

**Docket No. TR-190228 - Vol. I**

**Clark County v. Burlington Northern Sante Fe Railway**

**July 15, 2019**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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CLARK COUNTY, ) DOCKET TR-190228  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 BURLINGTON NORTHERN SANTE )  
 FE RAILWAY, )  
 )  
 )  
 Respondent. )

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PREHEARING CONFERENCE, VOLUME I  
 Pages 1-10  
 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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July 15, 2019  
 9:30 a.m.

Washington Utilities and Transportation Commission  
 621 Woodland Square Loop Southeast  
 Lacey, Washington 98503

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1 A P P E A R A N C E S

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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

5

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

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

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

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.

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.



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.

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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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358

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