

Docket No. TR-190918 - Vol. I

Whatcom County v. Burlington Northern Sante
Fe Railway

January 30, 2020



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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION
 3 _____
 4 WHATCOM COUNTY,) DOCKET TR-190918
 5 Petitioner,)
 6 vs.)
 7 BURLINGTON NORTHERN SANTE)
 8 FE RAILWAY,)
 9 Respondent.)
 10 _____
 11 PREHEARING CONFERENCE, VOLUME I
 12 Pages 1-10
 13 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON
 14 _____
 15 January 30, 2020
 16 1:30 p.m.
 17 Washington Utilities and Transportation Commission
 18 621 Woodland Square Loop Southeast
 19 Lacey, Washington 98503
 20 REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358
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1 A P P E A R A N C E S
 2 ADMINISTRATIVE LAW JUDGE:
 3 RAYNE PEARSON
 4
 5 FOR COMMISSION STAFF:
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 8 Utilities and Transportation Division
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 10
 11 FOR WHATCOM COUNTY:
 12 (Via phone)
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 14 Whatcom County Prosecutor's Office
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 Bellingham, Washington 98225
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 15
 16
 17 ALSO PRESENT:
 18 BETTY YOUNG
 19 * * * * *
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1 LACEY, WASHINGTON; JANUARY 30, 2020
 2 1:30 P.M.
 3 --oOo--
 4 P R O C E E D I N G S
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 6 JUDGE PEARSON: Let's be on the record in
 7 Docket TR-190918, which is a petition filed by Whatcom
 8 County seeking to install median barriers at a highway
 9 rail grade crossing in Bellingham, Washington.
 10 Today is Thursday, January 30th, 2020, at
 11 1:30 p.m., and we're here for a prehearing conference to
 12 discuss scheduling and other procedural issues.
 13 My name is Rayne Pearson. I'm the
 14 administrative law judge presiding over this case.
 15 So let's begin by taking short appearances
 16 beginning with Commission Staff.
 17 MR. ROBERSON: Good afternoon. My name is
 18 Jeff Roberson, R-o-b-e-r-s-o-n. I'm an assistant
 19 attorney general representing Staff. My contact
 20 information is filed in the docket in a notice of
 21 appearance. And with me at counsel table is Ms. Betty
 22 Young who's the Staff witness in this matter.
 23 JUDGE PEARSON: Okay. And for Whatcom
 24 County, Mr. Quinn?
 25 MR. QUINN: Sure. This is Christopher

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1 Quinn, Civil Deputy Prosecuting Attorney, again,
 2 appearing on behalf of Whatcom County in this case. Did
 3 you need contact information, Judge, on the record at
 4 this time?
 5 JUDGE PEARSON: It's in your -- it's in your
 6 notice of appearance, so that's fine.
 7 MR. QUINN: That's wonderful, okay. And I'm
 8 appearing alone at this time.
 9 JUDGE PEARSON: Okay. Thank you.
 10 And is there anyone on the conference line
 11 representing BNSF?
 12 Okay. Hearing nothing, is there anyone else
 13 on the conference line who wishes to enter an
 14 appearance?
 15 Okay. Hearing nothing, as we discussed
 16 before we came on the record, what we'll do now is take
 17 a 15-minute recess to allow BNSF time to call in. We'll
 18 reconvene at 1:45 at which time I will entertain any
 19 motions for default if BNSF has failed to appear. So we
 20 are in recess.
 21 MR. QUINN: Thank you, Judge.
 22 (Recess taken from 1:32 p.m.
 23 until 1:46 p.m.)
 24 JUDGE PEARSON: Let's be back on the record.
 25 It's now 1:46 p.m. We just took a 15-minute recess to

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1 allow BNSF time to appear. So at this time, I will ask
 2 if there is anyone representing BNSF on the conference
 3 line because no one has entered the room.
 4 Okay. Hearing nothing, I will entertain
 5 motions for default.
 6 MR. QUINN: Yes, Your Honor. Chris Quinn,
 7 Whatcom County. And I am going to make a motion at this
 8 time pursuant to Washington Administrative Code
 9 480-07-450, which I believe would apply in this
 10 situation. The Commission under these circumstances has
 11 the authority, the administrative judge has the
 12 authority to dismiss a party or find a party in default
 13 for failing to appear at the time and place set for
 14 hearing.
 15 In this case, it's my understanding from UTC
 16 that the railroad, BNSF, was properly served with notice
 17 of today's prehearing. I believe their presence is --
 18 was required. I'll also note that from my review of the
 19 record, I don't believe any legal counsel entered an
 20 appearance on behalf of BNSF, and, again, I -- I don't
 21 believe that would be grounds again for default in this
 22 case. But seeing that nobody has appeared on behalf of
 23 the railroad, I am going to ask the Court to consider
 24 entering a default and granting -- granting in this case
 25 Whatcom County's previously filed petition to install

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1 median barriers at the Cove Road railroad crossing,
 2 USDOT Site No. 0847954.
 3 I believe that the petition that Whatcom
 4 County has previously filed with the UTC required to
 5 file -- let me see the date here. Sorry, I don't have
 6 the date in front of me, but I believe it has been -- I
 7 believe it was filed in October of 2019. I believe
 8 that's properly before Your Honor at this time and can
 9 be considered for purposes of the request for default
 10 and granting of the County's petition at this time. So
 11 I'll take any questions the Court may have.
 12 JUDGE PEARSON: Okay. Thank you.
 13 I'll also note for the record that the
 14 notice of prehearing conference did put BNSF on notice
 15 that it could be found in default if it failed to appear
 16 today.
 17 And I have some questions -- well, my first
 18 question for Staff is whether Staff supports the
 19 County's motion.
 20 MR. ROBERSON: Staff does support the
 21 motion, Your Honor.
 22 JUDGE PEARSON: Okay. And then my second
 23 question for Staff, and this might be a question that
 24 Ms. Young can answer, is whether Staff is prepared to
 25 grant the petition at this time or whether Staff would

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1 prefer to follow the normal procedure and enter an ex
 2 parte order after the fact. So I could grant the motion
 3 for default and then let Staff follow its normal process
 4 with the ex parte order granting the petition, or if
 5 you'd like me to just grant it in -- in the order along
 6 with the default.
 7 MS. YOUNG: I'm fine with you just issuing
 8 an order granting the petition.
 9 JUDGE PEARSON: Okay.
 10 MS. YOUNG: I'm just not sure if there's
 11 some complication with a default order and then being
 12 able to ask -- BNSF being able to challenge that and ask
 13 to reopen so --
 14 JUDGE PEARSON: That's true. You're right,
 15 because of the -- the -- the timing, it might be better
 16 to grant the motion for default, which I'm going to do,
 17 Mr. Quinn, and then allow their -- their ten days to
 18 run, and then once that runs --
 19 MR. QUINN: Sounds good.
 20 JUDGE PEARSON: Sorry, go ahead.
 21 MR. QUINN: No, I'm sorry. That -- that
 22 sounds good, Your Honor, and if -- I modify my request
 23 for just that, enter the default at this time.
 24 JUDGE PEARSON: Okay.
 25 MR. QUINN: Yeah.

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1 JUDGE PEARSON: And then we'll put the
 2 petition through the normal channels like we usually do
 3 with an ex parte or a delegated order?
 4 MR. QUINN: Right.
 5 JUDGE PEARSON: Okay. All right. Well,
 6 then your motion is -- is granted.
 7 MR. QUINN: Thank you, Your Honor. And I
 8 just wanted to clarify, I spoke off the record with --
 9 with counsel for the Commission, but will that order
 10 be -- that order I assume will be prepared by the UTC
 11 and -- and forwarded to BNSF?
 12 JUDGE PEARSON: Do you mean the default
 13 order or the order --
 14 MR. QUINN: The default.
 15 JUDGE PEARSON: -- granting the petition?
 16 Yes, both will -- both will --
 17 MR. QUINN: The default order.
 18 JUDGE PEARSON: Yes.
 19 MR. QUINN: Wonderful.
 20 JUDGE PEARSON: Yes.
 21 MR. QUINN: Thank you.
 22 JUDGE PEARSON: Okay. Is there anything
 23 further that we need to discuss?
 24 MR. ROBERSON: Not from Staff's --
 25 MR. QUINN: Not from Whatcom County.

1 JUDGE PEARSON: Okay. Thank you all for
 2 coming here today, and we are adjourned.
 3 MR. QUINN: Thank you so much.
 4 (Adjourned at 1:50 p.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.
 10
 11
 12 _____
 13 Tayler Garlinghouse, CCR 3358
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