

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,	)	DOCKET TR-090121
	)	
Petitioner,	)	
	)	ORDER 02
v.	)	
	)	
SNOHOMISH COUNTY,	)	ORDER DENYING
	)	REQUEST FOR CONTINUANCE
Respondent.	)	
.....	)	

- 1     **NATURE OF PROCEEDING.** Docket TR-090121 involves a petition by Burlington Northern Santa Fe Railway Company (BNSF) to abandon and close to public use a railroad-highway grade crossing located at Logen Road, Stanwood, Snohomish County, Washington (US DOT #084713P) in accordance with Revised Code of Washington (RCW) 81.53.060.
  
- 2     **REQUEST FOR CONTINUANCE.** On February 19, 2009, the Washington Utilities and Transportation Commission (Commission) issued Order 01, *Prehearing Conference Order*, and set this matter for hearing on Monday, March 30-31, 2009. On Wednesday, March 18, 2009, Mr. Lynn Logen sent a letter to the Commission seeking a continuance of the hearing.
  
- 3     **CONFERENCE.** On Thursday, March 19, 2009, the Commission issued a Notice of Conference to Discuss Motion for Continuance and subsequently convened a conference in this docket at Olympia, Washington, on Friday, March 20, 2009, at 10:30 a.m., before Administrative Law Judge (ALJ) Adam E. Torem.
  
- 4     **APPEARANCES.** Bradley Scarp and Kelsey Endres, Montgomery Scarp MacDougall, PLLC, Seattle, Washington, represent BNSF. Justin Kasting and Matt Otten, Deputy Prosecuting Attorneys, Everett, Washington, represent Snohomish County. Lynn Logen, *pro se*, Bellevue, Washington, represents himself. Jonathan

Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").<sup>1</sup>

- 5 At the conference, Mr. Logen reiterated the reasons supporting his request for a continuance of the hearing, focusing on the limited time available to analyze responses to his data requests and a desire for additional time to negotiate a potential settlement with BNSF. BNSF acknowledged that it was in the process of responding to three pending data requests from Mr. Logen. Under Commission rules, those responses would not be due until Friday, March 27, 2009. However, BNSF agreed to do all in its power to expedite its process and respond by early next week. BNSF did question the relevance of some of Mr. Logen's data requests but nevertheless agreed to respond as soon as possible and take up the scope of appropriate issues at the Status Conference scheduled for next Tuesday afternoon, March 24, 2009.
- 6 BNSF, Snohomish County, and Commission Staff all opposed any continuance of the hearing dates. BNSF noted its arrangements for witnesses who would be traveling to Snohomish County for the hearing. Snohomish County referenced its support for seeing the crossing closed and associated Stanwood Amtrak station built as soon as possible. Commission Staff indicated that the Commission had already mailed out dozens of individual notices to members of the public and also advertized the public comment hearing scheduled for Monday evening, March 30, 2009.
- 7 **Commission Decision.** In accordance with WAC 480-07-385, "the commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission." Here, Mr. Logen's request for continuance is made in good faith but does not amount to good cause to reschedule the proceeding. In this instance, there are other less drastic means to address Mr. Logen's desire to be fully prepared for the hearing.
- 8 BNSF has agreed to accelerate its responses to Mr. Logen's pending data requests. In addition, Mr. Logen and BNSF can work on a potential settlement prior to, at, and even after the hearing on the merits has occurred. There is no good cause to delay the

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<sup>1</sup> In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

scheduled hearing on the merits and separate it from public comment hearing to be held on the same night. Therefore, Mr. Logen's request is denied.

**ORDER**

9 THE COMMISSION ORDERS THAT:

- 10 (1) Lynn Logen's Request for Continuance is DENIED. The evidentiary hearing  
set to commence on Monday, March 30, 2009, shall go forward as scheduled.
- 11 (2) BNSF shall expedite its responses to all pending data requests submitted by  
Lynn Logen and make good faith efforts to respond to each and all of those  
outstanding requests no later than 12:00 p.m. on Tuesday, March 24, 2009.
- 12 (3) The Status Conference set for Tuesday afternoon, March 24, 2009, shall go  
forward as scheduled and be utilized to, among other things, discuss and  
limit, as necessary, the statutorily relevant topics for the evidentiary hearing.

Dated at Olympia, Washington, and effective March 20, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge