

0001

1                           BEFORE THE WASHINGTON STATE  
2                           UTILITIES AND TRANSPORTATION COMMISSION  
3 PUGET SOUND AND PACIFIC        )  
RAILROAD,                        )     Docket No. TR-041729  
4                           Petitioner,        )     Volume I  
5 vs.                                )     Pages 1-17  
6 THURSTON COUNTY,                )  
                          Respondent.    )  
7 \_\_\_\_\_  
8

9                           A hearing in the above matter was held on January  
10 13, 2005, from 1:35 p.m. to 2:15 p.m., at 1300 South  
11 Evergreen Park Drive Southwest, Room 108, Olympia,  
12 Washington, before Administrative Law Judge, KAREN M.  
13 CAILLE.

14                           The parties were present as follows:

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

18                           HOMEOWNERS, by GARY FLEMING, homeowner, PO Box  
455, Rochester, Washington 98579.  
19 Telephone (360)273-8282, Email fleminggary@Yahoo.com.

20                           PUGET SOUND AND PACIFIC RAILROAD, by ED  
McCULLOUGH, Train Master, 501 North Second Street, Elma,  
21 Washington 98541. Telephone (360)482-4994, Cell  
(360)239-5678, Fax (360)482-3966, Email  
22 mccullough@railamerica.com.

23

24 Jennifer R. Cordner, CCR

25 Court Reporter

0002

1 PUGET SOUND AND PACIFIC RAILROAD, by ROBERT  
2 WESLEY, System Maintainer, 501 North Second Street, Elma,  
3 Washington 98541. Telephone (360)483-4994.

4 THURSTON COUNTY, by DAVE NICHOLS, Engineering  
5 Program Manager, 2404-A Heritage Court southwest, Olympia,  
6 Washington 98502. Telephone (360)754-3355, Extension  
7 7817, Fax (360)786-5582, Email nichold@co.thurston.wa.us.

8 THURSTON COUNTY, by DALE RANCOUR, County Engineer  
9 for Transportation Services in Thurston County, 2404-A  
10 Heritage Court Southwest, Olympia, Washington 98502.  
11 Telephone (360)786-5234, Email rancour@co.thurston.wa.us.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

0003

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

2                       JUDGE CAILLE: Just as a heads-up to everyone, if  
3 you will please just speak one at a time, and loudly, and  
4 distinctly for the benefit of the court reporter. And  
5 also, a little slowly. Just try to moderate your pace.

6                       We are here today for the first prehearing  
7 conference in Docket No. TR 041729. It is styled Puget  
8 Sound and Pacific Railroad versus Thurston County. This  
9 proceeding has been initiated by Puget Sound and Pacific  
10 Railroad through a petition for the abandonment and  
11 closure of the Moon Road at Gray Crossing in Rochester.  
12 My name is Karen Caille, and I am the Administrative Law  
13 Judge assigned to this proceeding. Today is January the  
14 13th, 2005. We are convened in the hearing room in the  
15 Commission's offices in Olympia, Washington.

16                      The purpose of this prehearing conference is to  
17 take interventions, establish dates for distribution of  
18 evidence and work papers, and other scheduling matters.

19                      As I indicated before I went on the record, I'm  
20 now going to ask for appearances, and I will ask the  
21 Railroad to begin.

22                      MR. McCULLOUGH: I'm Ed McCullough, Train Master,  
23 Puget Sound Pacific Railroad. Our address is 501 North  
24 Second Street, Elma, Washington 98541. The office phone  
25 number is (360)482-4994, and my cell number is

0004

1 (360)239-5678.

2 JUDGE CAILLE: And Mr. McCullough, do you have a  
3 fax?

4 MR. McCULLOUGH: (360)482-3966.

5 JUDGE CAILLE: And what about Email?

6 MR. MCCULLOUGH: It's ed.mccullough,  
7 M-C-C-U-L-L-O-U-G-H, @railamerica, that's one word --

8 JUDGE CAILLE: Rail America?

9 MR. MCCULLOUGH: -- dot com. And we have one  
10 other railroad employee here.

11 MR. WESLEY: Do you want my name and --

12 JUDGE CAILLE: Yes, the same information.

13 MR. WESLEY: My name is Bob Wesley. I'm the  
14 System Maintainer for the railroad.

15 JUDGE CAILLE: And the same address Mr. Wesley?

16 MR. WESLEY: Yes, same address. The only thing  
17 that is probably different is my phone number is  
18 (360)239-

19 1268, same office phone number, no Email.

20 JUDGE CAILLE: Thank you. And for Thurston  
21 County?

22 MR. NICHOLS: My name is Dave Nichols. I am the  
23 Engineering Program Manager for the Roads and  
24 Transportation Department. My address is 2404-A Heritage  
25 Court SW, Olympia 98502. Phone number is (360)754-3355,

0005

1 Extension 7817. My Email address is N-I-C-H-O-L-D,  
2 @co.thurston.wa.us.

3 JUDGE CAILLE: All right. Thank you. And what  
4 about a fax number, do you have that?

5 MR. NICHOLS: (360)786-5582.

6 JUDGE CAILLE: Thank you.

7 MR. RANCOUR: Dale Rancour, R-A-N-C-O-U-R, I'm  
8 the County Engineer for Transportation Services in  
9 Thurston County. Same address. My phone number is  
10 (360)786-5134, and Email is rancouv@co.thurston.wa.us.

11 JUDGE CAILLE: Thank you. For Staff?

12 MR. THOMPSON: I'm Jonathan Thompson, Assistant  
13 Attorney General, representing the Commission Staff. My  
14 address is 1400 South Evergreen Park Drive SW, PO Box  
15 40128, and that's Olympia 98504. My phone number is  
16 (360)664-1225 the fax is 586-5522, and my Email address is  
17 jthomps@wutc.wa.gov.

18 JUDGE CAILLE: Okay. Before we go on,  
19 Mr. McCullough, would you please spell your last name for  
20 me one last time?

21 MR. MCCULLOUGH: M-C-C-U-L-L-O-U-G-H.

22 JUDGE CAILLE: Thank you.

23 MR. MCCULLOUGH: Yes, ma'am.

24 JUDGE CAILLE: And Mr. Fleming, why don't you  
25 enter your appearance?

0006

1           MR. FLEMING: Okay. Gary Fleming, PO Box 455,  
2 Rochester, Washington 98579. Phone number is (360)273-  
3 8282, and my Email would be Fleming, underscore,  
4 gary@yahoo.com, and I have no fax.

5           JUDGE CAILLE: Did you say at Yahoo dot com?

6           MR. FLEMING: Yes.

7           JUDGE CAILLE: Is there anyone else who wants to  
8 enter their appearance?

9           MS. WORD: I represent Richard Debolt's office.

10          JUDGE CAILLE: All right. Would you please state  
11 your name?

12          MS. WORD: Cathy Word.

13          JUDGE CAILLE: Actually, Cathy, would you like to  
14 come up to the table?

15          MS. WORD: I don't mind.

16          JUDGE CAILLE: Okay.

17          MS. WORD: He couldn't be here. He had to go  
18 into a meeting at the last minute.

19          JUDGE CAILLE: You're representing?

20          MS. WORD: Richard Debolt, D-E-B-O-L-T.

21          JUDGE CAILLE: And can you enter perhaps his  
22 address or how we would contact or mail things to him?

23          MS. WORD: PO Box 4600, Olympia 98504.

24          JUDGE CAILLE: Anyone else want to enter an  
25 appearance this afternoon?

0007

1           All right. The next order of business that I'd  
2 like to address are interventions. And Mr. Fleming, you  
3 submitted a document that is styled an intervention, but  
4 it actually does not have a lot of the elements that a  
5 petition to intervene should contain.

6           So I talked to earlier, before we went on the  
7 record, explaining to you how there is a formal way you  
8 can participate, which would be to intervene in the  
9 adjudication part of this proceeding, or a less formal  
10 way, which would be to participate in a public hearing  
11 where you would testify and present evidence.

12           I don't think I made it clear, but you -- at a  
13 public hearing, you can also cross-examine the people who  
14 are testifying at that hearing. Now, those people will  
15 probably be different from the people that are  
16 participating in the adjudication, because generally our  
17 public hearings are for like the homeowners to put down on  
18 the record their concerns related to the issues.

19           So having said that you indicated that you would  
20 like to formally participate; is that correct?

21           MR. FLEMING: I just want to make sure as long as  
22 the homeowners have an opportunity to state their  
23 position, and also cross-examine the facts, and that would  
24 be sufficient for me.

25           JUDGE CAILLE: All right. So I would take that

0008

1 as wanting to participate formally in the adjudication.  
2 So what I'm going to do now is ask you some questions and  
3 this will be like an oral intervention. That we will  
4 accomplish here.

5 So again, will you please state your name and  
6 address?

7 MR. FLEMING: Gary Fleming, PO Box 4455,  
8 Rochester, Washington 98509.

9 JUDGE CAILLE: And Mr. Fleming, are you  
10 representing an organization or yourself?

11 MR. FLEMING: Myself.

12 JUDGE CAILLE: Have you participated in any  
13 Commission proceedings in the last two years?

14 MR. FLEMING: I have not.

15 JUDGE CAILLE: And could you tell me why you are  
16 interested in this proceeding?

17 MR. FLEMING: I'm interesting because the  
18 Railroad and the purpose of this meeting, as I understand  
19 it, is to improve the safety in order to promote security  
20 and to be a convenience to the public. I don't believe  
21 that this proposed action before the Commission at this  
22 time would do either.

23 JUDGE CAILLE: And can you tell me how you're  
24 related to this proceeding? You're a homeowner; is that  
25 correct?



0009

1           MR. FLEMING: I'm a homeowner, and that is my  
2 primary way of crossing the railroad tracks within a few  
3 hundred feet of my house.

4           JUDGE CAILLE: All right. Thank you.

5           And Mr. Fleming, in your documents that you  
6 submitted on January the 10th, you had a discussion of  
7 some issues, and I think what I am going to do is  
8 incorporate those -- that discussion into the oral  
9 petition to intervene. So that document will accompany  
10 and will be considered a part of the petition to  
11 intervene. And attached to that document are pictures as  
12 well. Now, if you want to submit this as a formal  
13 exhibit, that would be something you would do at the  
14 hearing.

15          MR. FLEMING: That will be fine.

16          JUDGE CAILLE: All right. Let me see if there's  
17 anything else I need to ask you.

18          So Mr. Fleming, do you intend to be calling --  
19 will you call witnesses?

20          MR. FLEMING: Not at this time.

21          JUDGE CAILLE: I realize that, but for the  
22 hearing, would you calling fellow homeowners or other  
23 people to testify?

24          MR. FLEMING: Yes, that's my intention.

25          JUDGE CAILLE: All right. Do you have an idea

0010

1 about how many people that would be?

2 MR. FLEMING: Probably less than 10.

3 JUDGE CAILLE: And would you be calling any other  
4 witnesses or experts?

5 MR. FLEMING: We may want to call -- we do have  
6 some concerns about fire support, and perhaps of the  
7 "short terms" in the area.

8 JUDGE CAILLE: Okay. And in addition to  
9 presenting those witnesses and cross-examining the other  
10 witnesses in the proceeding, do you intend to file any  
11 written materials?

12 MR. FLEMING: I'm undecided at this point.

13 JUDGE CAILLE: All right. Are there any  
14 objections from any of the parties to the petition of  
15 Mr. Fleming to participate in this proceeding?

16 All right then, the petition is granted.

17 Next, I'd like to talk about the issues. If each  
18 of the parties could briefly tell me what they see as the  
19 issues in this proceeding. And we could begin with the  
20 Railroad.

21 MR. MCCULLOUGH: Yes, ma'am. The biggest problem  
22 that we see is our increase in traffic right now. We're  
23 up to 27, 28 thousand carloads a year, which means that  
24 there's somewhere between 55 and 60 thousand carloads  
25 going past that crossing at Moon Road.

0011

1           That particular crossing -- just because of the  
2 approaches off of Moon Road, on the, I guess it's the  
3 south side, it's, to us, it's an unsafe place because  
4 people going on that crossing from the south side -- it  
5 doesn't matter how close my trains are on the siding --  
6 they almost have to get into the mainline, which is a 40  
7 mile an hour mainline, before they can get across the  
8 crossing.

9           So from our perspective, it is an unsafe crossing  
10 because of just the way the approach is to the south side  
11 for the crossing. That's really the bottom line for us.

12           JUDGE CAILLE: And the County?

13           MR. NICHOLS: Well, this is a county road  
14 crossing where there is a county road. I didn't do any  
15 research prior to today, but I believe it's been there  
16 since -- there are old plats down there in that area in  
17 the early 1900s, so it's been a platted road for, I think,  
18 a long time.

19           I guess, the issue from the County's standpoint  
20 is we haven't had any traffic accidents at the crossing or  
21 the scene of the crossing, so there hasn't been any  
22 history of accidents there.

23           The location of the crossing isn't ideal because  
24 traffic has to -- northbound traffic on Moon Road has to  
25 cross a sharp curve in the road that tends to be somewhat

0012

1 restrictive of sight distance. So you have traffic that's  
2 actually cutting across a sharp curve in the road before  
3 they get to the crossing. So it could potentially be a  
4 safety issue, although there has been no accident history  
5 there.

6 JUDGE CAILLE: Okay. And Staff.

7 MR. THOMPSON: I think Staff is more or less in a  
8 wait and see mode at this point. So I don't think we have  
9 anything to add as far as what the issues might be.

10 JUDGE CAILLE: And Mr. Fleming, do you to want to  
11 state anything for the record?

12 MR. FLEMING: There are alternatives other than  
13 what have been proposed that would take care of the  
14 County's concern with the crossings that are in our  
15 proposal of alternative considerations.

16 I think not only would they cause less negative  
17 effect on the homeowners, but I think that some of these  
18 suggestions would, in fact, be less expensive for the  
19 people responsible for paying for reconditioning of the  
20 crossing or making the alternatives that we suggested.

21 And I would say that I disagree with the Railroad  
22 in the fact that there have been many occasions as cited  
23 in several comments submitted in the packet that we  
24 submitted to you saying that they have habitually violated  
25 RCW 81.44.10, which requires the cars to be 100 feet from

0013

1 the crossing. And there have been many occasions where  
2 they have been as close as 15 often in the 35 to 50 foot  
3 range.

4           Also, I have talked to several landowners who  
5 have been unaware of the train because they have not  
6 sounded their notification devices in sufficient time to  
7 alert traffic using that road. The other thing is that  
8 the Gate Road crossing has an unusual problem in that  
9 there's a lot of homeowners out there that also have  
10 horses, and farm equipment, and the sort of stuff that  
11 requires trailers. The concern with the Gate Road  
12 crossing is it causes the said trailers to scrape and  
13 damage them. So they tend to use the Moon Road crossing.

14           That's where part of our concern about the fire  
15 and the short terms -- people coming out to live on the  
16 Hunter Road area.

17           JUDGE CAILLE: So there's another crossing, and  
18 it's called Gate Road; is that right?

19           MR. FLEMING: Yes, it's about 1400, plus a few  
20 feet, to the east of the Moon Road crossing. And the  
21 other problem is, if you look at photographs we took from  
22 both the Moon Road and the Gate Road crossing, you see  
23 very clearly the train there -- you have a very clear  
24 sight, almost unlimited down both to the east and west,  
25 but if you use the Gate Road crossing, which is a proposal

0014

1 the Railroad is talking about -- to this site -- to the  
2 west, that's limited to about two hundred feet on the east  
3 and therefore it does cause a certain hazard that way.

4 JUDGE CAILLE: All right. Thank you,  
5 Mr. Fleming.

6 MR. FLEMING: You're welcome.

7 JUDGE CAILLE: All right. That gives me an idea  
8 of what we are going to be discussing. At this point, we  
9 would normally go off the record and discuss the schedule,  
10 and I then would put the schedule into the record. So why  
11 don't we do that at this point, unless, is there anything  
12 else anyone would like to say on the record for right  
13 now?

14 MR. WESLEY: Yeah, I would like to bring up a  
15 couple other points.

16 JUDGE CAILLE: Could you please state your name?

17 MR. WESLEY: Yeah, my name is Bob Wesley.

18 JUDGE CAILLE: Mr. Wesley, that's right. Thank  
19 you, Mr. Wesley.

20 MR. WESLEY: We made reference to the Gate Road  
21 crossing, that would, in our estimation, that would be a  
22 real viable alternative for a crossing to be used by all  
23 the public going through there because once we do that we  
24 can apply for the 130 funding, and install gate lights,  
25 significantly improving that crossing, changing the

0015

1 roadway of the crossing also, put the concrete tubs in,  
2 make it so that these trailers, and anything else going  
3 across there -- I mean, we've had locals ruining our rail  
4 there by scraping. So it would -- to improve that road  
5 right there, make it better for everybody to cross there,  
6 and safety wise with the lights and gates the public is a  
7 whole lot safer.

8 MR. FLEMING: Your Honor, if I might just  
9 respond. I would be interested in seeing -- in business  
10 we would normally do a cost benefit analysis to see what  
11 are the least expensive -- as I understand it -- is it the  
12 County that would be paying for improvements on this?

13 MR. NICHOLS: Not generally.

14 MR. FLEMING: Not generally?

15 MR. NICHOLS: No.

16 MR. FLEMING: So that would be who?

17 MR. NICHOLS: Federal government.

18 MR. FLEMING: Federal government, still our tax  
19 dollars.

20 JUDGE CAILLE: Again, gentlemen, let me ask you  
21 to talk one at a time so the court reporter can record  
22 you.

23 All right. If there's nothing further, then  
24 let's go off the record and talk about schedule.

25 Except just me throw out this one other thing.

0016

1 Is there any possibility that the parties could work  
2 together and come to some kind of a resolution on the  
3 issues here without going to an adjudication?

4 MR. FLEMING: I think we, as landowners, would be  
5 open to discussing a resolution.

6 MR. MCCULLOUGH: And the railroad obviously is.  
7 We would like to solve the problems there.

8 JUDGE CAILLE: So maybe what we can do is build a  
9 schedule for a certain amount of time for the parties to  
10 get together and try to work something out.

11 (Discussion off the record.)

12 JUDGE CAILLE: We have had a very productive  
13 off-record discussion, and it sounds like the parties are  
14 going to attempt to come together and try to reach some  
15 consensus, and therefore, avoid an adjudication in this  
16 case. But if there is an adjudication we are setting  
17 aside April 25th and April 26, those days for hearing, and  
18 we will plan to hold a public meeting the evening of April  
19 25th here at the Commission.

20 Then I am going to check dates in the first two  
21 weeks of early February to come up with a time for the  
22 parties to meet to begin their negotiations or talks. And  
23 it sounds like that will be at the Gate Community  
24 Schoolhouse. And the dates I'm looking at will be  
25 February 2nd; the 4th; the 7th; the 8th; and the 9th.



0017

1                   And folks have asked that the Commission provide  
2 a facilitator or mediator for this purpose, and I will  
3 check into that, and that will drive the week that we  
4 select.

5                   Okay. Is there anything else?

6                   In the prehearing conference order I will put in  
7 the number of copies of documents you will need to file  
8 with the Commission, if there are any motions or  
9 exhibits. But hopefully this will get resolved, and we  
10 don't have to do that.

11                   Is there anything else from anyone before I close  
12 this meeting?

13                   All right. I thank you very much for coming and  
14 I will issue a prehearing reference order probably within  
15 the next week.

16                   Thank you for coming.

17                   (Hearing adjourned at 2:15 p.m.)

18

19

20

21

22

23

24

25