

Docket No. TR-171142 - Vol. I

**Washington State Department of Transportation v.
BNSF Railway Company**

February 12, 2018



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Page 1

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,) DOCKET TR-171142
)
)
Petitioner,)
)
vs.)
)
BNSF RAILWAY COMPANY,)
)
)
Respondent.)

PREHEARING CONFERENCE, VOLUME I
Pages 1-11
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

1:30 P.M.
February 12, 2018

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Page 2

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Page 3

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2
3 ALSO PRESENT:
4
5 STEPHEN SEMENICK
6 BETTY YOUNG
7 AHMER NIZAM
8 MEGAN MCINTYRE (via bridge line)
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Page 4

1 OLYMPIA, WASHINGTON; FEBRUARY 12, 2018
2 1:30 P.M.
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4 PROCEEDINGS
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6 JUDGE PEARSON: We will be on the record in
7 Docket TR-171142, which is a petition filed by the
8 Washington State Department of Transportation to modify
9 highway rail grade crossing active warning devices at a
10 railroad crossing in Toppenish, Washington.
11 Today is Monday, February 12th, 2018, at
12 1:30 p.m., and we are here for a prehearing conference
13 to discuss scheduling and other procedural issues.
14 My name is Rayne Pearson. I'm the
15 administrative law judge presiding over this case.
16 So let's begin by taking short appearances.
17 I know that all of the parties have entered notices of
18 appearance, so I'll just need you to state who you are
19 and who you represent and we will start with Staff.
20 MR. BEATTIE: Julian Beattie, Office of the
21 Attorney General, appearing on behalf of the Commission
22 Staff.
23 JUDGE PEARSON: Okay. And for the
24 Department of Transportation?
25 MR. LOCKWOOD: Good afternoon, Your Honor.

Page 5	Page 7
<p>1 My name is Scott Lockwood. I'm also an assistant 2 attorney general. I'm here on behalf of the Department 3 of Transportation. 4 JUDGE PEARSON: Okay. Thank you. 5 And for BNSF? 6 MS. WILLINGHAM: Yes, this is Jennifer 7 Willingham, attorney for BNSF, and I believe also I have 8 Stephen Semenick, public projects manager, as well as 9 assistant project director, Megan McIntyre. 10 JUDGE PEARSON: Okay. Thank you. 11 Is there anyone else on the bridge line who 12 wishes to enter an appearance? 13 Okay. Hearing nothing, is there any party 14 seeking to intervene? 15 Okay. Do the parties want the discovery 16 rules to be available in this case? 17 MR. BEATTIE: Commission Staff's position is 18 that the -- that's not necessary at this point. 19 JUDGE PEARSON: Okay. How do the other 20 parties feel about that? 21 MR. LOCKWOOD: Well, I don't anticipate -- 22 JUDGE PEARSON: Can you speak into the 23 microphone? 24 MR. LOCKWOOD: Well, at this point, I don't 25 anticipate the need for discovery. I nevertheless would</p>	<p>1 the following events and dates. Mediation conference on 2 Monday, March 5th, 2018. 3 JUDGE PEARSON: Oh, good. Glad you have it 4 in writing. Okay. 5 MR. BEATTIE: Direct testimony due from the 6 petitioner on Friday, April 13th; response testimony 7 from respondent, BNSF, and respondent, Commission Staff, 8 due on Friday, May 25th; rebuttal and cross-answering 9 testimony from all parties due on Monday, June 25th; 10 cross-examination, exhibits, and exhibit lists due on 11 Wednesday, July 18th; evidentiary hearing, location to 12 be designated, on Wednesday, August 1st and Thursday, 13 August 2nd, if necessary; public hearing on Wednesday, 14 August 1st in the evening; and post-hearing briefs on 15 Friday, September, Friday 7th. 16 JUDGE PEARSON: Okay. Thank you. 17 So I did have a heads-up from Mr. Beattie 18 about mediation earlier on today, and I did confirm that 19 Judge Marguerite Friedlander is available on March 5th 20 to conduct a mediation. Is everyone okay with holding 21 that here? 22 MR. LOCKWOOD: Yes. 23 JUDGE PEARSON: Okay. So we can reserve 24 probably this room and another conference room to have a 25 breakout room if we need it for that day, assuming it's</p>
Page 6	Page 8
<p>1 not opt to waive it at this point. So I would 2 appreciate if we could preserve the rules of discovery. 3 JUDGE PEARSON: Okay. Ms. Willingham? 4 MS. WILLINGHAM: I would agree with that, 5 Your Honor. We would like to preserve our right to 6 discovery. 7 JUDGE PEARSON: And you agree, Mr. Beattie, 8 with that? 9 MR. BEATTIE: Sure. 10 JUDGE PEARSON: Okay. So we will preserve 11 that at this point, and that brings us to the schedule. 12 Do the parties have a proposed schedule or do you need a 13 recess to discuss scheduling? 14 MR. BEATTIE: I think a recess would be 15 helpful. 16 JUDGE PEARSON: Okay. Why don't we do that. 17 We will go ahead and go off the record. 18 (A break was taken from 19 1:32 p.m. to 1:39 p.m.) 20 JUDGE PEARSON: So let's go back on the 21 record. And during the break, I understand that the 22 parties agreed on a procedural schedule. 23 Mr. Beattie, do you want to read that into 24 the record? 25 MR. BEATTIE: Please. Parties are proposing</p>	<p>1 available. I shouldn't speak quite yet, but we'll 2 figure something out. We'll have two rooms available. 3 MS. MCINTYRE: This is Megan McIntyre, BNSF. 4 Because we have people coming from out of state, what 5 time is that designated to be at? 6 JUDGE PEARSON: That was my next question. 7 MR. BEATTIE: Well, I guess I'd ask BNSF for 8 a proposal since it's probably most onerous on you guys 9 in terms of travel. 10 MS. WILLINGHAM: Probably afternoon would be 11 best. 12 MR. BEATTIE: Okay. And I guess my question 13 for the parties is whether we believe 1:00 in the 14 afternoon is sufficient? 15 MS. WILLINGHAM: Or even I guess -- or even 16 midmorning. 17 Megan and Stephen, would that work for you 18 like 10:00 or... 19 MR. SEMENICK: 10 o'clock would work. 20 MS. MCINTYRE: Yeah, I think 10:00 or 11:00. 21 JUDGE PEARSON: So we can designate a 10:00 22 a.m. start time; does that sound good? 23 MR. BEATTIE: 10:00 sounds good to 24 Commission Staff. 25 JUDGE PEARSON: Okay.</p>

2 (Pages 5 to 8)

1 MR. LOCKWOOD: That works for DOT as well.
 2 JUDGE PEARSON: Okay. Okay. So I will
 3 indicate the start time in the prehearing conference
 4 order, and I will also work on the room scheduling, and
 5 if it doesn't get into the prehearing conference order,
 6 I will notify the parties by email exactly where in the
 7 building it will be, okay?
 8 Okay. Well, as I noted when we were off the
 9 record, we will reserve a room here at the Commission
 10 for both days of the hearing, but it is incumbent upon
 11 the parties to find a facility in or near Toppenish to
 12 host the hearing. And if you've not secured a space and
 13 notified us of that location at least 45 days before the
 14 hearing date, we will hold the hearing here at the
 15 Commission's headquarters in Olympia. So please make
 16 sure you notify me directly when you secure a location,
 17 and then we will issue a notice confirming that.
 18 Okay. Is there anything else that we need
 19 to address while we're here today?
 20 MS. WILLINGHAM: I don't think so.
 21 JUDGE PEARSON: No?
 22 MR. BEATTIE: Nothing from Staff.
 23 JUDGE PEARSON: Okay, great. So, again, I
 24 will issue a prehearing conference order reflecting the
 25 schedule that we discussed here today, and we are

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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Tayler Garlinghouse
 Tayler Garlinghouse, CCR 3358

1 adjourned. Thank you.
 2 (Adjourned at 1:43 p.m.)
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<p style="text-align: center;">A</p> <p>a.m 8:22 ability 11:9 accurate 11:9 active 4:9 address 9:19 adjourned 10:1,2 administrative 1:13 2:2 4:15 afternoon 4:25 8:10,14 agree 6:4,7 agreed 6:22 ahead 6:17 AHMER 3:4 anticipate 5:21,25 appearance 4:18 5:12 appearances 4:16 appearing 4:21 appreciate 6:2 April 7:6 assistant 2:8,13 5:1 5:9 assuming 7:25 attorney 2:8,13 4:21 5:2,7 August 7:12,13,14 available 5:16 7:19 8:1,2 Avenue 1:21</p>	<p>break 6:18,21 breakout 7:25 bridge 2:18 3:5 5:11 briefs 7:14 brings 6:11 Buell 1:21 building 9:7</p> <p style="text-align: center;">C</p> <p>C 2:1 3:1 4:4 11:1,1 case 4:15 5:16 CCR 1:20 11:17 Certified 11:6 certify 11:8 Cleanwater 2:14 coming 8:4 Commission 1:2,18 2:4,6 4:21 5:17 7:7 8:24 9:9 Commission's 9:15 Company 1:7 2:19 conduct 7:20 conference 1:11 4:12 7:1,24 9:3,5 9:24 confirm 7:18 confirming 9:17 CONNIE 2:13 Cont 3:1 COUNTY 11:4 cross-answering 7:8 cross-examination 7:10 crossing 4:9,10</p>	<p>designated 7:12 8:5 devices 4:9 Direct 7:5 directly 9:16 director 5:9 discovery 5:15,25 6:2,6 discuss 4:13 6:13 discussed 9:25 Docket 1:4 4:7 DOT 9:1 Drive 1:18 2:4,8,14 2:20 due 7:5,8,9,10</p> <p style="text-align: center;">E</p> <p>E 2:1,1 3:1,1 4:4,4 11:1,1 earlier 7:18 email 9:6 enter 5:12 entered 4:17 evening 7:14 events 7:1 Evergreen 1:18 2:4 2:8 evidentiary 7:11 exactly 9:6 exhibit 7:10 exhibits 7:10</p> <p style="text-align: center;">F</p> <p>F 11:1 facility 9:11 February 1:16 4:1 4:11 feel 5:20 figure 8:2 filed 4:7 find 9:11 following 7:1 foregoing 11:8 Fort 2:20 Fourth 1:21 Friday 7:6,8,15,15 Friedlander 7:19</p>	<p style="text-align: center;">G</p> <p>G 4:4 Garlinghouse 1:20 11:6,17 general 2:8,13 4:21 5:2 Glad 7:3 go 6:17,17,20 good 4:25 7:3 8:22 8:23 grade 4:9 great 9:23 guess 8:7,12,15 guys 8:8</p> <p style="text-align: center;">H</p> <p>headquarters 9:15 heads-up 7:17 hearing 5:13 7:11 7:13 9:10,12,14 9:14 helpful 6:15 highway 4:9 hold 9:14 holding 7:20 Honor 4:25 6:5 host 9:12</p> <p style="text-align: center;">I</p> <p>incumbent 9:10 indicate 9:3 intervene 5:14 issue 9:17,24 issues 4:13</p>	<p>julian.beattie@u... 2:10 July 7:11 June 7:9</p> <p style="text-align: center;">K</p> <p>know 4:17 knowledge 11:9</p> <p style="text-align: center;">L</p> <p>law 1:13 2:2 4:15 let's 4:16 6:20 line 2:18 3:5 5:11 lists 7:10 LLC 1:21 location 7:11 9:13 9:16 Lockwood 2:12 4:25 5:1,21,24 7:22 9:1 Lou 2:20</p> <p style="text-align: center;">M</p> <p>manager 5:8 March 7:2,19 Marguerite 7:19 McIntyre 3:5 5:9 8:3,3,20 mediation 7:1,18 7:20 Megan 3:5 5:9 8:3 8:17 Menk 2:20 microphone 5:23 midmorning 8:16 modify 4:8 Monday 4:11 7:2,9</p>
<p style="text-align: center;">B</p> <p>back 6:20 Beattie 2:7 4:20,20 5:17 6:7,9,14,23 6:25 7:5,17 8:7,12 8:23 9:22 behalf 4:21 5:2 believe 5:7 8:13 best 8:11 11:9 BETTY 3:4 BNSF 1:7 2:17,19 5:5,7 7:7 8:3,7 Box 2:9,14</p>	<p style="text-align: center;">D</p> <p>D 4:4 date 9:14 dates 7:1 day 7:25 days 9:10,13 Department 1:4 2:11 4:8,24 5:2 designate 8:21</p>	<p>feel 5:20 figure 8:2 filed 4:7 find 9:11 following 7:1 foregoing 11:8 Fort 2:20 Fourth 1:21 Friday 7:6,8,15,15 Friedlander 7:19</p>	<p style="text-align: center;">J</p> <p>Jennifer 2:19 5:6 jennifer.willingh... 2:21 judge 1:13 2:2 4:6 4:15,23 5:4,10,19 5:22 6:3,7,10,16 6:20 7:3,16,19,23 8:6,21,25 9:2,21 9:23 Julian 2:7 4:20</p>	<p style="text-align: center;">N</p> <p>N 2:1 3:1 4:4 name 4:14 5:1 National 1:24 near 9:11 necessary 5:18 7:13 need 4:18 5:25 6:12 7:25 9:18</p>

<p>nevertheless 5:25 NIZAM 3:4 noted 9:8 notice 9:17 notices 4:17 notified 9:13 notify 9:6,16</p> <hr/> <p style="text-align: center;">O</p> <p>O 4:4 o'clock 8:19 o0o-- 4:3 Office 4:20 Oh 7:3 okay 4:23 5:4,10,13 5:15,19 6:3,10,16 7:4,16,20,23 8:12 8:25 9:2,2,7,8,18 9:23 Olympia 1:19,23 2:5,9,15 4:1 9:15 onerous 8:8 opt 6:1 order 9:4,5,24</p> <hr/> <p style="text-align: center;">P</p> <p>P 2:1,1 3:1,1 4:4 p.m 1:15 4:2,12 6:19,19 10:2 P.O 2:9,14 Pages 1:12 Park 1:18 2:4,8 parties 4:17 5:15 5:20 6:12,22,25 7:9 8:13 9:6,11 party 5:13 Pearson 1:13 2:3 4:6,14,23 5:4,10 5:19,22 6:3,7,10 6:16,20 7:3,16,23 8:6,21,25 9:2,21 9:23 people 8:4 petition 4:7 petitioner 1:5 7:6 please 6:25 9:15</p>	<p>point 5:18,24 6:1 6:11 position 5:17 post-hearing 7:14 prehearing 1:11 4:12 9:3,5,24 PRESENT 3:2 preserve 6:2,5,10 presiding 4:15 probably 7:24 8:8 8:10 procedural 4:13 6:22 project 5:9 projects 5:8 proposal 8:8 proposed 6:12 proposing 6:25 public 5:8 7:13</p> <hr/> <p style="text-align: center;">Q</p> <p>question 8:6,12 quite 8:1</p> <hr/> <p style="text-align: center;">R</p> <p>R 2:1 3:1 4:4 11:1 RAEZER 2:13 raezerc@wsdot.... 2:16 rail 4:9 railroad 4:10 Railway 1:7 2:17 2:19 Rayne 1:13 2:3 4:14 read 6:23 Realtime 1:21 rebuttal 7:8 recess 6:13,14 record 4:6 6:17,21 6:24 9:9 reflecting 9:24 REPORTED 1:20 Reporter 11:7 Reporting 1:21 represent 4:19</p>	<p>reserve 7:23 9:9 respondent 1:9 7:7 7:7 response 7:6 right 6:5 room 7:24,24,25 9:4,9 rooms 8:2 rules 5:16 6:2</p> <hr/> <p style="text-align: center;">S</p> <p>S 2:1 3:1 4:4 schedule 6:11,12,22 9:25 scheduling 4:13 6:13 9:4 Scott 2:12 5:1 scottl@atg.wa.gov 2:16 Seattle 1:22,23 secure 9:16 secured 9:12 seeking 5:14 Semenick 3:3 5:8 8:19 September 7:15 short 4:16 Shorthand 11:6 skill 11:9 sound 8:22 sounds 8:23 South 1:18 2:4,8 space 9:12 speak 5:22 8:1 Staff 2:6 4:19,22 7:7 8:24 9:22 Staff's 5:17 start 4:19 8:22 9:3 state 1:4 4:8,18 8:4 11:3,7 Stephen 3:3 5:8 8:17 sufficient 8:14 Suite 1:22 sure 6:9 9:16 SW 1:18 2:4,8,14</p>	<hr/> <p style="text-align: center;">T</p> <p>T 11:1,1 taken 6:18 Taylor 1:20 11:6,17 terms 8:9 testimony 7:5,6,9 Texas 2:20 Thank 5:4,10 7:16 10:1 think 6:14 8:20 9:20 Thursday 7:12 THURSTON 11:4 time 8:5,22 9:3 today 4:11 7:18 9:19,25 Toppenish 4:10 9:11 TR-171142 1:4 4:7 transcript 11:8 Transportation 1:2 1:4,18 2:4,11 4:8 4:24 5:3 travel 8:9 true 11:8 two 8:2</p> <hr/> <p style="text-align: center;">U</p> <p>understand 6:21 Utilities 1:2,18 2:3</p> <hr/> <p style="text-align: center;">V</p> <p>VOLUME 1:11 vs 1:6</p> <hr/> <p style="text-align: center;">W</p> <p>waive 6:1 want 5:15 6:23 warning 4:9 Washington 1:1,4 1:18,19,22 2:3,5,9 2:15 4:1,8,10 11:3 11:7 we'll 8:1,2 we're 9:19 Wednesday 7:11</p>	<p>7:12,13 Willingham 2:19 5:6,7 6:3,4 8:10 8:15 9:20 wishes 5:12 work 8:17,19 9:4 works 9:1 Worth 2:20 writing 7:4 www.buellrealti... 1:25</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <p>Yeah 8:20 YOUNG 3:4</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p style="text-align: center;">1</p> <p>1-11 1:12 1:00 8:13 1:30 1:15 4:2,12 1:32 6:19 1:39 6:19 1:43 10:2 10 8:19 10:00 8:18,20,21,23 11:00 8:20 12 1:16 4:1 12th 4:11 1300 1:18 2:4 1325 1:21 13th 7:6 1400 2:8 1840 1:22 18th 7:11 1st 7:12,14</p> <hr/> <p style="text-align: center;">2</p> <p>2018 1:16 4:1,11 7:2 206.287.9066 1:23 2500 2:20</p>
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2nd 7:13

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360.753.1620 2:15

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45 9:13

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5th 7:2,19

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7th 7:15

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