott.

12 MR. TALBOTT: Yeah, I guess just a few.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Talbott:

16 Q. Representative Burkley, first thanks for
17 coming in today. As you sit here you're guessing as
18 to why residents didn't come in to the public
19 meeting, right? You didn't -- you weren't told
20 somebody flew south. I mean, you're aware that the
21 PUCO took time out of their day and out of their
22 life, scheduled a meeting up there in that same area
23 in Melrose, right there in Melrose or Oakwood,
24 wherever it was, and in response the three trustees
25 showed up but not a single resident; you're aware of

1 that?

2 A. I'm -- you brought that to my attention.

3 Q. Okay. You're not aware that I'm wrong,
4 right?

5 A. I'm not aware that you're wrong, although
6 to say that the farm community or the residents have
7 not communicated to the trustees is maybe an
8 assumption that might not be accurate.

9 Q. Right. But as far as when we know we
10 have a meeting, and I think it may have been in
11 January, as far as when we had that meeting, why
12 people came or didn't come, you don't know; is that
13 fair?

14 A. Yeah, I don't have a --

15 Q. Okay. And then you encouraged the
16 parties to reach a voluntarily agreement here,
17 correct?

18 A. I always hope that the interested parties
19 can reach an agreement that is beneficial to both
20 parties.

21 Q. Fair. Fair. And you are aware that on
22 Norfolk Southern's behalf we tried like the dickens
23 to do that. Are you aware of that?

24 A. I have -- I heard that that was, that you
25 were -- made attempts, yeah.

1 Q. And did you hear that the township, the
2 trustees' position was that for political, you know,
3 for political reasons they'd prefer that any closure
4 decision be made by the state of Ohio as opposed to
5 at the local level? Is that fair?

6 A. To speak on what the trustees were
7 thinking, I can't make an assumption there.

8 Q. Well, did they tell you that? Because
9 they came to you at some point.

10 A. I don't know if they, if there was any
11 mention that they wanted the state to carry their
12 load. I don't recall any comment like that.

13 Q. Okay.

14 MR. TALBOTT: Sir, that's all I have.

15 Q. Or I guess, back it up, you haven't, you
16 yourself, have you driven each of these three
17 crossings recently?

18 A. Probably not in the last four months, no.

19 Q. Okay. And as far as Mr. Barringer's
20 testimony with regard to measurements and pavement
21 and warning devices, I assume you don't dispute any
22 of that.

23 A. No, I don't --

24 Q. Thank you.

25 A. -- dispute any of that.

1 HEARING EXAMINER LYNN: Representative
2 Burkley, you said you don't believe it's in the best
3 interest of the community to close this crossing but
4 could you go into any additional detail as to why?

5 THE WITNESS: Well, there was a
6 mention -- I submitted a letter previously that the
7 Commission probably has, hopefully they received it.

8 HEARING EXAMINER LYNN: Yes, we did.

9 THE WITNESS: There are a number of
10 factors that I think go into, you know, anything that
11 is a change in the status quo. When you talk about
12 inconvenience versus safety, you know, you could
13 maybe weigh those differently depending on what side
14 of the railroad track you're on, depending on whether
15 you think that if it's been a crossing that has had a
16 lot of activity as far as crashes, accidents, farm
17 equipment getting hung up on it, you know, I haven't
18 seen that, you know, and in a small community news
19 like that travels fast. You know, if a farmer gets
20 hung up on a railroad crossing, you know it pretty
21 quick, and I have no knowledge of anything like that
22 happening.

23 You know, you always weigh what you think
24 is going to be beneficial for all parties involved,
25 and do you do something -- do you change something

1 just for change? I don't think that's in the best
2 interest of anybody.

3 HEARING EXAMINER LYNN: Okay. Thank you.

4 Mr. Burkard, any additional questions?

5 MR. BURKARD: I have no other questions
6 at this time.

7 HEARING EXAMINER LYNN: Okay. And any
8 more witnesses for you or for Mr. Talbott?

9 MR. TALBOTT: No, your Honor, we would --
10 or, actually, we didn't call this witness. I guess
11 if he's excused I have one --

12 HEARING EXAMINER LYNN: Yes, he is.

13 MR. TALBOTT: Thank you.

14 (Witness excused.)

15 MR. TALBOTT: And then we'd submit our
16 exhibits as well.

17 HEARING EXAMINER LYNN: I'll just go off
18 the record for a minute just to take a quick break.

19 MR. TALBOTT: Okay.

20 (Recess taken.)

21 HEARING EXAMINER LYNN: We'll go back on
22 the record. Before we took our break, Mr. Talbott
23 had moved that his exhibits, I should say his
24 evidence here, petitions, Exhibits A through F be
25 admitted into evidence. Mr. Burkard, do you have any

1 objection to that.

2 MR. BURKARD: Your Honor, I have reviewed
3 those exhibits and I have no objection to those being
4 admitted. They appear to be appropriate.

5 HEARING EXAMINER LYNN: Okay. Thank you.
6 We'll admit those into evidence.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 HEARING EXAMINER LYNN: And also,
9 Mr. Talbott, your photograph there is on the easel,
10 will you be admitting that into evidence as well
11 or --

12 MR. TALBOTT: That is the identical, it's
13 a blow-up of Defendant's Exhibit, I believe it's E,
14 and so I'd hate to burden the PUCO with maintaining
15 the posterboard, but I'm certainly willing to give it
16 to you if you would like it. Otherwise, I'll take it
17 on home.

18 HEARING EXAMINER LYNN: Well, as long as
19 it's the same as Exhibit E, which it appears to be --

20 MR. TALBOTT: Yeah, it's the same as
21 Exhibit E.

22 HEARING EXAMINER LYNN: -- you can fold
23 that up and take it home.

24 MR. TALBOTT: Okay.

25 HEARING EXAMINER LYNN: Incidentally,

1 also before we close, do the parties want to file
2 briefs? There's an opportunity to do so if you wish.

3 MR. TALBOTT: I guess we should. Would
4 it help the Commission?

5 HEARING EXAMINER LYNN: It could, yes.

6 MR. BURKARD: I'd like to do that, then,
7 if we could.

8 HEARING EXAMINER LYNN: Okay.

9 MR. TALBOTT: That's fine. I guess a
10 reasonable window of time because we -- is there a --
11 we probably want to get this -- does this get
12 transcribed within --

13 HEARING EXAMINER LYNN: Certainly. Yes.

14 MR. TALBOTT: We should probably take a
15 peek at that, if the Commission was okay, and then
16 maybe two weeks after transcription or something like
17 that.

18 HEARING EXAMINER LYNN: That would be
19 suitable, certainly.

20 MR. TALBOTT: That okay with you, Joe?

21 MR. BURKARD: That's fine.

22 (Discussion off the record.)

23 MR. BURKARD: That would be fine with me,
24 then.

25 HEARING EXAMINER LYNN: So approximately

1 a couple weeks after the transcript is filed.

2 MR. TALBOTT: Yeah.

3 HEARING EXAMINER LYNN: That's fine.

4 MR. TALBOTT: If the court reporter is
5 pretty confident on the ten days, do we want to agree
6 on a set date now by which our exhibits should be
7 filed.

8 HEARING EXAMINER LYNN: I'm open to that,
9 certainly. Off the record.

10 (Discussion off the record.)

11 HEARING EXAMINER LYNN: Back on the
12 record. Mr. Talbott, the date you had in mind is?

13 MR. TALBOTT: Joe and I conferred. If
14 the Commission was -- was okay with April 11 for the
15 briefs.

16 HEARING EXAMINER LYNN: That works just
17 fine. We'll make it April 11th for the briefs.
18 Thank you.

19 MR. TALBOTT: And we'll file them or just
20 both file testimony the same day I assume?

21 HEARING EXAMINER LYNN: That's fine.

22 MR. BURKARD: Perfect.

23 HEARING EXAMINER LYNN: Any further
24 questions at all?

25 MR. BURKARD: No, your Honor.

1 MR. TALBOTT: Not on behalf of Norfolk
2 Southern.

3 HEARING EXAMINER LYNN: As I indicated,
4 we will admit all of Norfolk Southern's exhibits into
5 evidence. Thank you.

6 Thank you all for attending today, and
7 that closes our hearing.

8 MR. TALBOTT: Thank you.

9 MR. BURKARD: Thank you.

10 (The hearing concluded at 2:34 p.m.)

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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 Thursday, March 6, 2014, and
5 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, 2016.

11 (74826-MDJ)

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Summary: Transcript Proceedings from the hearing held on 3/6/2014 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.