

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

CLARK COUNTY,) DOCKET TR-190228

) Petitioner,)

vs.)

) BURLINGTON NORTHERN SANTE
) FE RAILWAY,)

) Respondent.)

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

July 15, 2019
9:30 a.m.

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

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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LACEY, WASHINGTON; JULY 15, 2019
9:30 A.M.

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PROCEEDINGS

JUDGE PEARSON: Let's be on the record in Docket TR-190228, which is a petition filed by Clark County seeking to install median barriers at a highway rail-grade crossing in Vancouver, Washington.

Today is Monday, July 15th, 2019, at 9:30 a.m., and we're here for a prehearing conference to discuss scheduling and other procedural issues.

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

So let's begin by taking short appearances. We'll start with Staff and then we will identify the parties on the bridge line.

So, Mr. Roberson?

MR. ROBERSON: Good morning. My name is Jeff Roberson, R-o-b-e-r-s-o-n. My contact information is on file in the docket. I'm an assistant attorney general representing Staff, and with me at counsel table is Ms. Betty Young who is Staff's witness.

JUDGE PEARSON: Okay. Thank you.

And for the County, Ms. Cook, I understand

APPEARANCES

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you're here on behalf of Taylor Hallvik and you're on the bridge line. Could you please enter an appearance?

MS. COOK: Yes, my name is Christine Cook. I'm a senior deputy prosecuting attorney with Clark County, Washington, and I am here filling in for Taylor Hallvik who is a deputy prosecuting attorney for Clark County, Washington. And we are here to represent the County in the scheduling matter.

Also with me is Ahmad Qayoumi, who is the director of the public works department, and his last name is spelled Q-a-y-o-u-m-i. And Rob Klug, who is the interim transportation manager with the County Department of Public Works.

JUDGE PEARSON: Okay. Thank you.

And for BN --

MR. OWSLEY: Hello?

JUDGE PEARSON: Mr. Owsley?

MR. OWSLEY: Thank you, Your Honor. Good morning. Travis Owsley, O-w-s-l-e-y, appearing on behalf of BNSF Railway Company. Contact information is on file with the docket.

JUDGE PEARSON: Okay. Thank you.

Is there anyone else on the bridge line who wishes to enter an appearance?

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.

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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1 CERTIFICATE

2
3 STATE OF WASHINGTON
4 COUNTY OF THURSTON

5
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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11
12  Tayler Garlinghouse
13 Tayler Garlinghouse, CCR 3358
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