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1 BEFORE THE WASHINGTON UTILITIES AND
 TRANSPORTATION COMMISSION
2 THE BURLINGTON NORTHERN AND)
SANTE FE RAILWAY COMPANY,) Docket No. TR-010684
3)
 Petitioner,) Volume I
4) Pages 1 to 12
 vs.)
5)
CITY OF SPRAGUE,)
6)
 Respondent.)
7 _____)

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10 A hearing in the above matter was held on
11 March 26, 2002, at 9:30 a.m., at 1300 South Evergreen
12 Park Drive Southwest, Room 108, Olympia, Washington,
13 before Administrative Law Judge THEODORA M. MACE.

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The parties were present as follows:

15

16 THE COMMISSION, by JONATHAN THOMPSON,
Assistant Attorney General, 1400 South Evergreen Park
17 Drive Southwest, Olympia, Washington 98504-0128,
Telephone (360) 664-1225, Fax (360) 586-5522, E-mail
jthompso@wutc.wa.gov.

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19 BURLINGTON NORTHERN AND SANTE FE RAILWAY
COMPANY, by ROBERT E. WALKLEY, Attorney at Law, 20349
20 Northeast 34th Court, Sammamish, Washington, 98074-4319,
Telephone and Fax (425) 868-4846, E-mail
21 rewalkley@earthlink.net.

22

23 CITY OF SPRAGUE, by SYLVIA FOX, Mayor, 312
East First Street, Sprague, Washington 99032, Telephone
24 (509) 257-2662, Fax (509) 257-2691, E-mail
foxsylvia@aol.com.
Joan E. Kinn, CCR, RPR
25 Court Reporter

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

2 JUDGE MACE: This is the first pre-hearing
3 conference in the proceeding titled Docket Number
4 TR-010684, The Burlington Northern and Sante Fe Railway
5 Company against the City of Sprague. This proceeding is
6 about a request by the railroad to close the D Street,
7 that's D as in dog, Street at grade crossing.

8 May I ask who just joined us?

9 MR. KIMBRELL: Yes, this is Tom Kimbrell --
10 am I still with you?

11 JUDGE MACE: Yes.

12 MR. KIMBRELL: I'm Tom Kimbrell, Spokane,
13 Washington, I'm with the Commission.

14 JUDGE MACE: Thank you.

15 MR. COWLES: Mike Cowles, BNSF.

16 JUDGE MACE: Thank you.

17 I just indicated that this is the first
18 pre-hearing conference in Docket TR-010684, Burlington
19 Northern and Sante Fe Railway Company against the City
20 of Sprague. This is the request by the railroad to
21 close the D Street at grade crossing in the City of
22 Sprague. We also have on the line, for the benefit of
23 those who just joined us by conference bridge, we have
24 the City of Sprague, and I will be taking appearances
25 shortly from everyone, from counsel and from the

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1 parties, but first I want to go through a few
2 preliminary matters. The first thing I want to find out
3 is can people, including the City of Sprague and Mr.
4 Kimbrell and Mr. Cowles, is that right, can you hear me?

5 MR. KIMBRELL: Tom Kimbrell in Spokane, I
6 hear you very well.

7 MS. FOX: Yes, we can hear you with the City
8 of Sprague.

9 MR. WALKLEY: Mike, can you hear the judge?

10 MR. COWLES: Yes, I can.

11 JUDGE MACE: All right, thank you.

12 My name is Theo Mace, and I'm the presiding
13 Administrative Law Judge in this proceeding. Today is
14 March 26, 2002, and we are convened in a hearing room at
15 the Commission's offices in Olympia, Washington. The
16 agenda we have before us today is first of all to take
17 appearances of counsel, to find out whether there are
18 any petitions to intervene and to address those, to deal
19 with any motions or procedural matters we need to
20 address prior to going ahead with the pre-hearing
21 conference, whether there will be a need for protective
22 order and whether the discovery rule will be invoked,
23 and finally to set a schedule for the proceeding
24 including a provision for public hearing.

25 I would like you first of all in terms of

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1 Sprague.

2 JUDGE MACE: Thank you.

3 And Staff.

4 MR. THOMPSON: Jonathan Thompson,
5 T-H-O-M-P-S-O-N, I'm an Assistant Attorney General, and
6 I will be representing the Commission Staff, which is
7 appearing as an independent party in the case. My
8 mailing address is 1400 South Evergreen Park Drive
9 Southwest, Olympia, Washington 98504. My telephone
10 number is 360-664-1225, Fax is same area code and
11 586-5522. My E-mail address is jthompso@wutc.wa.gov. I
12 think that covers it.

13 JUDGE MACE: Thank you.

14 Next I would like to address the question of
15 whether there have been petitions to intervene filed. I
16 have received no petitions to intervene. Does anyone
17 know of anyone who might have filed a petition to
18 intervene or are interested in intervening?

19 MR. WALKLEY: We don't know of any, Your
20 Honor, on the railroad.

21 JUDGE MACE: Very well, then it appears there
22 are no petitions to intervene, and we will move on to
23 the question of discovery. Is anyone in this proceeding
24 going to want to have the discovery rule invoked? That
25 is to say, will the parties want to obtain information

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1 or other data from each other so that we should indicate
2 that the discovery process as outlined in the WAC
3 480-09-480 will be used?

4 MR. WALKLEY: Your Honor, this is Robert
5 Walkley, I have found that it frequently is possible and
6 beneficial to everyone to simply agree between parties
7 or between counsels on an informal discovery process
8 that's much like the rules of Superior Court but does
9 not involve any formal process by the Commission unless
10 the parties get into some kind of disagreement, and then
11 the Administrative Law Judge could hear the matter. I
12 do not anticipate, for the railroad, I don't anticipate
13 almost any discovery, very little if any. And so I
14 would request that we simply go informal by writing
15 letters to each other if we desire to have discovery.

16 JUDGE MACE: Thank you.

17 Ms. Fox.

18 MS. FOX: Yes?

19 JUDGE MACE: I wanted to ask you whether or
20 not you think you will need to invoke the discovery rule
21 or whether you would want to just embark on discovery in
22 this case.

23 MS. FOX: I know that we have an objection
24 here to that crossing being closed. I'm not sure
25 exactly what you're asking. You said there was no

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1 letters mailed in with objections, but we have
2 definitely got an objection to that crossing being
3 closed.

4 JUDGE MACE: Right, the discovery rule
5 primarily has to do with whether or not the parties will
6 be asking information of each other about the matter at
7 issue in the case, and there is a discovery rule that we
8 follow when discovery matters are at issue. And I think
9 it's primarily asking the parties whether or not they
10 will be conducting discovery.

11 I think at this point what I'm going to do is
12 indicate that the rule is invoked just to protect the
13 parties. I haven't asked you, Mr. Thompson, but there
14 is, if you want to, you could certainly conduct
15 discovery in an informal way as Mr. Walkley described,
16 but if there are any problems or any need later down the
17 road to act in a more formal way with regard to
18 discovery, the discovery rule has been invoked, and you
19 will be able to proceed in that fashion.

20 MS. FOX: So you need us to --

21 JUDGE MACE: You don't need to do anything
22 right now except that if you want information from the
23 railroad, you can write a letter to them asking for that
24 information.

25 MS. FOX: All right, thank you.

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1 JUDGE MACE: Well, the next issue is whether
2 or not the parties would need a protective order in this
3 case, and the protective order usually has to do with
4 whether or not parties want to protect commercial
5 information that they do not want to have revealed to
6 the public. I need to ask whether or not the parties
7 would want to have the Commission issue a protective
8 order in this case.

9 MR. WALKLEY: Your Honor, since there has
10 been no discovery request by either party as yet, I
11 certainly don't see a need for a protective order at
12 this time. We would like to reserve the right to seek a
13 protective order if a request is made to us that
14 requires a protective order. It is conceivable but
15 unlikely that one will be needed.

16 JUDGE MACE: Mr. Thompson.

17 MR. THOMPSON: Well, my only comment would be
18 that this doesn't seem like the type of case in which
19 there would be, you know, the type of commercially
20 sensitive information we typically use a protective
21 order to protect.

22 JUDGE MACE: That seems reasonable. I'm
23 going to ask the City of Sprague, however, whether you
24 want to address this question of whether or not you
25 would need a protective order in this case.

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1 MS. FOX: At this point, I don't think that
2 we would.

3 JUDGE MACE: Very well, I'm going to leave it
4 at that. And if it looks for some unforeseen reason
5 that we can't tell right now that we need one, we can
6 address that later.

7 I think then the only other thing that I want
8 to turn to is the question of a schedule for
9 proceedings, and I would indicate to the parties that we
10 need to have a date for a public hearing in addition to
11 a date for evidentiary hearing, if that's going to take
12 place.

13 You might want to discuss the question of
14 attempting to settle this case, and I would call to your
15 attention that if there is some need for a mediation to
16 try to resolve the case, we can make an administrative
17 law judge available for that purpose to the parties.

18 In terms of your discussion of scheduling, my
19 own schedule calls for me to be away from the office in
20 July, I believe it's the last week of July, the last
21 full week of July, and I'm in hearing on July 30th and
22 31st, so you're aware that those are days that I would
23 not be able to hold a hearing.

24 Is there any questions that anyone has before
25 I allow the parties time on their own to discuss

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1 scheduling?

2 All right, I will be leaving the hearing room
3 at this point for the benefit of those that are here by
4 conference bridge, and Mr. Thompson and Mr. Walkley and
5 Ms. Fox, I expect that you will now begin to discuss the
6 schedule for this proceeding.

7 (Discussion off the record.)

8 JUDGE MACE: Mr. Walkley would you tell us
9 what schedule you have derived.

10 MR. WALKLEY: Thank you, Your Honor. We have
11 discussed, the three parties present at the conference
12 here, have discussed timing, and we are pretty much
13 agreed that holding the public or holding the
14 evidentiary hearing in Sprague on Wednesday the 29th of
15 May would make sense, and then probably in the evening a
16 meeting for the public hearing for members of the
17 public. And then, if necessary, we could schedule
18 perhaps half a day or something on Thursday the 30th or
19 other time in time to allow you to conclude the hearing
20 and get back to Olympia on the 30th. So we feel that
21 that would be a reasonable schedule.

22 And we do not see the need at the present
23 time, at least the railroad certainly doesn't, see the
24 need to get into scheduling things such as brief due
25 dates and briefing schedules. Our preference would be

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1 no brief really necessary, you know, prior to the
2 hearing, although certainly it probably would be helpful
3 for each side to disclose its witnesses prior to the
4 hearing to allow you to schedule it and so on. But I
5 don't foresee discovery cutoff dates or anything of that
6 necessary right now.

7 JUDGE MACE: Mr. Thompson.

8 MR. THOMPSON: I was just going to suggest
9 that typically we have a pre-hearing conference the day
10 before the hearing, you know, the hearing actually
11 begins in order to just kind of cover the ground rules
12 and, oh, you know, mark exhibits and that type of thing.
13 Maybe that would be appropriate for a telephone
14 conference on the 28th.

15 JUDGE MACE: Yes, I'm not opposed to that. I
16 guess there -- and so let me ask the City of Sprague, in
17 terms of holding a pre-hearing conference on the 28th at
18 9:30, would you be able to do that?

19 MS. FOX: Yes.

20 JUDGE MACE: We would have an evidentiary
21 hearing on the 29th, and I need to find out when I can
22 actually get there on the 29th so as to know what would
23 be a good time to begin that hearing, and it may be, for
24 example, that it won't start until 10:00 in the morning.

25 MS. FOX: On the 29th?

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1 JUDGE MACE: Yes. And we'll need a time and
2 a place for the public hearing, and maybe I can -- have
3 you discussed that at all?

4 MR. WALKLEY: Only that they would like it to
5 be in the evening.

6 JUDGE MACE: All right, let's go off the
7 record.

8 (Discussion off the record.)

9 JUDGE MACE: We're adjourned until we convene
10 for the pre-hearing conference on the 28th.

11 (Hearing adjourned at 10:15 a.m.)

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