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1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

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4 BENTON COUNTY,)Docket TR-042083
5)Volume I
6)Pages 1-12
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8))
9 BNSF RAILWAY COMPANY,)
10)Respondent.)
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15 A pre-hearing conference in the
16 above-entitled matter was held at 9:32 a.m. on
17 Thursday, July 28, 2005, at 1300 South Evergreen Park
18 Drive, S.W., Olympia, Washington, before
19 Administrative Law Judge DENNIS MOSS.

20 The parties present were as follows:

21 BENTON COUNTY, by Kathleen Fitzgerald,
22 Deputy Prosecuting Attorney, 620 Market Street,
23 Prosser, Washington 99350 (Appearing via
24 teleconference bridge.)

25 BNSF RAILWAY COMPANY, by Robert
Walkley, Attorney at Law, Montgomery Scarp
MacDougall, P.L.L.C., 1218 Third Avenue, 27th Floor,
Seattle, Washington 98101 (Appearing via
teleconference bridge.)

COMMISSION STAFF, by Jonathan Thompson,
Assistant Attorney General, 1400 S. Evergreen Park
Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

Barbara L. Nelson, CCR

Court Reporter

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1 JUDGE MOSS: Let's be on the record. This
2 is Dennis Moss at the Washington Utilities and
3 Transportation Commission. I'm an Administrative Law
4 Judge and I have been assigned to preside in this
5 matter styled Benton County against BNSF Railway
6 Company, Docket Number TR-042083. The matter
7 concerns a proposal to build an at-grade crossing in
8 Benton County.

9 Previously, we had scheduled a pre-hearing
10 conference, and that was continued on the
11 representation that there were settlement
12 negotiations underway. After we take appearances
13 this morning, I'll want a status report on that so
14 that we can determine what further process may be
15 required and set a schedule for that, as needed.

16 So let us first, however, take appearances,
17 and I believe, Ms. Fitzgerald, that you were on the
18 line for Benton County?

19 MS. FITZGERALD: That's correct.

20 JUDGE MOSS: Could you please enter your
21 appearance?

22 MS. FITZGERALD: Kathleen Fitzgerald, I'm a
23 Deputy Prosecuting Attorney for Benton County on
24 behalf of Benton County Public Works Department.

25 JUDGE MOSS: And your physical address, your

0003

1 telephone number, your facsimile and your e-mail,
2 please.

3 MS. FITZGERALD: 620 Market Street, Prosser,
4 Washington, 99350-0954. The Prosser office telephone
5 number is 509-786-5611; the Tri-Cities office is
6 509-736-3084; and the fax number is 509-786-5627.

7 JUDGE MOSS: Is that an 86?

8 MS. FITZGERALD: 786.

9 JUDGE MOSS: Okay. For some reason I had 73
10 down.

11 MS. FITZGERALD: My e-mail address, has that
12 been requested?

13 JUDGE MOSS: Yes, please. We like to have a
14 record of that.

15 MS. FITZGERALD: Okay. It's
16 Kathleen.Fitzgerald@co.benton.wa.us. It's a long
17 one.

18 JUDGE MOSS: What were the first two letters
19 there after the at?

20 MS. FITZGERALD: C-O.

21 JUDGE MOSS: P.O.?

22 MS. FITZGERALD: Yeah.

23 MR. WALKLEY: C-O, Judge, County.

24 JUDGE MOSS: C-O, ah, County, Benton,
25 Washington, U.S.

0004

1 MS. FITZGERALD: That's right.

2 JUDGE MOSS: How logical. All right. Thank
3 you for that information, Ms. Fitzgerald.

4 MR. DUNFEE: Judge, you might want to check
5 that phone for the Tri-Cities.

6 JUDGE MOSS: Oh, the Prosser is fine.

7 MS. FITZGERALD: The Prosser phone number is
8 786-5611 and the Tri-Cities office number is
9 736-3084.

10 JUDGE MOSS: We need to know who else spoke
11 on the bridge line just a moment ago.

12 MS. FITZGERALD: That would be Ross Dunfee.

13 MR. DUNFEE: I'm Ross Dunfee, I'm the Benton
14 County Public Works Director and County Engineer.

15 JUDGE MOSS: Okay. The reason we ask is our
16 reporter has to make a transcript and she has to
17 record who is speaking at any given time, so -- all
18 right. And that is a good point. I'm frankly not
19 accustomed to using this teleconference bridge line.
20 I don't really like it very much, but I must remind
21 you that, every time you speak, you need to identify
22 yourself, because the sound quality in this room is
23 not that great, and that's the reason I, frankly,
24 don't like it. But we can hear you so far, but
25 please do identify yourselves when you speak.

0005

1 Let me take the appearance for BNSF, which
2 would be Mr. Walkley. If you would please enter your
3 appearance?

4 MR. WALKLEY: Yes, Your Honor, my name is
5 Robert E. Walkley, W-a-l-k-l-e-y. I'm an attorney
6 representing BNSF Railway Company. My address is
7 Montgomery, M-o-n-t-g-o-m-e-r-y, Scarp, S-c-a-r-p,
8 MacDougall, M-a-c-D-o-u-g-a-l-l, P.L.L.C., Law Firm
9 in Seattle. Its address is Seattle Tower, 27th
10 Floor, 1218 Third Avenue, Seattle, Washington, 98101.
11 The phone number is 206-625-1801; fax number is
12 206-625-1807; my e-mail is bob@montgomeryscarp.com.

13 JUDGE MOSS: Thank you. And I don't believe
14 we have any other parties in this proceeding, but I
15 will ask if there's any other counsel on the bridge
16 line, and I don't mean to skip Mr. Thompson.

17 MR. WALKLEY: This is Robert Walkley, Your
18 Honor. We also have on the telephone John Shurson.
19 John Shurson is our public project engineer. John,
20 you might just identify yourself.

21 JUDGE MOSS: That's really not necessary,
22 unless Mr. Shurson needs to speak, and we'll just
23 need his name. So all we need for appearance
24 purposes is counsel.

25 MR. WALKLEY: Okay.

0006

1 JUDGE MOSS: All right. So only counsel.
2 And I did skip Mr. Thompson. I didn't mean to say
3 that we had no other parties to exclude Staff, but
4 Mr. Thompson is the only one in the hearing room, and
5 that was the distinction I was trying to draw. So we
6 will have appearance, then, from Commission's
7 Regulatory Staff.

8 MR. THOMPSON: Okay. This is Jonathan
9 Thompson, Assistant Attorney General, representing
10 the Commission Staff. My street address is 1400
11 South Evergreen Park Drive, S.W., P.O. Box 40128,
12 Olympia, 98504. My phone number is 360-664-1225; fax
13 is 586-5522; and my e-mail is jonat@atg.wa.gov and
14 also jthompso@wutc.wa.gov.

15 JUDGE MOSS: All right. I believe that will
16 complete our appearances. Let me ask. There was
17 some off-the-record discussion that I overheard
18 earlier concerning the status of settlement
19 discussions, I believe. And let me just ask if the
20 parties require a few moments off the record to bring
21 each other up to speed on where things stand before
22 briefing me or, if you're prepared to brief me now on
23 the status of things, I would be happy to hear that
24 on the record. So do we need to go off the record?

25 MS. FITZGERALD: Your Honor, Kathleen

0007

1 Fitzgerald speaking. We don't need to go off the
2 record. I do think there is an agreement on the
3 table.

4 JUDGE MOSS: Okay. Fine. Well, why don't
5 you or someone else give us a status report and we'll
6 see what we might need to do in the way of further
7 process.

8 MR. DUNFEE: This Is Ross Dunfee. John
9 Shurson and I had a conversation a couple days ago
10 about this project, and I'd prefer that if John would
11 do that, if he would speak to the resolution.

12 MR. SHURSON: Certainly. This is John
13 Shurson, BNSF. Ross is correct. We had talked a
14 couple days ago about resolution, a resolution on
15 this, and BNSF will agree to the proposed new
16 crossing, as they have submitted to us, and with the
17 caveat that it will be entirely -- the costs will be
18 borne by either the county or somebody other than
19 BNSF.

20 JUDGE MOSS: Okay. Mr. Shurson, I don't
21 mean to cut you off. Well, actually, I do mean to
22 cut you off, but not rudely, simply because I don't
23 really need to know the details. I only need to know
24 that the parties have, in fact, achieved a settlement
25 agreement and that that is something they will reduce

0008

1 to writing and file with the Commission. And of
2 course, they would need to do that in coordination
3 with Mr. Thompson and Mr. Roswell with the Commission
4 Staff.

5 If that is the status of things, then we can
6 move on to any further process discussion, but I
7 really don't need to know the details. I appreciate
8 your willingness to share them.

9 MR. SHURSON: This is John Shurson again.
10 You are correct. We have reached a settlement.

11 JUDGE MOSS: Okay, good. Well, that's fine,
12 then. That being the status of affairs, what sort of
13 schedule are you looking at in terms of filing paper?

14 MR. WALKLEY: Your Honor, this is Robert
15 Walkley. Exactly what paper do you need? We know
16 that probably there needs to be an order issued by
17 the Commission authorizing the crossing.

18 JUDGE MOSS: We would need something to
19 memorialize the fact that the parties have achieved
20 an agreement. Mr. Thompson has, in the past, worked
21 with the parties on this. Perhaps he can illuminate
22 it for us.

23 MR. THOMPSON: Yeah, in cases such as this,
24 I believe the rail staff has a standard form waiver
25 of hearing that just needs to have some blanks filled

0009

1 in and then be submitted to the Commission. So we
2 can certainly supply you with one of those.

3 JUDGE MOSS: I just need some sort of paper
4 to act on, Mr. Walkley. And what I would propose,
5 then, or suggest is that if the parties waive initial
6 decision in this matter, I can take it directly to
7 the three Commissioners, who are the head of this
8 agency, and we can get a final order out fairly
9 promptly once I have a piece of paper memorializing
10 that everything has been agreed to in a way that is
11 consistent with the public interest, and we can close
12 the docket.

13 MR. WALKLEY: This is Robert Walkley. I
14 have a question for the county. Do you foresee -- we
15 do need to enter into agreements with each other the
16 standard forms of crossing agreements with each
17 other. Do you anticipate needing time before the
18 county board or anything like that for approval of
19 such an agreement or what do you foresee? And John,
20 also, I'd like to know how long it might take the
21 railroad to prepare such agreement, and then we can
22 have the agreements all done and then waive the
23 hearing and that's the end of it.

24 JUDGE MOSS: Okay. And let me suggest at
25 this point that we do go off the record. There's no

0010

1 reason to transcribe all of this discussion. I'd
2 like to give you all a few minutes to discuss this
3 and get everything worked out, and once that has been
4 achieved, we'll go back on the record and I will
5 quickly make a record and we will be able to close
6 our proceeding this morning.

7 So with that, let's be off the record. And
8 I'll just listen in so I'll know when to summarize.

9 (Discussion off the record.)

10 JUDGE MOSS: All right. Let's be back on
11 the record. The parties have had an opportunity to
12 discuss matters off the record and I have listened in
13 on that discussion and it seems that the parties have
14 agreed to a process whereby they will file
15 appropriate papers with the Commission seeking -- or
16 waiving the initial decision and memorializing the
17 fact that they have indeed reached a settlement in
18 principle.

19 And Mr. Thompson, the Commission Staff's
20 representative, will be able to work with you to
21 ensure that the proper papers are filed, and I will
22 then take the matter in hand and see to it that it's
23 processed through the Commission with an appropriate
24 order. We'll close the matter without prejudice,
25 should things go awry for some reason unanticipated

0011

1 today. Then there will be certainly an opportunity
2 for the matter to be brought back before the
3 Commission for whatever is required. So parties
4 should proceed with that sense of comfort.

5 On a matter for the transcript, if you will,
6 please, we need the spelling on two names, Mr.
7 Shurson, if you could spell your last name, please.

8 MR. SHURSON: Certainly. It's
9 S-h-u-r-s-o-n.

10 JUDGE MOSS: And Mr. Dunfree?

11 MR. DUNFEE: There's no R. I'm not free.
12 It's D-u-n-f-e-e. But I don't charge much, either.

13 JUDGE MOSS: You've had people mispronounce
14 your name before, I trust?

15 MR. DUNFEE: Most of the time it's
16 mispronounced.

17 JUDGE MOSS: I apologize.

18 MR. DUNFEE: Not a problem.

19 JUDGE MOSS: Is there any further business
20 we need to conduct this morning?

21 MR. WALKLEY: No, Your Honor.

22 MS. FITZGERALD: No, Your Honor.

23 JUDGE MOSS: All right. I'm getting a
24 negative nod from Mr. Thompson, as well. So with
25 that, I appreciate you all being here this morning,

0012

1 and it sounds to me that matters are well in hand and
2 that you will be able to proceed to close this matter
3 between yourselves, so with that, we'll be off the
4 record. Thank you.

5 MR. WALKLEY: Thank you, Your Honor.

6 MS. FITZGERALD: Thank you, Your Honor.

7 (Proceedings adjourned at 9:54 a.m.)

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