

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3	THE BURLINGTON NORTHERN AND)	Docket No. TR-010194
	SANTA FE RAILWAY COMPANY,)	
4)	Volume VII
	Petitioner,)	
5)	Pages 784 to 796
	v.)	
6)	
	SNOHOMISH COUNTY,)	
7)	
	Respondent.)	
8	_____)	

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10 A hearing in the above matter was held on
11 December 10, 2001, at 1:30 p.m., at 1300 South Evergreen
12 Park Drive Southwest, Room 206, Olympia, Washington
13 before Administrative Law Judge MARJORIE SCHAER.

14 The parties were present as follows:

15 THE COMMISSION, by JONATHAN THOMPSON,
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20 THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
21 COMPANY, by ROBERT E. WALKLEY, Attorney at Law, 20349
22 Northeast 34th Court, Sammamish, Washington 98074-4319,
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25 WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION, RAIL DIVISION, by JEFFREY STIER,
Assistant Attorney General, 905 Plum Street, Building 3,
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Joan E. Kinn, CCR, RPR
Court Reporter

0785

1 SNOHOMISH COUNTY, by JASON CUMMINGS, Deputy
2 Prosecuting Attorney, 2918 Colby Avenue, Suite 203,
3 Everett, Washington 98201, Telephone (425) 388-6332.

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1 P R O C E E D I N G S.

2 JUDGE SCHAER: We're here today for a
3 post-hearing hearing in Docket Number TR-010194, which
4 is a filing by Burlington Northern and Santa Fe Railroad
5 seeking permission to close a railroad crossing at 156th
6 Street Northeast in Marysville, Washington.

7 I'm going to ask for appearance by counsel at
8 this point. We already have most of your details in the
9 record, so you can just give your name and party and
10 anything that's changed, if you got a new address, phone
11 number, fax number, et cetera.

12 So we will start with you, Mr. Walkley.

13 MR. WALKLEY: I'm Robert E. Walkley
14 representing the Burlington Northern Santa Fe Railway
15 Company.

16 JUDGE SCHAER: Thank you.

17 And then for the County.

18 MR. CUMMINGS: Jason Cummings representing
19 Snohomish County.

20 JUDGE SCHAER: And Washington DOT.

21 MR. STIER: Jeff Stier representing the
22 Department of Transportation Rail Division.

23 JUDGE SCHAER: Thank you.

24 And for the Commission.

25 MR. THOMPSON: Jonathan Thompson representing

0787

1 the Commission Staff.

2 JUDGE SCHAER: Okay. Procedurally at this
3 point in the matter, we did have a briefing date set for
4 November 16th, and on November 14th I was contacted by
5 Mr. Walkley, who filed with the Commission a request for
6 an extension of the briefing date. We were able to
7 convene a phone hearing where all counsel who are
8 currently appearing discussed how to proceed from that
9 point, and the parties agreed to work toward achieving a
10 settlement.

11 And part of their agreement was that the
12 settlement would include all parties to the proceeding,
13 that it would be reflected in a stipulation or agreed
14 order, that the documentation would include a written
15 statement setting out their reasons for believing why
16 the settlement is in the public interest, and that if
17 they were not able to reach a complete settlement that
18 any partial settlement would be submitted by December
19 5th.

20 It was also agreed by the parties that if
21 they were able to reach a settlement, then there would
22 be a waiver of an initial order in this matter.

23 It was also agreed that if no settlement was
24 filed, then the parties would have a briefing date of
25 December 31st, 2001, that they would be expected to file

0788

1 proposed findings of fact and conclusions of law with
2 their brief.

3 These agreements were reflected in the letter
4 that I sent to the parties on November 16, 2001. And so
5 on December 5th, I received a letter from Mr. Walkley
6 indicating that you are making progress toward
7 settlement but that no settlement agreement and no
8 details beyond that. So what I would like first this
9 afternoon is just kind of a report from the parties on
10 where you are in that process, and then we can talk
11 about what the next steps need to be.

12 Go ahead, Mr. Walkley.

13 MR. WALKLEY: Thank you, Your Honor. In my
14 letter of December 5th, I did list the fundamental or
15 principal areas of agreement of the parties, and
16 basically it's quite simple. In exchange for and after
17 an order permitting closure of the crossing at 156th,
18 Burlington Northern and the County would then proceed on
19 a number of mitigation projects which are spelled out in
20 the letter. The projects would be the projects of the
21 County, and the Railroad would assist the County by
22 making available certain sums of money not to exceed
23 \$400,000 for the various projects that are spelled out
24 in the letter.

25 Subsequent to that, discussions have

0789

1 continued among the parties. The Washington State
2 Department of Transportation and the County and the
3 Railroad are currently drafting a full agreement, which
4 I'm pleased to report is, we believe, near completion.
5 While the principle of the settlement is simple, the
6 devil's in the details, as they say. And what the
7 parties are doing is working through some complex issues
8 regarding the timing of certain funding, the mechanics
9 of certain funding, and so on.

10 And I believe it's also been disclosed that
11 there does need to be a meeting, a further meeting with
12 technical representatives of the parties and the
13 Washington State Department of Transportation Regional
14 Authorities on December 14th where they will talk
15 through one of the projects involved, and that is the
16 proposed traffic signalization of the intersection of
17 172nd and Northeast 27th.

18 So what the parties intend to do now is to
19 work as quickly as possible to conclude agreement,
20 actual final agreement, and also to complete
21 consultation with WUTC Staff, and to then come to Your
22 Honor, I believe, with our agreement and with anything
23 that we may agree upon today such as a draft final order
24 or other such documentation.

25 JUDGE SCHAER: Did you have anything to add

0790

1 to that, Mr. Crumley?

2 MR. CUMMINGS: Mr. Cummings.

3 JUDGE SCHAER: I'm sorry, I've got a Crumley
4 on every case.

5 MR. CUMMINGS: Not a problem.

6 No, I think Mr. Walkley did a fine job of
7 succinctly putting forward where the parties are without
8 having to -- I think Mr. Stier and I were talking
9 earlier today, we caution, I don't want to throw too
10 much detail at you at this point in time as you're still
11 a decision maker if for some odd chance things fall
12 through at the final hour. But essentially I think
13 Mr. Walkley has done a fine job of stating where we are.

14 JUDGE SCHAER: Did you have anything to add,
15 Mr. Stier?

16 MR. STIER: No, I think he covered
17 everything.

18 JUDGE SCHAER: Mr. Thompson, what has been
19 your client's involvement in all of this?

20 MR. THOMPSON: Well, Staff's input really
21 hasn't been solicited to this point, though certainly
22 when we have inquired of WSDOT and the County as to the
23 status of negotiations or what sorts of things are being
24 discussed, we have gotten that information. We stand
25 ready to facilitate any kind of settlement or to assist

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1 in coming up with a resolution and, to be frank, would
2 probably appreciate greater inclusion earlier on in the
3 process.

4 JUDGE SCHAER: And is there anything, I know
5 we have kind of decided that SEPA is not involved in
6 this case, although it keeps dancing around the edges of
7 it, is there anything going on in SEPA as far as Staff?
8 I believe we had given a number to a late filed exhibit,
9 and I don't believe that that exhibit has yet been
10 filed. What's the status on that?

11 You're either going to have to tell
12 Mr. Thompson and let him report, or I can remind you
13 that you're still sworn as a witness and let you talk if
14 that's agreeable with the others.

15 MR. THOMPSON: I will just sum up what I
16 know, and he can whisper in my ear if I don't have it
17 right. I think we have a lien put from other agencies
18 that we need to issue a threshold determination,
19 although a question occurs to me that if the scope of
20 the project may be a bit different depending on what the
21 settlement is, so there may be some issues there as to
22 possibly even who the lead agency should be. I don't
23 know. Those just occur to me as I sit here.

24 JUDGE SCHAER: Is this something that you had
25 an opportunity to discuss with the other counsel?

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1 MR. THOMPSON: No.

2 JUDGE SCHAER: Okay. Let me tell you what
3 the Commission is going to need if this is going to be
4 settled, because that will give everybody, I think, a
5 little bit more information about what we will need to
6 do procedurally from here.

7 I tried to outline in the letter to you that
8 what the Commission will need if it is to consider a
9 settlement is it will need a statement based on
10 objective facts that the parties believe would indicate
11 that settlement is in the public interest. And then
12 what we do when we receive a settlement of this nature
13 is we schedule a hearing so that if, in this instance,
14 the Administrative Law Judge has questions about what's
15 been submitted, or in a case where the commissioners are
16 sitting commissioners have questions about that, then we
17 would want to have a witness, and probably one witness
18 from each party could appear as a panel, but we need to
19 have somebody there who can answer questions. And then
20 we would call a hearing like this one, and if there were
21 any such questions, they could be asked and answered so
22 that anything that I would need to understand in order
23 to make my recommendation to the commissioners on the
24 settlement, I would have.

25 And it certainly is possible that as part of

0793

1 what you submit, usually we would have a stipulation,
2 and often if the parties want to draft an agreed order,
3 that would be appropriate, just as in a brief it would
4 be appropriate if there was something in particular you
5 thought should be covered in the order, you could point
6 that out so that we don't miss something that might be
7 needed by one of you to make this work.

8 So I was hoping that by having all of you
9 come here today that maybe some conversation among the
10 parties could go on about where you are and what needs
11 to be done, and then you could come back and report back
12 to me on process and how you would like any, you know,
13 if we can set a deadline now for a filing and try to get
14 a hearing date or what we need to do from here going
15 forward.

16 So does anybody have anything else they want
17 to say on the record at this point in the hearing?

18 Then I'm going to suggest that we take an
19 afternoon recess and that the four of you and your
20 support people go gather around a table or somewhere and
21 kind of work out the answers to those questions for me.
22 And if you need, if it's beneficial to you to have some
23 time where all four of you are together to talk about
24 other things also, we can accommodate that. So let's be
25 off the record for the moment.

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1 (Recess taken.)

2 JUDGE SCHAER: Let's be back on the record
3 after an extended recess in which the parties were able
4 to discuss their progress toward settlement and how we
5 should procedurally go forward in this matter.

6 Before we get to a report on that, I would
7 like to indicate that it was agreed at the previous
8 hearings in this matter that there would be an exhibit
9 prepared that was copies of the letters from members of
10 the public that the Commission has received, and that
11 was, I believe, identified and admitted as Exhibit 64,
12 and I have distributed copies of that exhibit to all
13 parties this afternoon.

14 And then there was one other loose end
15 looking at the exhibits, Mr. Thompson, and that was what
16 was discussed as Exhibit 63, which was going to be a
17 SEPA determination by the Commission. And would you
18 like to let us know what the plans are of Commission
19 Staff for that, please.

20 MR. THOMPSON: Yes, we would expect to have
21 that issued I guess by this week, I would imagine. Then
22 there's a two week comment period following that. So we
23 will file that as late filed Exhibit 63.

24 JUDGE SCHAER: Thank you.

25 Any questions about anything to do with the

0796

1 that?

2 I will reflect just under a circumstance that
3 I don't believe will happen, but if you do file briefs
4 rather than those agreements, I will expect those briefs
5 to be accompanied by proposed findings of facts and
6 conclusions of law.

7 So that is also my understanding of what was
8 discussed. Hearing will be scheduled for 1:30 in the
9 afternoon on January 15th, 2002, for presentation of the
10 settlement and questioning of witnesses. And it remains
11 my understanding that if the parties are able to reach a
12 settlement that they have agreed that there will be a
13 waiver of an initial order so that the settlement may be
14 presented to the commissioners and an order issued
15 directly. Is that still everyone's understanding?

16 MR. WALTERS: Yes, Your Honor.

17 JUDGE SCHAEER: Okay. Is there anything
18 further we need to discuss this afternoon?

19 Thank you, we will be off the record.

20 (Hearing adjourned at 3:00 p.m.)

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