Docket No. TR-190918 - Vol. I

Whatcom County v. Burlington Northern Sante Fe Railway

January 30, 2020



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

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1 BEFORE THE WASHINGTON 2 UTILITIES AND TRANSPORTATION COMMISSION 3 "		CKELINO. TR-190916 - VOI. I		1/30/2020
UTILITIES AND TRANSPORTATION COMMISSION WHATCOM COUNTY.) DOCKET TR-199918 BERLINGTON NORTHERN SANTE) RESPONDER.) RESPONDER.) REPORTED BY. TAVLER GARLINGHOUSE, CCR 3358 BURINGTON Listes and Transportation Commission County seeking to install median barriers at a highway rail grade crossing in Bellingham, Washington. Today is Thursday, January 30th, 2020, at 11.30 p.m. Today is Thursday, January 30th, 2020, at 12. Pages 1-10 January 30, 2020 13. ADMINISTRATIVE LAW JUDGE RAYNE PEARSON 14. Washington Listes and Transportation Commission 15. January 30, 2020 16. 1:30 p.m. 17. Washington Listes and Transportation Commission 18. So let's begin by taking short appearances 19. Begin Robertson, Ro-be-re-ben. I'm an assistant 19. Washington Lister and Transportation Commission 19. Washington Lister GARLINGHOUSE, CCR 3358 19. Buyell Bealine Reporting LLC 20. South Washington 18503 19. Washington Staff 19. Washington Lister GARLINGHOUSE, CCR 3358 20. Begin Lister GARLINGHOUSE, CCR 3358 21. A P P E A R A N C E S 22. ADMINISTRATIVE LAW JUDGE: 23. JUDGE PEARSON: Ckay, And for Whistoom 24. County, Mr. Quilling and Jarrier GARLINGHOUSE, CCR 3358 25. JUDGE PEARSON: Ckay, And for Whistoom 26. Control of Appearance, So that's fine. 27. JUDGE PEARSON: It's in your -it's in your 28. In County Washington Staff 29. JUDGE PEARSON: It's in your -it's in your 29. JUDGE PEARSON: It's in your -it's in your 29. Okay, Hearing nothing, as we discussed 29. JUDGE PEARSON: It'	1	Page 1	1	Page 3
4 WHATCOM COUNTY. DOCKET TR-190918 3000- 7 BURLINGTON NORTHERN SANTE 5 JUDGE PEARSON: Let's be on the record in PROCEED IN G.S 7 BURLINGTON NORTHERN SANTE 7 Docket TR-190918, which is a petition filed by Whatcom or Docket TR-190918, which is a petition filed by Whatcom or Today is Thursday, January 300, 2020 at 11 30 p.m. and we're here for a prehearing conference to 12 discuss scheduling and other procedural issues. 13 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON				
4 WHATCOM COUNTY.) DOCKETTR-190918 4 PROCEEDINGS 5 Ve. 5 Ve. 6 JUDGE PEARSON: Let's be on the record in Petitioner. 7 Docket TR-190918, which is a petition filed by Whatcom Expansion (1) PREHARING CONFERENCE, VOLUME I 1 Pages 1-10		CHEFFEC AND HONOR ON ATTOM COMMISSION		
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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 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON 14 January 30, 2020 15 1:30 p.m. 16 1:30 p.m. 17 Washington Utilities and Transportation Commission 18 EPORTED BY: TAYLER GARLINGHOUSE, CCR 3358 19 ENDER REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358 10 ENDERTED BY: TAYLER GARLINGHOUSE, CCR 3358 11 John State	· ·		-	,
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Pages 1-10 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON ADMINISTRATIVE LAW JUDGE RAYNE PEARSON 14 January 30, 2020 15 January 30, 2020 16 130 p.m. Washington Utilities and Transportation Commission 62 l Woodland Square Loop Southeast Lacey, Washington 98503 REPORTED BY: TAYLER GARLINCHOUSE, CCR 3358 Lacey, Washington 98504 REPORTED BY: TAYLER GARLINCHOUSE, CCR 3358 Lacey Washington 98101 REPORTED BY: TAYLER GARLINCHOUSE, CCR 3358 Lacey Washington 98101 REPORTED BY: TAYLER GARLINCHOUSE, CCR 3358 Lacey Washington 98101 REPORTED BY: TAYLER GARLINCHOUSE, CCR 3358 REPORTED BY: TA		PREHEARING CONFERENCE, VOLUME I		
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January 30, 2020 13 January 30, 2020 14 January 30, 2020 15 January 30, 2020 16 1:30 p.m. 17 Washington Utilities and Transportation Commission 18 Jeff Roberson, Ro-b-er-s-on-lim an assistant 19 January 30, 2020 10 Reported BY: TAYLER GARLINGHOUSE, CCR 3358 10 Reported BY: TAYLER GARLINGHOUSE, CCR 3358 11 January 30, 2020 12 Reported BY: TAYLER GARLINGHOUSE, CCR 3358 13 Jeff Roberson, Ro-b-er-s-on-lim an assistant 14 January 30, 2020 15 MR. ROBERSON: Good afternoon. My name is 16 beginning with Commission Staff. 17 MR. ROBERSON: Good afternoon. My name is 18 Jeff Roberson, Ro-b-er-s-on-lim 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 Page 2 1 A P P E A R A N C E S 24 ADMINISTRATIVE LAW JUDGE: 25 ADMINISTRATIVE LAW JUDGE: 26 JUDGE PEARSON: It's in your - it's in your 27 JUDGE PEARSON: It's in your - it's in your 28 JUDGE PEARSON: It's in your - it's in your 29 JUDGE PEARSON: It's in your - it's in your 20 JUDGE PEARSON: Okay. Thank you. 20 JUDGE PEARSON: Okay. Thank you. 21 A P P E A R A N C E S 22 JUDGE PEARSON: Okay. Thank you. 23 JUDGE PEARSON: Okay. Thank you. 24 this time? 25 JUDGE PEARSON: Okay. Thank you. 26 JUDGE PEARSON: Okay. Thank you. 27 JUDGE PEARSON: Okay. Thank you. 28 JUDGE PEARSON: Okay. Thank you. 29 JUDGE PEARSON: Okay. Thank you. 30 JUDGE PEARSON: Okay. Thank you. 31 on the conference line who wishes to enter an 32 JUDGE PEARSON: Okay. Hearing nothing, as we discussed 33 before we came on the record, what we'll do now is take 34 Shimilar thanks and the record of default if BNSF ime to call in. We'll 29 JUDGE PEARSON: Okay. Thank you, Judge. 20 JUDGE PEARSON: Okay. Thank you, Judge. 21 MR. QUINN: Thank you, Judge.				·
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Washington Utilities and Transportation Commission 6 2 Woodland Square Loop Southeast 18 Jeff Roberson, Ro-be-t-s-o-be-Two na 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 (200) 846-6889 National 25 www.buellrealtime.com 26 A P P E A R A N C E S 27 ADMINISTRATIVE LAW JUDGE: 28 A STATIVE LAW JUDGE: 39 RAYNE PEARSON 40 JEFF ROBERSON 41 This is Christopher 41 A P P E A R A N C E S 42 ADMINISTRATIVE LAW JUDGE: 43 RAYNE PEARSON 44 This time? 45 FOR COMMISSION STAFF: 46 JEFF ROBERSON 47 JUGGE PEARSON: It's in your it's in your 48 JUDGE PEARSON: It's in your it's in your 49 JUDGE PEARSON: Okay. Thank you. 40 JUGGE PEARSON: Okay. And I'm 40 JUGGE PEARSON: Okay. And I'm 41 ALSO PRESENT: 41 ALSO PRESENT: 42 ALSO PRESENT: 43 BETTY YOUNG 44 Staff with me at counsel table is Ms. Betty 45 JUGGE PEARSON: Okay. And for Whatcom 46 JULIUS TRATIVE LAW JUDGE: 47 ALSO PRESENT: 48 BETTY YOUNG 49 JUGGE PEARSON: Okay. Thank you. 49 JUGGE PEARSON: Okay. Thank you. 40 And is there anyone on the conference line 49 JUGGE PEARSON: Okay. Thank you. 40 And is there anyone on the conference line 40 JUGGE PEARSON: Okay. Thank you. 41 ALSO PRESENT: 41 ALSO PRESENT: 42 ALSO PRESENT: 43 ALSO PRESENT: 44 BETTY YOUNG 45 JUGGE PEARSON: Okay. Thank you, Judge. 45 JUGGE PEARSON: Okay. Thank you, Judge. 46 JUGGE PEARSON: Okay. Thank you, Judge. 47 ALSO PRESENT: 48 JUGGE PEARSON: Okay. Thank you, Judge. 49 JUGGE PEARSON: Okay. Thank you, Judge. 40 JUGGE PEARSON: Okay. Thank you, Judge. 41 JUGGE PEARSON: Okay. Thank you, Judge. 42 JUGGE PEARSON: Okay. Thank you, Judge. 43 JUGGE PEARSON: Okay. Thank you, Judge. 44 JUGGE PEARSON: Okay. Thank you, Judge. 45 JUGGE PEARSON: Okay. Thank you, Judge. 46 JUGGE PEARSON: Okay. Thank you, Judge. 47 ALSO PRESENT: 48 JUGGE PEARSON: Okay. Thank you, Judge. 49 JUGGE PEARSON: Okay. Thank you, Judge.		·		
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Page 2 A P P E A R A N C E S ADMINISTRATIVE LAW JUDGE: RAYNE PEARSON RAYNE PEARSON RAYNE PEARSON SIGNIFICATION OF THE Attorney General Utilities and Transportation Division Polymay ayasington 98504 Signification of the Attorney General Utilities and Transportation Division Polymay ayasington 98504 Signification of Country: FOR WHATCOM COUNTY: Civia phone) CHRISTOPHER QUINN CHARISTOPHER QUINN CHARISTOPHER QUINN CHARISTOPHER OLINN CHARICTOPHER OLINN CHARISTOPHER O		(360) 534-9066 Olympia	23	JUDGE PEARSON: Okay. And for Whatcom
Page 2 A P P E A R A N C E S ADMINISTRATIVE LAW JUDGE: RAYNE PEARSON RAYNE PEARSON FOR COMMISSION STAFF: JUDGE PEARSON: It's in your it's in your ontice of appearance, so that's fine. JEFF ROBERSON MR. QUINN: That's wonderful, okay. And I'm appearing alone at this time. MR. QUINN: That's wonderful, okay. And I'm appearing alone at this time. JUDGE PEARSON: Okay. Thank you. MR. QUINN: That's wonderful, okay. And I'm appearing alone at this time. JUDGE PEARSON: Okay. Thank you. And is there anyone on the conference line representing BNSF? Via phone) HRISTOPHER QUINN Whatcom County Prosecutor's Office and Legingham. Washington 98225 Cquinn@co.whatcom.wa.us ALSO PRESENT: BETTY YOUNG ***** BETTY YOUNG ***** MR. QUINN: Sure. This is Christopher Page 4 Quinn, Civil Deputy Prosecuting Attorney, again, appearing on behalf of Whatcom County in this case. Did Whatcom Centry of the Attorney date of the record at this time? DUDGE PEARSON: It's in your it's in your notice of appearance, so that's fine. MR. QUINN: That's wonderful, okay. And I'm appearing alone at this time. DUDGE PEARSON: Okay. Thank you. And is there anyone on the conference line representing BNSF? Okay. Hearing nothing, is there anyone else ALSO PRESENT: ALSO PRESENT: BETTY YOUNG ***** BETTY YOUNG ***** MR. QUINN: Thank you, Judge. ***** MR. QUINN: Thank you, Judge. MR. QUINN: Thank you, Judge. MR. QUINN: Thank you, Judge.			24	County, Mr. Quinn?
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RAYNE PEARSON 4	1	APPEARANCES	1	Quinn, Civil Deputy Prosecuting Attorney, again,
4 this time? 5 FOR COMMISSION STAFF: 6 JEFF ROBERSON Office of the Attorney General Utilities and Transportation Division 7 Utilities and Transportation Division 8 Olympia Washington 98504 9 JEFF ROBERSON Office of the Attorney General Utilities and Transportation Division 8 Olympia Washington 98504 9 JUDGE PEARSON: It's in your it's in your ontice of appearance, so that's fine. 7 MR. QUINN: That's wonderful, okay. And I'm 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 appearance? 14 appearance? 15 Okay. Hearing nothing, as we discussed 16 before we came on the record, what we'll do now is take 17 ALSO PRESENT: 18 BETTY YOUNG 19 ***** 10 DAW. Hearing nothing, as we discussed 11 before we came on the record, what we'll do now is take 12 a 15-minute recess to allow BNSF time to call in. We'll 13 reconvene at 1:45 at which time I will entertain any 14 motions for default if BNSF has failed to appear. So we 15 are in recess. 16 MR. QUINN: Thank you, Judge. 17 ALSO PRESENT: 18 BETTY YOUNG 19 *****	2		2	
5 FOR COMMISSION STAFF: 6 JEFF ROBERSON Coffice of the Attorney General Total Utilities and Transportation Division P.O. Box 40128 Solvmpia, Washington 98504 Signification Division POR WHATCOM COUNTY: 12 (Via phone) 13 Whatcom County Prosecutor's Office 14 Bellingham, Washington 98225 15 Cquinn@co.whatcom.wa.us 16 CALSO PRESENT: 17 ALSO PRESENT: 18 BETTY YOUNG 19 IFF ROBERSON 19 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 ALSO PRESENT: 18 BETTY YOUNG 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.	3	RAYNE PEARSON	3	you need contact information, Judge, on the record at
6 JEFF ROBERSON Office of the Attorney General Vilities and Transportation Division 8 Olympia, Washington 98504 9 jeff.roberson@utc.wa.gov 10 11 FOR WHATCOM COUNTY: 12 (Via phone) 13 Whatcom County Prosecutor's Office 14 Belingham, Washington 98225 15 Cquinn@co.whatcom.wa.us 16 17 ALSO PRESENT: 18 BETTY YOUNG 19 Indicate the Attorney General 20 Indicate of the Attorney General 21 Indicate the Attorney General 22 (Recess taken from 1:32 p.m.	4		4	this time?
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17 ALSO PRESENT: 18 BETTY YOUNG 19 ***** 20 are in recess. 21 MR. QUINN: Thank you, Judge. 22 (Recess taken from 1:32 p.m.	12	(Via phone) CHRISTOPHER OLIINN	12	
17 ALSO PRESENT: 18 BETTY YOUNG 19 ***** 20 are in recess. 21 MR. QUINN: Thank you, Judge. 22 (Recess taken from 1:32 p.m.	13	Whatcom County Prosecutor's Office	13	on the conference line who wishes to enter an
17 ALSO PRESENT: 18 BETTY YOUNG 19 ***** 20 are in recess. 21 MR. QUINN: Thank you, Judge. 22 (Recess taken from 1:32 p.m.	14	Bellingham, Washington 98225	14	appearance?
17 ALSO PRESENT: 18 BETTY YOUNG 19 ***** 20 are in recess. 21 MR. QUINN: Thank you, Judge. 22 (Recess taken from 1:32 p.m.	15	cquinn@co.whatcom.wa.us	15	Okay. Hearing nothing, as we discussed
18 BETTY YOUNG 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.	16		16	before we came on the record, what we'll do now is take
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.	17	ALSO PRESENT:	17	a 15-minute recess to allow BNSF time to call in. We'll
20 20 are in recess. 21 21 MR. QUINN: Thank you, Judge. 22 (Recess taken from 1:32 p.m.	18	BETTY YOUNG	18	reconvene at 1:45 at which time I will entertain any
20 20 are in recess. 21 21 MR. QUINN: Thank you, Judge. 22 (Recess taken from 1:32 p.m.	19	* * * *	19	motions for default if BNSF has failed to appear. So we
22 (Recess taken from 1:32 p.m.	20		20	are in recess.
	21		21	MR. QUINN: Thank you, Judge.
\mathbf{I}	22		22	(Recess taken from 1:32 p.m.
23 until 1:46 p.m.)	1			
24 JUDGE PEARSON: Let's be back on the record.	23		23	until 1:46 p.m.)
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	1	prefer to follow the normal procedure and enter an ex
2	if there is anyone representing BNSF on the conference	2	parte order after the fact. So I could grant the motion
3	line because no one has entered the room.	3	for default and then let Staff follow its normal process
4	Okay. Hearing nothing, I will entertain	4	with the ex parte order granting the petition, or if
5	motions for default.	5	you'd like me to just grant it in in the order along
6	MR. QUINN: Yes, Your Honor. Chris Quinn,	6	with the default.
7	Whatcom County. And I am going to make a motion at this	7	MS. YOUNG: I'm fine with you just issuing
8	time pursuant to Washington Administrative Code	8	an order granting the petition.
9	480-07-450, which I believe would apply in this	9	JUDGE PEARSON: Okay.
10	situation. The Commission under these circumstances has	10	MS. YOUNG: I'm just not sure if there's
11	the authority, the administrative judge has the	11	some complication with a default order and then being
12	authority to dismiss a party or find a party in default	12	able to ask BNSF being able to challenge that and ask
13	for failing to appear at the time and place set for	13	to reopen so
14	hearing.	14	JUDGE PEARSON: That's true. You're right,
15	In this case, it's my understanding from UTC	15	because of the the the timing, it might be better
16	that the railroad, BNSF, was properly served with notice	16	to grant the motion for default, which I'm going to do,
17	of today's prehearing. I believe their presence is	17	Mr. Quinn, and then allow their their ten days to
18	was required. I'll also note that from my review of the	18	run, and then once that runs
19	record, I don't believe any legal counsel entered an	19	MR. QUINN: Sounds good.
20	appearance on behalf of BNSF, and, again, I I don't	20	JUDGE PEARSON: Sorry, go ahead.
21	believe that would be grounds again for default in this	21	MR. QUINN: No, I'm sorry. That that
22	case. But seeing that nobody has appeared on behalf of	22	sounds good, Your Honor, and if I modify my request
23	the railroad, I am going to ask the Court to consider	23	for just that, enter the default at this time.
24	entering a default and granting granting in this case	24	JUDGE PEARSON: Okay.
25	Whatcom County's previously filed petition to install	25	MR. QUINN: Yeah.
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1	median barriers at the Cove Road railroad crossing,	1	JUDGE PEARSON: And then we'll put the
2	USDOT Site No. 0847954.	2	petition through the normal channels like we usually do
3	I believe that the petition that Whatcom	3	with an ex parte or a delegated order?
4	County has previously filed with the UTC required to	4	MR. QUINN: Right.
5	file let me see the date here. Sorry, I don't have	5	JUDGE PEARSON: Okay. All right. Well,
6	the date in front of me, but I believe it has been I	6	then your motion is is granted.
7	believe it was filed in October of 2019. I believe	7	MR. QUINN: Thank you, Your Honor. And I
8	that's properly before Your Honor at this time and can	8	just wanted to clarify, I spoke off the record with
9	be considered for purposes of the request for default	9	with counsel for the Commission, but will that order
10	and granting of the County's petition at this time. So	10	be that order I assume will be prepared by the UTC
11	I'll take any questions the Court may have.	11	and and forwarded to BNSF?
12	JUDGE PEARSON: Okay. Thank you.	12	JUDGE PEARSON: Do you mean the default
13	I'll also note for the record that the	13	order or the order
14	notice of prehearing conference did put BNSF on notice	14	MR. QUINN: The default.
15	that it could be found in default if it failed to appear	15	JUDGE PEARSON: granting the petition?
16	today.	16	Yes, both will both will
17	And I have some questions well, my first	17	MR. QUINN: The default order.
18	question for Staff is whether Staff supports the	18	JUDGE PEARSON: Yes.
19	County's motion.	19	MR. QUINN: Wonderful.
20	MR. ROBERSON: Staff does support the	20	JUDGE PEARSON: Yes.
21	motion, Your Honor.	21	MR. QUINN: Thank you.
22	JUDGE PEARSON: Okay. And then my second	22	JUDGE PEARSON: Okay. Is there anything
23	question for Staff, and this might be a question that	23	further that we need to discuss?
24	Ms. Young can answer, is whether Staff is prepared to	24	MR. ROBERSON: Not from Staff's
25	grant the petition at this time or whether Staff would	25	MR. QUINN: Not from Whatcom County.

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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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	Page 10	
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	T. I. O. II. I	
13	Tayler Garlinghouse, CCR 3358	
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