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1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 CHELAN COUNTY,)
4 Petitioner,) DOCKET NO. TR-041066
5 vs.) Volume I
6 CASCADE AND COLUMBIA RIVER) Pages 1 to 14
7 RAILROAD,)
8 Respondent.)
9

CASCADE AND COLUMBIA RIVER)
10 RAILROAD,) DOCKET NO. TR-041076
11 Petitioner,)
12 vs.)
13 CHELAN COUNTY,)
14 Respondent.)
15

15 A prehearing conference in the above matter
16 was held on January 10, 2005, from 1:30 p.m. to 2:00
17 p.m., at 1300 South Evergreen Park Drive Southwest, Room
18 206, Olympia, Washington, before Administrative Law
19 Judge THEODORA MACE.

21 The parties were present as follows:
22 THE COMMISSION, by SALLY G. JOHNSTON for
23 JONATHAN C. THOMPSON, Assistant Attorney General, P.O.
24 Box 40128, 1400 South Evergreen Park Drive Southwest,
Olympia, Washington 98504-0128, Telephone (360)
664-1225, Fax (360) 586-5522, E-Mail jonat@atg.wa.gov.
25 Joan E. Kinn, CCR, RPR
Court Reporter

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1 CHELAN COUNTY, via bridge line by LUIS
2 CHERNAK, Attorney at Law, P.O. Box 654, 200 North
3 Chelan, Wenatchee, Washington 98807, Telephone (509)
4 667-6200, Fax (509) 665-0445, E-mail
5 lchernak@wapa-sep.wa.gov.

6 CASCADE AND COLUMBIA RIVER RAILROAD, via
7 bridge line by BUCK D. WORKMAN, Vice President and
8 General Manager, 901 East Omak Avenue, Omak, Washington
9 98841, Telephone (509) 826-3752, Fax (509) 826-3866,
10 E-mail buck.workman@railamerica.com.

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

2 JUDGE MACE: Let's be on the record in Docket
3 Numbers TR-041066 and TR-041076. These dockets pertain
4 to railroad crossings in Chelan County, specifically in
5 Chelan Falls, Washington. In the first docket Chelan
6 County is requesting installation of warning signals and
7 gates at the Chestnut Street crossing of the Cascade and
8 Columbia River Railroad Company in Chelan Falls,
9 Washington. In the second docket Cascade and Columbia
10 River Railroad Company is requesting closure of the A
11 Street crossing in Chelan Falls, Washington.

12 My name is Theodora Mace, I'm the
13 Administrative Law Judge who has been assigned to this
14 case. We are convened at the offices of the Washington
15 Utilities and Transportation Commission in Olympia,
16 Washington, on January 10th, 2005, for prehearing
17 conferences in both of these dockets.

18 There are a number of items that we need to
19 address during a prehearing conference. The first of
20 these is I need to take appearances of those who are
21 representing the parties in this docket. And when I ask
22 for your appearance, I need to have you give me the long
23 form of an appearance, which means state your name, who
24 you represent, the address, the telephone number, a fax
25 number, and the E-mail address. And I'm going to begin

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1 with Chelan County with Mr. Chernak, would you please
2 give me the long form of your appearance for these
3 dockets.

4 MR. CHERNAK: Please, Your Honor, this is
5 Luis, L-U-I-S, N as in Neil, Chernak, C-H-E-R-N-A-K. I
6 represent Chelan County and the Chelan County Public
7 Works, which is a subdivision of Chelan County. The
8 address at which I can be reached most conveniently
9 would be in this form: P.O. Box 654, and the street
10 address is 200 North Chelan, Wenatchee 98807.

11 JUDGE MACE: Mr. Chernak.

12 MR. CHERNAK: Yes.

13 JUDGE MACE: The address I have for you shows
14 the Department of Public Works, Chelan County Legal
15 Department.

16 MR. CHERNAK: Right.

17 JUDGE MACE: That is not a good address for
18 you then?

19 MR. CHERNAK: A better address to have mail
20 come directly to me would be the one that I have given.

21 JUDGE MACE: Thank you.

22 MR. CHERNAK: I think that will actually
23 expedite things.

24 JUDGE MACE: Thank you. And then we need to
25 have the phone, fax, and E-mail, if you could give that,

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1 please.

2 MR. CHERNAK: My telephone number is (509)
3 667-6200, my fax number is (509) 665-0445.

4 JUDGE MACE: And an E-mail?

5 MR. CHERNAK: My E-mail is L and then my last
6 name, Chernak, @wapa-sep.wa.gov. And if I can explain
7 something to the tribunal.

8 JUDGE MACE: Go ahead.

9 MR. CHERNAK: Okay. I am a civil deputy, and
10 I'm split between the Child Support Division and the
11 Public Works Division.

12 JUDGE MACE: Mr. Chernak, I'm not
13 understanding what you're saying, if you can speak up
14 and a little more clearly.

15 MR. CHERNAK: And I apologize, we're on a
16 speaker phone, if this isn't working, I will have to
17 connect on the regular phone.

18 My time is split between two divisions of the
19 County, so I'm in a different office than the main
20 prosecutor's office. I just need to let you know that
21 that's why my address was different.

22 JUDGE MACE: Thank you. And, Mr. Chernak,
23 you're appearing in the matter of the petition of Chelan
24 County to upgrade warning devices on Chestnut Street; is
25 that correct, is that the docket you're appearing in?

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1 MR. CHERNAK: I'm appearing in both dockets,
2 Your Honor.

3 JUDGE MACE: All right.

4 And, Mr. Workman.

5 MR. WORKMAN: Yes, Your Honor.

6 JUDGE MACE: I need to have you enter an
7 appearance. You don't have an attorney for the
8 Railroad; is that right?

9 MR. WORKMAN: Not being represented by one.

10 JUDGE MACE: And so you're representing the
11 Railroad today?

12 MR. WORKMAN: I am representing the Railroad.

13 JUDGE MACE: Then I need to have you enter
14 your appearance just as Mr. Chernak did.

15 MR. WORKMAN: Okay. And I'm also on a
16 speaker phone, am I coming in clear enough for you?

17 JUDGE MACE: Yes, you're very clear right
18 now.

19 MR. WORKMAN: Okay. My name is Buck, D as in
20 Doyle, Workman, W-O-R-K-M-A-N, and I am the Vice
21 President and General Manager of the Cascade and
22 Columbia River Railroad. Mailing address is 901 East
23 Omak, O-M-A-K, Avenue in Omak, Washington 98841. My
24 phone number here is area code (509) 826-3752, the fax
25 number area code (509) 826-3866, my E-mail address is

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1 buck.workman@railamerica.com.

2 JUDGE MACE: Thank you. And are you
3 appearing in both dockets today?

4 MR. WORKMAN: Yes, I am.

5 JUDGE MACE: Thank you.

6 And for Staff.

7 MS. JOHNSTON: My name is Sally Johnston, I'm
8 a Senior Assistant Attorney General, I will be entering
9 an appearance for another attorney in our office who is
10 away on another matter right now. His name is Jonathan
11 C. Thompson, street address 1400 South Evergreen Park
12 Drive Southwest, Olympia, Washington 98504, P.O. Box
13 40128, his phone number is area code (360) 664-1225, the
14 office's fax number is area code (360) 586-5522,
15 Jonathan's E-mail address is jonat@atg.wa.gov.

16 JUDGE MACE: Thank you.

17 The next item that I want to turn to is the
18 question of whether or not these dockets should be
19 consolidated. Both have been noticed for prehearing
20 conference for today, and I have announced them at the
21 same time. I want to ask now if there is any opposition
22 to consolidation of these dockets, and I will turn first
23 to Chelan County.

24 MR. CHERNAK: No opposition, Your Honor.

25 JUDGE MACE: Mr. Workman.

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1 MR. WORKMAN: Not fully understanding what
2 combining the two dockets would be as far as, you know,
3 one in regard to the other, I guess I have no opposition
4 either.

5 JUDGE MACE: Well, as I envision it,
6 primarily it means that they will both be heard on the
7 same record. If there's a hearing, hearing will take
8 place in a consolidated manner at the same time and
9 place. And unless there is some reason otherwise, a
10 decision would be entered in both dockets at the same
11 time and would encompass issues in both dockets. So
12 does that change your opinion?

13 MR. WORKMAN: No, no opposition.

14 JUDGE MACE: All right.

15 And Staff.

16 MS. JOHNSTON: No, we believe consolidation
17 would be appropriate.

18 JUDGE MACE: Very well, thank you.

19 Do the parties seek invocation of the
20 discovery rule in this matter? In other words, will you
21 be conducting discovery, Mr. Chernak?

22 MR. CHERNAK: I think that we would like to
23 reserve the ability to do that, so yes, and I will try
24 to keep it fairly simple and as informal as possible.

25 JUDGE MACE: I will indicate that the

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1 discovery rule will be invoked. And when I say that, I
2 mean in the prehearing conference order that will result
3 from this hearing today, there will be a paragraph that
4 talks about invocation of the discovery rules and the
5 Commission's rules about discovery that you can rely on
6 in terms of doing discovery in this case.

7 Will there be a need for a protective order,
8 Mr. Chernak?

9 MR. CHERNAK: None that I know of, Your
10 Honor.

11 JUDGE MACE: Mr. Workman?

12 MR. WORKMAN: I'm really beginning to wish I
13 was --

14 JUDGE MACE: When I'm asking this question,
15 usually a protective order is entered in cases where
16 there is a lot of data that comes into the record and
17 parties are concerned that some of that data would
18 reveal trade secrets or other confidential matters.
19 Typically in a case like this a protective order would
20 not be entered unless the parties got to some point
21 where that became an issue, but it's one of the items
22 that we cover on our prehearing conference list, and so
23 that's the reason I'm asking.

24 MR. WORKMAN: Very good. I see no reason for
25 a protective order.

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1 JUDGE MACE: And Staff.

2 MS. JOHNSTON: Neither do we.

3 JUDGE MACE: All right, no protective order.

4 The issues are set forth as far as I recall
5 in rules and statutes pertaining to upgrading crossings
6 and closing crossings for railroads. I'm wondering if
7 the parties have had a chance to talk about scheduling
8 for this proceeding.

9 MR. CHERNAK: We haven't, Your Honor, and I
10 apologize, I have come to this lately, although I guess
11 you did have my name in advance, I didn't know that the
12 proceeding was coming up.

13 JUDGE MACE: You didn't know the prehearing
14 conference was coming up?

15 MR. CHERNAK: No, I didn't find out until
16 just about Christmas, so I just haven't had a chance to
17 confer with the other parties just because of my
18 workload.

19 JUDGE MACE: Well, I can give you an
20 opportunity now if you would like to talk about what you
21 think would be a good schedule. I would have to take
22 whatever schedule you come up with under advisement,
23 because I have to compare it with the Commission's
24 overall schedule, but I would be happy to give all of
25 you a chance to talk about that now off the record.

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1 MR. CHERNAK: Okay.

2 JUDGE MACE: All right, then let's be off the
3 record.

4 (Recess taken.)

5 JUDGE MACE: The parties have talked about
6 scheduling, and they have proposed two dates for a
7 hearing, March 30th or April 6th. They have indicated
8 that they prefer April 6th. They indicate the hearing
9 they believe will take approximately one day or less.
10 The County will provide approximately three witnesses,
11 the Railroad one, and Staff one. I have indicated that
12 I will check with our scheduling person and more than
13 likely the hearing will take place on April 6th, but you
14 will receive final notice of that in the prehearing
15 conference order.

16 I will also include in the prehearing
17 conference order a date upon which I would like to have
18 the parties exchange the names of witnesses that they
19 will be presenting and a listing of the exhibits they
20 intend to present during the hearing.

21 For purposes of our internal scheduling, I'm
22 going to indicate that we will have briefs provided 30
23 days from the date of the hearing, but we can discuss
24 that again at the time of hearing.

25 In addition, in the prehearing conference

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1 order you will receive instructions for the numbers of
2 copies that you need to provide of documents you would
3 have to provide with the Commission that you have to
4 file with the Commission in relation to this proceeding.

5 And then finally I would like to ask if the
6 parties have had any chance to discuss settlement or
7 resolution of this case, these cases.

8 MS. JOHNSTON: Not yet, Your Honor.

9 JUDGE MACE: Do the parties intend to do
10 that?

11 MS. JOHNSTON: Certainly.

12 MR. CHERNAK: Your Honor, we do too, and I,
13 as I said, I came to this late, I know that there has
14 been some discussion, and we would like to continue that
15 and see if we can't be creative and come up with some
16 way to resolve this, so I will be contacting the
17 Railroad, this is Mr. Chernak, and we'll try to have a
18 dialogue. And we'll also try to inform the AG's office
19 and Staff if they have been involved too.

20 MS. JOHNSTON: I just also would like to
21 request on the record that Commission Staff and my
22 office be included in any exchange of discovery, and we
23 will do the same with each of you.

24 MR. CHERNAK: Certainly, I think it's a
25 courtesy to everybody involved, so we will.

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1 MS. JOHNSTON: Thank you.

2 JUDGE MACE: All right. And I would ask that
3 the parties advise me as soon as they can if settlement
4 is reached so that we can cancel the hearing and make
5 that space and time available for other hearings that
6 might need to take place.

7 Is there anything else that we need to
8 address on the record at this point? Mr. Chernak?

9 MR. CHERNAK: If I could just have a second,
10 please, Your Honor.

11 JUDGE MACE: Surely.

12 MR. CHERNAK: For clarity's sake, I just ask
13 that if what Your Honor contemplated was that briefs
14 would be due 30 days prior to the final hearing, is that
15 it?

16 JUDGE MACE: No, 30 days from the date of the
17 hearing, after the hearing.

18 MR. CHERNAK: After the hearing, okay.

19 MS. JOHNSTON: No opening briefs.

20 JUDGE MACE: Yes, no opening briefs. You
21 wouldn't have to file anything actually before the
22 hearing except the statement of the list of exhibits and
23 the witnesses you intend to bring.

24 MR. CHERNAK: Okay, so briefs summarizing I
25 guess what we see at the hearing, okay.

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1 I think the only other question I have is
2 since we're consolidating these proceedings, I think we
3 -- do you contemplate we still need to file two parallel
4 sets of documents, one for the closing the street and
5 the other one -- I mean we won't file things together,
6 we'll file them in kind of parallel, two sets of
7 documents instead of one.

8 JUDGE MACE: You only need to file one set of
9 documents. You have to indicate that they pertain to
10 both dockets.

11 MR. CHERNAK: Okay, so we can put the docket
12 numbers on the top.

13 JUDGE MACE: Correct.

14 MR. CHERNAK: And then just make sure we
15 distinguish down below what arguments or facts we're
16 enclosing that have to deal with each pertinent.

17 JUDGE MACE: Correct.

18 MR. CHERNAK: Thank you.

19 JUDGE MACE: Mr. Workman, anything?

20 MR. WORKMAN: No, Your Honor.

21 JUDGE MACE: And Ms. Johnston?

22 MS. JOHNSTON: No, Your Honor.

23 JUDGE MACE: All right, then we're adjourned,
24 thank you very much.

25