

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
 2 COMMISSION
 3 THE BURLINGTON NORTHERN AND)
 SANTA FE RAILWAY COMPANY,)
 4)
 vs.) DOCKET NO. TR-010194
 5) Volume No. I
 SNOHOMISH COUNTY,) Pages 1 - 29
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9 A prehearing conference in the above matter
 10 was held on May 14, 2001, at 1:38 p.m., at 1300 South
 11 Evergreen Park Drive Southwest, Olympia, Washington,
 12 before Administrative Law Judge DENNIS MOSS.

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14 The parties were present as follows:

15 THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
 16 COMPANY, by ROBERT E. WALKLEY, Attorney at Law, 20349
 Northeast 34th Court, Sammamish, Washington 98074.

17 SNOHOMISH COUNTY, by JASON J. CUMMINGS,
 18 Deputy Prosecuting Attorney, Civil 1 Division, 2918
 Colby Avenue, Suite 203, Everett, Washington 98201.

19 DEPARTMENT OF TRANSPORTATION, by JEFFREY T.
 20 SCHULTZ (for Jeffrey D. Stier, attorney), 905 Plum
 Street, Building 3, Post Office Box 40113, Olympia,
 Washington 98504.

21 THE WASHINGTON UTILITIES AND TRANSPORTATION
 22 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
 General, 1400 South Evergreen Park Drive Southwest,
 23 Post Office Box 40128, Olympia, Washington 98504.

24 Also Present: Mike Cowles (via bridge) -
 25 BNSF; Ahmer Nizam - WUTC; Tim Winkler and David Weiser
 (via bridge) - City of Marysville; Audrey Hayes (via
 bridge) - DOT.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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P R O C E E D I N G S

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JUDGE MOSS: For the record, my name is
6 Dennis Moss, and we are convened at the Commission's
7 offices in Olympia for our first prehearing conference
8 in the matter styled The Burlington Northern and Santa
9 Fe Railway Company V. Snohomish County, Docket No.
10 TR-010194, and this particular matter involves a
11 petition by the Railroad to close a certain crossing at
12 156th Street Northeast at Mile Post 44.78 in Snohomish
13 County north of Marysville, Washington, according to
14 the Railroad's letter.

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I have previously indicated off the record
that there has been some delay due to traffic problems
and other reasons. A couple of the parties, at least,
including Mr. Cummings and Mr. Walkley, are making an
extra effort to be here today because I had asked
specifically that we try to meet all together
face-to-face for this first prehearing conference and
certainly want to try to accommodate that, so what I
will do is take appearances from those who are present,
either here in the room or by telephone, and we will
get that out of the way, and then we will recess for

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1 what will be approximately 30 minutes until 2:15 and
2 see if we can have the whole group assembled or at
3 least participating by phone and move forward. We
4 don't want to kill everybody's afternoon, but at the
5 same time, we do want to try to be accommodating under
6 the circumstances. Apparently, there is an accident on
7 I-5 south.

8 So let me begin here in the room, and then
9 I'll do a roll call, essentially, for those who I know
10 are on the telephone, and then we will see if there are
11 any others on the telephone. So I think, Mr. Thompson,
12 you are the only counsel present in the room.

13 MR. THOMPSON: This is Jonathan Thompson.
14 I'm an assistant attorney general, and I'm representing
15 the Commission staff, which is appearing as a party in
16 the case. Did you want address and phone number?

17 JUDGE MOSS: Yes. This is our first
18 prehearing, so I do ask for full appearances for the
19 record.

20 MR. THOMPSON: My mailing address is 1400
21 South Evergreen Park Drive Southwest, P.O. Box 40128,
22 and it's in Olympia, Washington, 98504. My telephone
23 number is (360) 664-1225. Fax is 586-5522, and I can
24 be reached by e-mail at jthompso@wutc.wa.gov.

25 JUDGE MOSS: Thank you very much. On the

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1 telephone, I know I have Mr. Cowles for the Railroad.
2 Are you there, Mr. Cowles?
3 MR. COWLES: I am.
4 JUDGE MOSS: Mr. Cowles, as I understand it,
5 the Railroad is going to be represented by counsel in
6 the name of Robert E. Walkley.
7 MR. COWLES: That is correct.
8 JUDGE MOSS: We will take Mr. Walkley's
9 appearance when he arrives, which we hope will be soon
10 given the problems on the highway and so forth.
11 Mr. Cowles, do you know, is Rexanne Gibson, will she
12 also be representing the Railroad in this matter?
13 MR. COWLES: Yes, sir. She's in the vehicle
14 with Mr. Walkley.
15 JUDGE MOSS: Fine. We'll take her
16 appearance --
17 MR. COWLES: My mistake. I guess she will
18 not be appearing today. I think Bob is on his own
19 coming down there.
20 JUDGE MOSS: We'll clarify that. On the line
21 for Snohomish County, we have Mr. Cummings; is that
22 correct?
23 MR. CUMMINGS: That's correct, Your Honor.
24 Jason Cummings, C-u-m-m-i-n-g-s.
25 JUDGE MOSS: Are you counsel for the County?

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1 MR. CUMMINGS: Yes, Your Honor, deputy
2 prosecuting attorney for Snohomish County.

3 JUDGE MOSS: Why don't you go ahead and give
4 us your address and telephone, fax, and e-mail, please.

5 MR. CUMMINGS: The address is the Civil
6 Division of the Prosecuting Attorney's Office, 2918
7 Colby Avenue, Suite 203, Everett, Washington, 98201.
8 My phone number would be area code (425) 388-6332. The
9 fax number being (425) 388-6333. Unfortunately, I do
10 not have e-mail access.

11 JUDGE MOSS: Who else do I have on here. For
12 the City of Marysville, I have Mayor David Weiser on
13 the line and Mr. Tim Winkler; is that right?

14 MR. WEISER: Yes, Your Honor.

15 JUDGE MOSS: Will you be represented by
16 counsel?

17 MR. WEISER: Not at this time, Your Honor.

18 JUDGE MOSS: Who is speaking?

19 MR. WEISER: David Weiser.

20 JUDGE MOSS: That's a point I should make.
21 When you all speak on the phone, particularly where
22 there is more than one party present on a single line,
23 but just generally, you do need to identify yourself
24 for the court reporter so we will have an accurate
25 transcript.

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1 While we are on this point, and we may have
2 to take this up again later, I'll just note that I did
3 receive some correspondence from the City of
4 Marysville. It's unclear to me at this juncture, Mayor
5 Weiser, whether the City has an intention to seek to
6 intervene in the proceeding or otherwise formally
7 participate, or whether you simply will participate, if
8 you will, as a member of the public, which we do allow
9 for after one fashion or another, but of course, there
10 is a distinction between participating as a party in
11 one status or another or not, so let me ask you your
12 intention in that regard.

13 MR. WEISER: Your Honor, I think that after
14 this hearing, we will make that determination how we
15 are going to participate, if that is okay.

16 JUDGE MOSS: We will take that subject up,
17 and don't let me forget to take that subject up when we
18 reconvene after two, and we will have to talk about
19 that a little bit and see. Typically, if a party
20 wishes to intervene, we require that be done, if it's
21 to be timely, by the time of this prehearing
22 conference. So we may need to ask you to make that
23 determination today, or it may be that the parties will
24 be agreeable to offer you a little bit of extra time to
25 do that, and we'll talk about that more later when

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1 everybody is present. Particularly, I want to have all
2 the counsel present for that consideration.

3 For the Washington Department of
4 Transportation, I believe we had Audrey Hayes?

5 MS. HAYES: I'm the legal assistant for Jeff
6 Stier, who is the assistant attorney general
7 representing Public Transportation and Rail, but he is
8 out of town and unable to attend, so he asked that I
9 listen in because I'm aware of his schedule.

10 JUDGE MOSS: Has the Washington Department of
11 Transportation filed an intervention, Ms. Hayes, to
12 your knowledge?

13 MS. HAYES: No, they haven't. Is Mr. Schultz
14 there?

15 MR. SCHULTZ: Yes, I'm here, Audrey, thank
16 you.

17 MS. HAYES: Did you talk with Jeff today?

18 MR. SCHULTZ: Yes, I did.

19 JUDGE MOSS: Why don't we go ahead and get
20 your introduction for the record. Are you counsel?

21 MR. SCHULTZ: No.

22 JUDGE MOSS: Just introduce yourself for the
23 record, if you would, so we will know who we are
24 talking to.

25 MR. SCHULTZ: I'm Jeffrey Schultz,

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1 S-c-h-u-l-t-z. I'm the rail operations and technical
2 expert for the Washington State Department of
3 Transportation. My address is 310 Maple Park, Olympia,
4 98504-7387. E-mail?

5 JUDGE MOSS: We don't really need that
6 because you do have counsel, and we'll be getting his
7 full appearance at some point, I'm sure, and actually,
8 let me first ask, Mr. Schultz, if you know, does the
9 Department of Transportation intend to formally
10 intervene in the proceeding?

11 MR. SCHULTZ: We have not made a decision
12 yet, Your Honor.

13 JUDGE MOSS: So we have two potential
14 parties, City of Marysville and Washington State DOT,
15 and we will have to return to the subject of
16 intervention later when we have everyone present.
17 Mr. Schultz, you came in late, but there has been some
18 delay, so we are going to have a continuance here in a
19 minute. Have I missed anybody?

20 MR. WEISER: I just got a call from Bob
21 Walkley. He'll be there in about three minutes. He's
22 just around the corner.

23 JUDGE MOSS: Oh, good. So then we will be
24 looking for Mr. Cummings. Where are you now,
25 Mr. Cummings?

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1 MR. CUMMINGS: We just pulled off on 101 to
2 come around to Evergreen.

3 JUDGE MOSS: Great. It looks like we will
4 have everybody here shortly. So what I propose to do
5 then at this point in time, we have most of the
6 appearances, and we will get the others in a moment.
7 It looks to me like everybody will be here by about two
8 o'clock. Let's be slightly pessimistic and we will say
9 15 minutes, so we will take a brief recess until about
10 five minutes after two and see if we can all get back
11 together then and have everyone present and resume our
12 business and hopefully conclude it in fairly short
13 order.

14 (Recess.)

15 JUDGE MOSS: We'll go back on the record
16 then. We've had a brief recess and resuming our
17 proceedings in this prehearing conference, and I think
18 we had actually just one appearance we need to make
19 formally of record, the others having already taken
20 care of that business. So, Mr. Walkley, let me ask you
21 to make your appearance, including your address, phone,
22 fax, and e-mail, if you have one that you use.

23 MR. WALKLEY: Thank you, Your Honor, and
24 again, I apologize for the incredible traffic and being
25 late. My name is Robert E. Walkley, W-a-l-k-l-e-y,

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1 attorney at law, 20349 Northeast 34th Court, Sammamish,
2 Washington, 98074-4319. Telephone and fax number is
3 (425) 868-4846, and my e-mail is
4 rewalkley@earthlink.net, and I'd like also to enter an
5 appearance, not at this hearing but in the case, for
6 cocounsel, Rexanne Gibson -- that's R-e-x-a-n-n-e,
7 G-i-b-s-o-n -- of the firm of Kroschel,
8 K-r-o-s-c-h-e-l, Gibson, Kinerk, K-i-n-e-r-k, Reeve,
9 R-e-e-v-e, LLP, 110 110th Avenue Northeast, Bellevue,
10 Washington, 98004, and her telephone number is
11 (425) 462-9584. Thank you.

12 JUDGE MOSS: Thank you, Mr. Walkley, we
13 appreciate that. I have several items on the agenda,
14 and counsel may have other items they wish to add or
15 other representatives who may have other items that we
16 need to take up today, but the first order of business
17 typically is the matter of petitions or requests to
18 intervene in the proceeding. At this juncture, at
19 least, we have the railway company and the county as
20 parties. Staff is a statutory party and doesn't have
21 to make a motion to intervene, but we do have a couple
22 of other parties who have expressed an interest in the
23 case, and in an earlier moment during our session when
24 not everyone was present, I raised the question with
25 the City of Marysville representatives, and with the

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1 Department of Transportation representatives whether
2 their respective clients wish to intervene in the
3 proceeding or otherwise participate formally in the
4 proceeding as opposed to being simply public
5 participants, which we allow for in a manner that I
6 will describe a little bit later.

7 Both of those parties, who are not
8 represented by counsel today, expressed that they would
9 prefer to be able to make that decision at a point in
10 time after today, and I'm prepared to allow for that;
11 although, we typically ask that interventions be made
12 either in advance of or by the prehearing conference.
13 If the other parties are agreeable, I would be prepared
14 to extend the period for, let's say, a business week
15 and let those parties have an opportunity to consult
16 with counsel and make that final decision. Is there
17 objection to my doing that?

18 MR. WALKLEY: No objection, Your Honor.

19 MR. CUMMINGS: None from the County.

20 JUDGE MOSS: There being no objection to
21 that, today is the 14th, so I said it would be a
22 business week, so that would take us to the 21st. I
23 will provide until the 21st for the City of Marysville
24 and the Washington Department of Transportation to
25 decide if they wish to petition for formal intervention

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1 in the case. If they do, other parties will have an
2 opportunity to respond in writing an opposition, if
3 they choose to do so. I'll provide a period of time
4 for that, fairly brief, I think, and then we will rule
5 on those motions in due course. Is that agreeable to
6 the City of Marysville and to the Washington Department
7 of Transportation? Mayor Weiser, will you be speaking
8 for Marysville today?

9 MR. WEISER: Yes, I will, Your Honor.

10 JUDGE MOSS: Is that an agreeable process?

11 MR. WEISER: Very agreeable.

12 JUDGE MOSS: For the Department of
13 Transportation, which of you will be speaking today?

14 MR. SCHULTZ: I will, Your Honor, and that is
15 agreeable to the Department of Transportation as well.
16 Thank you.

17 JUDGE MOSS: Please make note of that and
18 either take it up with counsel, in the case of the
19 Department of Transportation, and if the City chooses
20 to consult counsel, then that's a point to be taken up.
21 You will need to make a formal petition, and I'll refer
22 you to our procedural rules. If memory serves, that's
23 WAC 480-09-430. That spells out the rules for
24 intervention. Did I get that right, Mr. Thompson?

25 MR. THOMPSON: You know, I don't have them in

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1 front of me, so I'm not sure.

2 JUDGE MOSS: I'll look it up just to be sure.

3 Yes, I did cite the correct WAC.

4 I'll just ask if there is any other party
5 that wishes to intervene? And hearing nothing, I take
6 it that will be the outside line-up. Unless, of
7 course -- we do have provisions for late-filed motions
8 to intervene and that's always a possibility, but I
9 think we have everybody here who has an interest in the
10 case represented after one fashion or another today.

11 Are there any other procedural matters, other
12 than the procedural schedule, that anyone wants to take
13 up, any preliminary motions or anything like that?

14 Hearing nothing, I think we can move on. I think we
15 should discuss briefly what issues there are in the
16 case, and let me just turn to you, Mr. Thompson, and
17 ask if Staff has identified any issues in the case that
18 they would like to bring to my attention.

19 MR. THOMPSON: I'm going to ask Mr. Nizam to
20 just give a summary of what the case is about, if
21 that's what you are looking for.

22 JUDGE MOSS: That would be fine. This is
23 when you all educate me as to what the case is about,
24 so I'll give everybody a turn.

25 MR. NIZAM: This is Ahmer Nizam from the

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1 staff of the Utilities and Transportation Commission.
2 On February 8th of 2001, we received a petition from
3 the Burlington Northern Santa Fe Railway Company
4 requesting Commission approval to close an abandoned
5 highway rail grade cross located at 156th Street in
6 Snohomish County. The purpose of the closure, which
7 I'm going to read straight from the Petition, is --

8 JUDGE MOSS: Do try to read slowly. Break it
9 up, because I too talk too fast, and the reporter is
10 telling me all the time.

11 MR. NIZAM: Rather than read the paragraph,
12 the Washington State Department of Transportation and,
13 I believe, Amtrak are working together with the
14 Railroad to construct a siding track through the
15 crossing. The purpose of the siding track would be to
16 hold freight trains while Amtrak trains, which are
17 typically faster, can pass. If such a siding was built
18 through the crossing, it would block the crossing for
19 long periods of time, and once again, I'm going to say,
20 this is from the Petition, and I'm giving a summary of
21 the Petition. That would make the crossing unreliable.

22 Besides the issue with blocking the crossing,
23 the Petition cites two previous accidents, which
24 implies public safety is compromised by the crossing,
25 and the Washington State Department of Transportation

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1 had a traffic analysis done which basically concluded
2 that if the crossing were closed, the circulation of
3 traffic in the general vicinity wouldn't have an
4 adverse impact. Rather, the closing of the crossing
5 wouldn't have an adverse impact on traffic in the
6 vicinity. With those reasons, they ask that the
7 Commission grant an order that the crossing is closed.

8 Now, the other parties, Snohomish County and
9 the City of Marysville, stated objections to the effect
10 that closing the crossing would eliminate one of two
11 points of access to the area east of the tracks, which
12 could compromise emergency vehicle access as well as
13 any future development in that area, which is
14 tentatively planned for by the City of Marysville. At
15 this point, I would like to invite any of the parties
16 to either build on or correct anything I've stated.

17 JUDGE MOSS: That would seem to be
18 appropriate that we hear from the others. Let me turn
19 first to Mr. Cummings and ask about the County's
20 position. Has Mr. Nizam essentially captured the
21 City's concerns, which I understand to be it would
22 eliminate one of two current means of access to an area
23 and the County is concerned about the impact on
24 emergency vehicles and the prospects for future
25 development, or are those both the County and the

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1 City's concerns?

2 MR. CUMMINGS: I can speak to the County's
3 concerns, Your Honor. Snohomish County's main concern
4 is the loss of emergency vehicle access that will
5 result from the closure of the 156th Street crossing.
6 In fact, Snohomish County would phrase the issue as to
7 whether or not public safety requires that 156th Street
8 crossing be closed, when, in fact, it's our position
9 that public safety and health requires that it remain
10 open.

11 JUDGE MOSS: So from the County's position
12 then, this is essentially a balancing of harms, if you
13 will.

14 MR. CUMMINGS: That would be correct. The
15 issues of future development obviously would be of
16 concern to the County on some regards. I believe that
17 the public safety issue is the prevalent issue we've
18 presented before the board.

19 JUDGE MOSS: Mayor Weiser, of course we've
20 given you some extra time to decide whether to
21 participate as an intervenor, but so I fully understand
22 the case, let me ask about the City of Marysville's
23 concerns.

24 MR. WEISER: I think we have a couple of
25 concerns, that we share what has just been stated by

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1 Snohomish County. There is a petition actively being
2 worked on right now as far as annexing a certain
3 portion of this area to the City of Marysville. There
4 will be considerable housing growth in that area when
5 that petition is acted on or if it is acted on
6 favorably. We also have a concern with any additional
7 traffic that that would put onto 172nd Street to the
8 north at 19th Avenue, the railroad crossing, and at
9 27th Avenue.

10 JUDGE MOSS: As I understand it then, the
11 property in question is not currently within the
12 municipal limits of Marysville.

13 MR. WEISER: That is correct, Your Honor.
14 It's within our urban growth boundary.

15 JUDGE MOSS: Also concerned then with related
16 traffic impacts on 172nd Street North. Does anybody
17 else wish to speak to the issues in the case?
18 Mr. Walkley, I don't want to cut you off from an
19 opportunity.

20 MR. WALKLEY: Thank you, Your Honor. I found
21 Mr. Nizam's brief introduction to be very accurate. I
22 also found the County's comments to be accurate as to
23 what their concerns are. We did have an opportunity
24 this morning to meet fairly briefly, it turns out, with
25 the County for about an hour and a half to explore

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1 these issues, and there is hope that some kind of
2 solution can be found, but at the moment, the parties
3 are struggling with how to address the impacts of the
4 County appeals and the City appeals would come about.

5 The Railway, on the other hand, is also
6 concerned because this closure is necessary to provide
7 adequate capacity to the Railroad in view of the fact
8 that the State has begun the operation of Amtrak
9 trains, additional Amtrak passenger service to British
10 Columbia and back to Seattle, and those trains are
11 placing capacity problems on the line of railroad
12 between those two cities, and Marysville is an
13 important part of the program to make sure that
14 passenger service is run successfully as well as to
15 make sure that the freight railroad is not unduly
16 impacted. So our need for moving this process along
17 continues even though there are concerns about
18 capacity.

19 We have talked with the County about various
20 options, including leaving 156th open, gating it, or
21 somehow controlling traffic on it, but we have not been
22 able to reach agreement yet or even consensus yet on
23 what might be appropriate. However, I think both sides
24 agree -- Mr. Cummings can comment on it, but I think
25 both sides agree that we will continue to try to work

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1 together to simplify the issues as much as possible or
2 even come to a solution.

3 JUDGE MOSS: And Mr. Cummings was nodding in
4 the affirmative over there, and I would encourage you
5 all to continue those discussions as well.

6 Let me just ask a couple of questions here.
7 One, in terms of the siding issue, that is not before
8 this commission, is it?

9 MR. WALKLEY: No, Your Honor.

10 JUDGE MOSS: We are only concerned about
11 closing the crossing or not.

12 MR. WALKLEY: That's correct, Your Honor.

13 JUDGE MOSS: What is the status of the siding
14 project? Is that approved or is that to be approved or
15 does that require any state approval or federal
16 approval?

17 MR. WALKLEY: One of the questions that arose
18 during our meeting is the -- just to the extent that
19 the SEPA process, for example, needs to be gone through
20 as far as the government agencies are concerned. The
21 Railway itself may not be subjected to SEPA
22 requirements because of federal preemptions; however,
23 the local government still has that issue, and the
24 kinds of concerns they are raising may or may not
25 involve additional SEPA processes.

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1 As far as the Railway having to apply to any
2 federal agency for construction, we do not have to
3 because it is a siding, and it's the type of trackage
4 that is exempt from the application process, as far as
5 I understand. So what really is necessary is the
6 process of closing the crossing and then the
7 construction can continue or can start on the extension
8 of the current siding.

9 The siding now exists, and it's my
10 understanding that it's approximately 6,000 feet long,
11 and the extension would extend it to approximately 9500
12 feet long, and the reason for the extension is to
13 accommodate the expected longer trains that are going
14 to be impacting that line as we move forward, but the
15 crux of the issue will be whether and under what
16 conditions the 156th should be closed.

17 JUDGE MOSS: Or the matter otherwise resolved
18 consistent with your prior comments.

19 MR. WALKLEY: That's correct.

20 JUDGE MOSS: There was something in the
21 Petition, I believe, certainly in one of the documents,
22 that spoke of a June 2001 target date for action by
23 this commission. That's fairly close in time, as these
24 things go, and I'm wondering if that is still a date
25 that has some weight to it.

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1 MR. WALKLEY: If I may, Your Honor, I realize
2 that time is short. The Railway would like to, in an
3 ideal world, have an adjudication and decision by about
4 June 30th, 2001, in order to permit construction of the
5 siding and so forth in this construction year, which
6 means that our preference would be to try to set up a
7 schedule that would permit whatever hearing needs to
8 take place sometime in the June 20th time frame.

9 I think we are probably both agreed, both
10 Mr. Cummings and I, that we do not foresee a great deal
11 of discovery probably needed. There may be some, but
12 in a one-month to six-week time period, we may be able
13 to accomplish that. The only caveat I would have is
14 the parties are still working together on several
15 issues, including the SEPA review and other issues
16 related to approvals from the government level, and
17 therefor, any hearing date that might be set up today
18 we would ask be set up with the possibility that it
19 will have to be moved back if there is a delay or if
20 the parties otherwise feel it should be moved back for
21 other studies or whatever may be necessary.

22 JUDGE MOSS: I'm going to suggest here in a
23 moment that we recess and be off the record for a
24 period of time to let the parties discuss informally
25 among themselves what sort of procedural schedule will

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1 work best for them. Before we do that, just a couple
2 of remarks. One, I am unavailable the last week of
3 June and the first week of July. I have previous
4 commitments during those time frames. Otherwise, I
5 have a good bit of flexibility in my schedule through
6 the summer.

7 On the point of the possibility that the
8 hearing date might need to be extended depending on how
9 things develop, I'm always agreeable to that within
10 reasonable bounds. Our rules provide for a
11 first-agreed continuance more or less as a matter of
12 course, so to the extent we do set a schedule today and
13 you all wish to change that later, if you do that
14 consensually, it's very smooth, and if you have to
15 bring it to me to resolve, I'm prepared to do that
16 consistent with what I hear and consistent with the
17 administrative needs of the Commission. I do not like
18 to let things remain open without schedules, so to the
19 extent we set something today and later there is need
20 for some more time, let's do think in terms of definite
21 extensions. That keeps everyone's attention focused
22 and gets things accomplished in reasonable time frames.

23 So I think those are the only points I wanted
24 to make. I will sit without the commissioners in this
25 proceeding so we have a lot of flexibility there. It's

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1 just my schedule we have to worry about on that end,
2 and, of course, all the participants' schedules. So
3 let me then call a brief recess and let you all discuss
4 among yourselves what will work best, and perhaps you
5 can come up with an agreed schedule, keeping in mind my
6 conflict period, and then we will go back on the
7 record.

8 One more thing before I go off the record, as
9 I mentioned perhaps at the outset, this can be a good
10 opportunity for you all to set up some time for some
11 informal process as well, and you could even begin that
12 this afternoon if you chose to do so. We'll probably
13 wrap up in 10 minutes or so after we get back on the
14 record. So think about that as you discuss this too.
15 In the meantime, we will be in recess until a quarter
16 before the hour by the wall clock.

17 (Recess.)

18 JUDGE MOSS: We've had a brief recess to
19 allow the parties to discuss among themselves the
20 process and procedural schedule requirements for going
21 forward in this case. I have joined them a few moments
22 ago, and we had some further informal discussion, which
23 I will now recapitulate in pertinent part.

24 We talked a little bit about discovery, and
25 the parties have assured me that they will be

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1 cooperative, as usual in our experience, in exchanging
2 the sort of information that is typically required to
3 prosecute these cases. Of course, to the extent
4 someone identifies an expert witness, that should be
5 done at the earliest date it's known that that's going
6 to be done, and that will give the other parties the
7 opportunity to consider whether to use a subpoena or
8 subpoena duces tecum to discover the bases for that
9 expert's opinions, and if there are other issues that
10 should arise in terms of the appropriate exchange and
11 free exchange of information among the parties, then
12 those can be brought to my attention, and I will be
13 glad to help you all come to an appropriate
14 accommodation, if necessary. So I think that takes
15 care of that point.

16 As far as process and procedural schedule is
17 concerned, it does not appear that we need a great deal
18 in the way of process other than to establish a hearing
19 date and the date for our final prehearing conference.
20 That's all we need to do today, I think, and the
21 parties have suggested that we have that final
22 prehearing conference on July the 11th and then segue
23 directly into our hearing on the 12th and 13th of July,
24 and that works on my schedule, so we will set those
25 dates, and I will publish that in the prehearing order.

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1 In the interim, if the need should arise, the
2 parties can contact me for some additional process and
3 we can consider whether to have that. Sometimes it's
4 useful to get together for a formal conference, a
5 status conference or something like that. The parties,
6 of course, are free to use the Commission's facilities
7 by prior arrangement for any sort of settlement
8 negotiations or other discussions. The Commission
9 does, of course, encourage alternative dispute
10 resolutions, stipulations of fact, those sorts of
11 things that you are all familiar with from other cases,
12 and I do ask that you keep me apprised of any progress
13 you make in those regards, and, of course, the parties
14 are familiar with the rules for continuance in Chapter
15 480-09 WAC and can request that if needed to pursue
16 some of the alternative means of dispute resolution.

17 Do we have any other business we need to
18 conduct this afternoon? I don't believe I do.

19 MR. CUMMINGS: Nothing further from the
20 County.

21 MR. WALKLEY: Nothing further, Your Honor.

22 JUDGE MOSS: Thank you all for coming. I
23 think it's useful that we get together like this at the
24 outset and then subsequently as we need to do. I am
25 open to telephone conferences if we need to have those

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1 along the way to handle minor points, and we will
2 schedule the hearing in the vicinity of Marysville.

3 MR. SCHULTZ: Smoky Point area.

4 JUDGE MOSS: We have facilities that the
5 state uses for hearings in most areas, so we will find
6 out what's most convenient to the site and set the
7 hearing for that place, and we will also notice it, of
8 course, for public participation, and I'm glad I came
9 to that point, because I should say something on the
10 record about that, and this will be particularly
11 pertinent to the City of Marysville and the Washington
12 Department of Transportation, perhaps others down the
13 line.

14 In addition to the formal adjudicatory
15 process, which contemplates that parties will present
16 witnesses for examination and cross-examination,
17 perhaps the introduction of exhibits, the usual give
18 and take of a quasi-judicial proceeding, in this type
19 of proceeding we will have an opportunity for public
20 input, and I will sit for that, and members of the
21 public will be invited to speak to this subject, and
22 that will be part of the record. Typically, those
23 witnesses are not cross-examined and their evidence is
24 taken with the appropriate weight, given its nature.

25 In that connection, the letters that I have

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1 previously received can be made part of the record in
2 that fashion in addition, to, of course, being
3 introduced as argumentary exhibits as appropriate, if,
4 for example, the City of Marysville or its police
5 department or some other entity chose to formally
6 participate and was allowed to do so on the petition.
7 So keep those options in mind as you think about
8 whether to participate, and those of you who are, of
9 course, parties will want to have in mind that we will
10 have that additional process at the same time that we
11 have our hearing, which is another reason we hold it in
12 the locale of the application so that the interested
13 public will have an easy time of participating.

14 The case concludes with a two-step process,
15 really. The parties can waive an initial decision by
16 me, or I can prepare an initial decision. If I do
17 prepare an initial decision, that then is subject to
18 petitions, and then the Commission will issue a final
19 order in the case. You can waive the initial decision,
20 and we will discuss this later in the proceeding, and
21 if you choose to do so, then I will assist the
22 Commission to understand the record and have the record
23 before it, and they will make the final decision in the
24 case and that, again, is subject to petitions for
25 reconsideration and then any subsequent judicial

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1 appeal. So it's really sort of a two- or three-step
2 process depending on which way you all decide to go,
3 and we will talk about that at the time of the hearing,
4 and we will also consider at that time what sort of
5 post-evidentiary hearing process we will have, if that
6 will be in the form of oral arguments or briefs or
7 proposed findings of fact and conclusions of law or
8 whatever seems appropriate to the case at that time.
9 Anything else? I would like to thank you all
10 very much, particularly those of you who had to drive
11 some distance through difficult traffic today, and look
12 forward to working with you as we move through this
13 case. We are in recess.

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15 (Prehearing conference concluded at 3:00 p.m.)

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