

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

PUGET SOUND AND PACIFIC)	DOCKET NO. TR-041729
RAILROAD,)	
)	ORDER NO. 01
Petitioner,)	
)	
v.)	PREHEARING CONFERENCE
)	ORDER
THURSTON COUNTY,)	
)	
Respondent.)	
.....)	

1 **NATURE OF PROCEEDING.** Docket No. TR-041729 is petition by Puget Sound and Pacific Railroad Company seeking to close the Moon Road railroad crossing in Rochester, Washington pursuant to RCW 81.53.060.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on January 13, 2005, before Administrative Law Judge (ALJ) Karen M. Caillé.

3 **APPEARANCES.** Ed McCullough and Bob Lesley, Elma, Washington, represent Puget Sound and Pacific Railroad. Dave Nichols and Dale Rancour, Olympia, Washington, represent Thurston County Road and Transportation Department. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).¹ Gary Fleming, homeowner, Rochester, Washington, represents himself. Contact

¹ 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*.

information provided at the conference for the parties' representatives is attached as Appendix A to this order.

- 4 **PETITIONS FOR INTERVENTION.** On January 10, 2005, Gary and Lee Fleming filed a document titled a Petition to Intervene. This filing does not contain the information that is routinely supplied in a petition to intervene. Rather, the filing addresses possible issues related to this proceeding, and is accompanied by photos to illustrate the discussion in the filing.
- 5 During the prehearing conference, the ALJ explained options through which Mr. Fleming would be able to participate formally or informally in this proceeding. Mr. Fleming chose to formally intervene in this proceeding. The ALJ asked Mr. Fleming the questions associated with a formal petition, and Mr. Fleming supplied answers. Mr. Fleming uses the Moon Road crossing to access his property. No one objected to Mr. Fleming's intervention as an individual homeowner in this proceeding. The ALJ granted Mr. Fleming's request to intervene, and specified that the discussion and photos in Mr. Fleming's January 10, 2005, filing would be incorporated into the oral petition to intervene, as a list of the issues petitioner would like the Commission to consider in this proceeding.
- 6 **ISSUES.** Each of the parties briefly summarized the issues they expected to address in this proceeding. Among the issues raised by the parties are the following: safety of the crossing, alternatives to closure, need for and needs of the crossing, violation of RCW 81.53.080, relating to restrictions on railway equipment in proximity of crossings, and RCW 81.48.010, relating to failure to sound whistle.
- 7 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. The parties have agreed to discuss resolution of the issues in this proceeding and seek the services of a Commission

facilitator to assist them in their settlement discussions. The Commission assigns Ann E. Rendahl as the settlement judge in this matter. Settlement discussions will take place on February 8, 2005, beginning at 4:00 p.m. at the Gate Community School House located on Moon Road, one-quarter mile south (towards Highway 12) of the crossing in question. Participants are requested to arrive by 3:45 p.m. to allow for viewing of the Moon Road crossing while there is still daylight.

8 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference. **The evidentiary hearing will be held on April 25 and 26, 2005 at the Commission's offices in Olympia, Washington. A public hearing will be held the evening of April 25, 2005 at the Commission's offices.**

9 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission **an original plus 5** copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

10 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

11 An electronic copy of all filings must be provided by e-mail delivery to records@wutc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette

including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).

12 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer may grant parties a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties may only submit documents electronically with the Commission in this proceeding with the permission of the presiding officer. If, at any time during this proceeding, parties are authorized to file documents with the Commission electronically under WAC 480-07-145(6), Parties must submit the document to records@wutc.wa.gov, and file **an original, plus 5** paper copies, of the document with the Commission by the following business day.

13 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 25th day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET NO. TR-041729**

COMPANY	REPRESENTATIVE AND ADDRESS	PHONE	FACSIMILE	E-MAIL
Puget Sound and Pacific Railroad	ED MCCULLOUGH and BOB LESLEY P.O. Box L-2 501 N. 2nd Street Elma, WA 98541	360-482-4994 360-239-5678	360-482-3966	Ed.mccullough@railamerica.com
Thurston County Road and Transportation	DAVE NICHOLS DALE RANCOUR 2404-A Heritage Court SW Olympia, WA 98502-6031	360-754-3355 Ext. 7817 360-786-5134	360-786-5582	nichold@co.thurston.wa.us rancoud@co.thurston.wa.us
Homeowner Intervenor	Gary Fleming P.O. Box 445 Rochester, WA 98579	360-273-8282		Fleming_gary@yahoo.com
Commission Staff	JONATHAN THOMPSON Assistant Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	Jthompso@wutc.wa.gov
Administrative Law Judge	KAREN M. CAILLÉ Washington Utilities and Transportation Comm'n 1300 S. Evergreen Park Dr. SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1136	360-664-2654	kcaille@wutc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET NO. TR-041729

EVENT	DATE	INTERVAL
Settlement Discussions	February 8, 2005 Gate Community School House, Rochester beginning at 4:00 p.m. (Meet at 3:45 to view crossing)	
Evidentiary hearing	April 25-26, 2005 Commission's Office Main Hearing Room Beginning at 9:30 a.m.	
Public hearing	April 25, 2005 Commission's Office Main Hearing Room Beginning at 6:00 p.m.	
Initial post-hearing briefs	To Be Determined, may not be necessary.	
Post-hearing reply briefs	To Be Determined, may not be necessary.	