

Docket No. TR-170122 - Vol. I

Whatcom County v. BNSF Railway Company

April 24, 2017



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

206.287.9066

www.buellrealtime.com

Olympia | **360.534.9066** Spokane | **509.624.3261** National | **800.846.6989**

email: info@buellrealtime.com



Page 1

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION
 3 _____
 4 WHATCOM COUNTY,) DOCKET NO. TR-170122
 5 Petitioner,)
 6 vs.)
 7 BNSF RAILWAY COMPANY,)
 8 Respondent.)
 9 _____
 10 PREHEARING CONFERENCE, VOLUME I
 11 Pages 1-10
 12 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON
 13 _____
 14 April 24, 2017
 15 9:30 A.M.
 16
 17 Washington Utilities and Transportation Commission
 18 1300 South Evergreen Park Drive Southwest
 19 Olympia, Washington 98504
 20 REPORTED BY: TAYLER RUSSELL, CCR 3358
 21 Buell Realtime Reporting, LLC
 22 1325 Fourth Avenue, Suite 1840
 23 Seattle, Washington 98101
 24 (206) 287-9066 | Seattle
 (360) 534-9066 | Olympia
 (800) 846-6989 | National
 25 www.buellrealtime.com

Page 2

1 APPEARANCES
 2 ADMINISTRATIVE LAW JUDGE:
 3 RAYNE PEARSON
 Washington Utilities and
 4 Transportation Commission
 1300 South Evergreen Park Drive SW
 5 Olympia, Washington 98504
 (360) 664-1160
 6
 7
 8 FOR COMMISSION STAFF:
 9 BRETT SHEARER
 Assistant Attorney General
 10 P. O. Box 40128
 Olympia, Washington 98504
 11 (360) 664-1187
 bretts@atg.wa.gov
 12
 13 FOR WHATCOM COUNTY:
 (Via bridge line)
 14 DANIEL GIBSON
 Chief Civil Deputy Prosecuting
 15 Attorney
 Whatcom County Prosecuting Attorney
 16 311 Grand Avenue, Suite 201
 Bellingham, Washington 98225
 17 (360) 676-6784
 dgibson@co.whatcom.wa.us
 18
 19 FOR BNSF RAILWAY:
 (Via bridge line)
 20 JENNIFER WILLINGHAM
 BNSF Railway Co.
 21 General Attorney
 2500 Lou Menk Drive, AOB-3
 22 Fort Worth, Texas 76131
 (817) 352-1738
 23 jennifer.willingham@bnsf.com
 24
 25 * * * * *

Page 3

1 OLYMPIA, WASHINGTON; APRIL 24, 2017
 2 9:30 A.M.
 3 --o0o--
 4
 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.

Page 4

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

Page 5

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.

Page 6

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.

Page 7

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.

Page 8

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.)
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON
 4 COUNTY OF THURSTON
 5
 6 I, Tayler Russell, a Certified Shorthand Reporter
 7 in and for the State of Washington, do hereby certify
 8 that the foregoing transcript is true and accurate to
 9 the best of my knowledge, skill and ability.
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Tayler Russell, CCR 3358 _____