

Docket No. TR-170122 - Vol. I

Whatcom County v. BNSF Railway Company

April 24, 2017



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WHATCOM COUNTY,) DOCKET NO. TR-170122
)
 Petitioner,)
)
 vs.)
)
BNSF RAILWAY COMPANY,)
)
)
 Respondent.)

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

April 24, 2017

9:30 A.M.

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504

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A P P E A R A N C E S

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* * * * *

1 OLYMPIA, WASHINGTON; APRIL 24, 2017

2 9:30 A.M.

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

6
7 JUDGE PEARSON: Good morning. So let's go
8 ahead and be on the record. This is Docket TR-170122,
9 which is a petition filed by Whatcom County for
10 installation of median barriers at a highway rail grade
11 crossing located at Yacht Club Road in Bellingham.

12 Today is Monday, April 24th, 2017, and we
13 are here for a prehearing conference to discuss
14 scheduling and other procedural issues.

15 My name is Rayne Pearson. I'm the
16 administrative law judge presiding over this case.

17 So let's begin by taking appearances. I
18 believe everyone has filed a notice of appearance so we
19 can just take brief appearances. If you would just
20 state your name, spell your last name, and identify who
21 you are representing, and we'll begin with Mr. Shearer
22 for Commission Staff.

23 MR. SHEARER: Thank you, Your Honor. My
24 name is Brett Shearer, S-h-e-a-r-e-r, assistant attorney
25 general here on behalf of Commission Staff.

1 JUDGE PEARSON: Okay. Thank you.

2 And, Mr. Gibson?

3 MR. GIBSON: Yes, Daniel Gibson on behalf of
4 Whatcom County. My name is spelled G-i-b-s-o-n, and --
5 yeah, I think that's it.

6 JUDGE PEARSON: Okay. Thank you.

7 Ms. Willingham?

8 MS. WILLINGHAM: Yes, Jennifer Willingham on
9 behalf of BNSF, and I also have our manager of public
10 projects, Rick Wagner, on the line as well.

11 JUDGE PEARSON: Okay. And can you spell
12 your last name, Ms. Willingham?

13 MS. WILLINGHAM: W-i-l-l-i-n-g-h-a-m.

14 JUDGE PEARSON: Okay. Thank you.

15 So I was notified by my legal assistant on
16 Friday that the parties may be close to resolving their
17 dispute, and I was just wondering, Mr. Shearer, if you
18 could fill me in on that and then we'll let the other
19 parties weigh in.

20 MR. SHEARER: Yes, Your Honor. The other
21 parties will obviously have more details than Staff, but
22 it's our understanding there may be an agreement between
23 Whatcom County and BNSF to either amend the petition or
24 make some alteration which would -- and then we would
25 all ask you to reschedule this conference in the

1 interim.

2 JUDGE PEARSON: Okay.

3 MR. SHEARER: And like I said, Mr. Gibson
4 and Ms. Willingham could provide more detail on that.

5 JUDGE PEARSON: Okay. So, Mr. Gibson or
6 Ms. Willingham, is that an accurate reflection of where
7 the parties are at this point?

8 MR. GIBSON: I believe it is, Your Honor.
9 Ms. Willingham and I had conversations last week, and
10 based on the conversations that I've had with Public
11 Works staff here, I think we're at an agreement that
12 will enable us to dispense with the hearing once -- once
13 we finalize it. I think -- I believe we're prepared to
14 amend our petition to note that what we proposed is a
15 six-inch concrete median in the place of a mountable
16 curb. That six-inch concrete median will be topped by
17 plastic pylons. And as I understand it, upon
18 consideration of that, BNSF is prepared to agree to
19 that, but I will let Ms. Willingham speak to that on
20 behalf of BNSF.

21 MS. WILLINGHAM: Yes, Your Honor, that is
22 something that Mr. Gibson and I have discussed. And
23 BNSF is definitely willing to consider that amended
24 petition, and we think that that will potentially get us
25 close to resolving this matter.

1 JUDGE PEARSON: Okay. So, Mr. Gibson, what
2 is the time frame for -- in the event that you file an
3 amended petition, when would you expect to do that by?

4 MR. GIBSON: Well, in light of
5 Ms. Willingham's comments, I'll just confirm that that
6 will indeed conclude our -- our back and forth here.
7 But I would expect Mr. Swan would be able to do that
8 within -- would be able to do that within the week.

9 JUDGE PEARSON: Okay. So what I would
10 propose is that I would issue a prehearing conference
11 order that would acknowledge the possibility that the
12 County will file an amended petition by a certain date
13 if they choose to do so and then scheduling a second
14 prehearing conference. And I have some dates in mind
15 already for that, given my calendar and my availability
16 in the month of May. And so what I could do is leave
17 those with Mr. Shearer, and we could go off the record
18 and take a recess and the parties could discuss those
19 dates.

20 So when we come back on the record, I'd be
21 looking for a date by which the County would agree to
22 file an amended petition if it so chooses. It's not
23 committing to do that, but saying if the County does
24 that, it would be by this date and then also a date for
25 the second prehearing conference.

1 MR. GIBSON: Okay. Thank you, Your Honor.

2 JUDGE PEARSON: Okay. So I will give those
3 dates to Mr. Shearer and we will go off the record. I
4 will be in my office if one of you wants to come get me
5 when you're done.

6 Okay. Then we are in recess. Thank you.

7 (Recess taken from 9:37 a.m.
8 until 9:44 a.m.)

9 JUDGE PEARSON: Okay. So I understand that
10 the parties are ready to proceed, so we will be back on
11 the record.

12 So during the break, it sounds like the
13 parties agreed on a couple of dates.

14 So, Mr. Shearer, if you could read those
15 into the record.

16 MR. SHEARER: Yes, Your Honor. The parties
17 submitted an agreed request to have a deadline for an
18 amended petition by May 4th, 2017.

19 JUDGE PEARSON: Okay.

20 MR. SHEARER: With a new -- a second
21 prehearing conference -- excuse me -- on May 17th, 2017,
22 at 2:00 p.m.

23 JUDGE PEARSON: And that would be in room
24 139?

25 MR. SHEARER: Yes, Your Honor.

1 JUDGE PEARSON: Okay. So in the event that
2 we hold that prehearing conference, I will get
3 information to the parties who are calling in about
4 which number to call because it will be a different
5 number.

6 MR. GIBSON: Thank you.

7 MS. WILLINGHAM: Okay.

8 JUDGE PEARSON: So I think it makes sense to
9 take up petitions for intervention, if there will be
10 any, at the second prehearing conference. Because in
11 the event that the parties are unable to reach an
12 agreement, that could change things, and also to take up
13 discovery at that time. So we can hold those two
14 matters in abeyance if there are no objections to that.

15 MR. GIBSON: No objections from the County,
16 Your Honor.

17 MS. WILLINGHAM: No objections from BNSF,
18 Your Honor.

19 MR. SHEARER: And none from Staff, Your
20 Honor.

21 JUDGE PEARSON: Okay. Great. So is there
22 anything else that we need to address while we are here?

23 MR. GIBSON: The County has nothing further,
24 Your Honor.

25 JUDGE PEARSON: Okay. So I will issue an

1 order reflecting the dates that we discussed here in
2 scheduling a second prehearing conference, and we are
3 adjourned. Thank you very much.

4 (Adjourned at 9:45 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 Russell, 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 Russell, CCR 3358