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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 CLARK COUNTY, ) DOCKET TR-190228

)

5 Petitioner, )

)

6 vs. )

)

7 BURLINGTON NORTHERN SANTE)

FE RAILWAY, )

8 )

)

9 Respondent. )

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11 PREHEARING CONFERENCE, VOLUME I

12 Pages 1-10

13 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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14

15 July 15, 2019

16 9:30 a.m.

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Washington Utilities and Transportation Commission

18 621 Woodland Square Loop Southeast

Lacey, Washington 98503

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1 LACEY, WASHINGTON; JULY 15, 2019

2 9:30 A.M.

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

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6 JUDGE PEARSON: Let's be on the record in

7 Docket TR-190228, which is a petition filed by Clark

8 County seeking to install median barriers at a highway

9 rail-grade crossing in Vancouver, Washington.

10 Today is Monday, July 15th, 2019, at 9:30

11 a.m., and we're here for a prehearing conference to

12 discuss scheduling and other procedural issues.

13 My name is Rayne Pearson. I'm the

14 administrative law judge presiding over this case.

15 So let's begin by taking short appearances.

16 We'll start with Staff and then we will identify the

17 parties on the bridge line.

18 So, Mr. Roberson?

19 MR. ROBERSON: Good morning. My name is

20 Jeff Roberson, R-o-b-e-r-s-o-n. My contact information

21 is on file in the docket. I'm an assistant attorney

22 general representing Staff, and with me at counsel table

23 is Ms. Betty Young who is Staff's witness.

24 JUDGE PEARSON: Okay. Thank you.

25 And for the County, Ms. Cook, I understand

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1 you're here on behalf of Taylor Hallvik and you're on

2 the bridge line. Could you please enter an appearance?

3 MS. COOK: Yes, my name is Christine Cook.

4 I'm a senior deputy prosecuting attorney with Clark

5 County, Washington, and I am here filling in for Taylor

6 Hallvik who is a deputy prosecuting attorney for Clark

7 County, Washington. And we are here to represent the

8 County in the scheduling matter.

9 Also with me is Ahmad Qayoumi, who is the

10 director of the public works department, and his last

11 name is spelled Q-a-y-o-u-m-i. And Rob Klug, who is the

12 interim transportation manager with the County

13 Department of Public Works.

14 JUDGE PEARSON: Okay. Thank you.

15 And for BN --

16 MR. OWSLEY: Hello?

17 JUDGE PEARSON: Mr. Owsley?

18 MR. OWSLEY: Thank you, Your Honor. Good

19 morning. Travis Owsley, O-w-s-l-e-y, appearing on

20 behalf of BNSF Railway Company. Contact information is

21 on file with the docket.

22 JUDGE PEARSON: Okay. Thank you.

23 Is there anyone else on the bridge line who

24 wishes to enter an appearance?

25 Okay. Hearing nothing, I assume, then, that

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1 there is no one on the bridge line seeking to intervene

2 in this proceeding?

3 Okay. Also, hearing nothing, I do have a

4 question for BNSF before we get on to the other

5 procedural matters. With respect to the April 4th

6 letter that was mailed to BNSF from the Commission's

7 transportation safety director, Kathy Hunter, there was

8 a letter requesting BNSF to review Clark County's

9 petition and respond by either completing the waiver of

10 hearing form or providing a written response stating

11 BNSF's reasons for not supporting the petition, and my

12 understanding is that BNSF took neither of these

13 actions.

14 So, Mr. Owsley, if you could just state for

15 the record BNSF's position on the petition?

16 MR. OWSLEY: Yes, Your Honor. First, my

17 apologies for that. Stated briefly, Your Honor, BNSF's

18 position is that given the -- the -- the geometry of

19 this crossing and, you know, other physical

20 circumstances to it, feel that a Qwick Kurb median is

21 insufficient nor preferred. Commission considers -- the

22 County would consider a -- a nontraversable median as a

23 safety measure at this crossing.

24 JUDGE PEARSON: Okay. I figured that was

25 the case, but I just wanted you to state that for the

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1 record.

2 So moving on to procedural issues. Do the

3 parties want the discovery rules to be available in this

4 case?

5 MR. ROBERSON: They probably should be.

6 JUDGE PEARSON: Okay. And that brings us to

7 the schedule. Do the parties need a recess to discuss

8 scheduling? I saw that there was a proposed schedule

9 circulated last week, but I didn't hear whether or not

10 Staff was amenable to that proposed schedule.

11 MR. ROBERSON: Staff has no objections to

12 the schedule, Your Honor.

13 JUDGE PEARSON: So it sounds like you have

14 an agreed schedule. Do you want to read that into the

15 record? Do you have it?

16 MR. ROBERSON: Absolutely. Per the

17 procedural schedule the parties now agree to, there is a

18 settlement conference scheduled for

19 September 12th, 2019; Clark County's direct testimony

20 would be due September 30th, 2019; answering -- or

21 sorry, the response testimony would be due

22 October 28th, 2019.

23 JUDGE PEARSON: You said October 28th?

24 MR. ROBERSON: Yes.

25 JUDGE PEARSON: Okay.

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1 MR. ROBERSON: Cross-answering testimony and

2 rebuttal would be due December 2nd, 2019; the discovery

3 cutoff is January 6th, 2020; exhibits, witness list, and

4 time estimates are due to ALD on January 20th, 2020; the

5 hearing would be held February 27th, 2020; and

6 post-hearing briefs would be due March 26th, 2020.

7 JUDGE PEARSON: Okay. Thank you.

8 MR. ROBERSON: And there is one caveat that

9 I have not checked with ALD to make sure that the

10 hearing date is acceptable.

11 JUDGE PEARSON: I believe it is, but I'll

12 check real quick on my calendar. I'm free that day, so

13 that works.

14 MR. ROBERSON: Apologies, Your Honor.

15 JUDGE PEARSON: That's okay.

16 Okay. So we will reserve a room at the

17 Commission for the hearing. I assume you only think it

18 will take one day, is that -- I think that's accurate.

19 So it's incumbent upon the parties to find a facility in

20 or near Vancouver to host the hearing, and if you have

21 not secured a space and notified me of that location at

22 least 45 days before the hearing date, we will hold the

23 hearing here at the Commission's headquarters in Lacey.

24 So please make sure you notify me directly when you

25 secure a location.

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1 MS. COOK: The County would be happy to try

2 to find a room at Clark County that would be suitable

3 for a hearing, and we will get back with you on that as

4 soon as we can.

5 JUDGE PEARSON: Okay. Great. Thank you.

6 And just keep in mind too that we will need the space in

7 the evening for a public comment hearing that same day,

8 on February 27th.

9 MS. COOK: Okay.

10 JUDGE PEARSON: All right.

11 MS. COOK: That might -- that might make it

12 more difficult, but I will check that out.

13 JUDGE PEARSON: Okay. Thank you. In the

14 past, we have used Council Chambers in Whatcom County, I

15 believe, rooms at their courthouses, so that might be

16 something. I don't know if that's available.

17 MS. COOK: Council Chambers would be very

18 appropriate for this. Usually, unfortunately, there

19 is -- well, it may not be on this Thursday. There are

20 Thursday nights when the Planning Commission holds a

21 hearing in the chambers, but, again, I will look to that

22 and confirm whether or not we have space available.

23 JUDGE PEARSON: Okay. The other thing we

24 can do, because it is so far out, is we can -- we can

25 change the hearing date if we need to.

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1 MS. COOK: Okay.

2 JUDGE PEARSON: So just be in contact with

3 the parties, and Mr. Roberson can communicate with me

4 whatever you all decide.

5 MS. COOK: Okay.

6 JUDGE PEARSON: Okay.

7 MS. COOK: Thank you, Your Honor, I will do

8 that.

9 JUDGE PEARSON: Okay. Is there anything

10 else that we need to address while we're here today?

11 MR. ROBERSON: Not from Staff.

12 MR. OWSLEY: Nothing from BNSF, Your Honor.

13 JUDGE PEARSON: Okay. Thank you.

14 Ms. Cook, nothing else?

15 MS. COOK: Nothing from the County.

16 JUDGE PEARSON: Okay, great. I will issue

17 an order reflecting what we discussed here today and we

18 are adjourned. Thank you.

19 (Adjourned at 9:40 a.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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6 I, Tayler Garlinghouse, a Certified Shorthand

7 Reporter in and for the State of Washington, do hereby

8 certify that the foregoing transcript is true and

9 accurate to the best of my knowledge, skill and ability.

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13 Tayler Garlinghouse, CCR 3358

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