

Docket No. TR-180466 - Vol. I

**Whatcom County v. Burlington Northern Sante Fe
Railway**

August 2, 2018



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WHATCOM COUNTY,)	
)	
)	
Petitioner,)	
)	
vs.)	Docket No. TR-180466
)	
BURLINGTON NORTHERN SANTE FE)	
RAILWAY,)	
)	
Respondent.)	
)	

Sitting for and as the
WASHINGTON UTILITIES and TRANSPORTATION COMMISSION
are JUDGE LAURA CHARTOFF and JUDGE RAYNE PEARSON
PREHEARING CONFERENCE - VOLUME I

AUGUST 2, 2018

9:30 A.M.

PAGES 1-11

RICHARD HEMSTAD BUILDING
SECOND FLOOR
COMMISSION'S HEARING ROOM
1300 S. EVERGREEN PARK DRIVE SW
OLYMPIA, WASHINGTON

REPORTED BY: KANDI CLARK, CCR #3008, CSR

1 APPEARANCES

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14 FOR THE RESPONDENT, BNSF RAILROAD:
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(Appearing by telephone.)

17
18 ALSO PRESENT:
19 BETTY YOUNG
STEPHEN SEMENICK
20 JIM KARCHER

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1 (Proceedings begin at 9:30 a.m.)

2

3 JUDGE PEARSON: This is Docket TR-180466, which
4 is a petition filed by Whatcom County to install median
5 barriers at a highway - rail grade crossing at Cliffside
6 Drive in Bellingham, Washington.

7 Today is Thursday, August 2nd, 2018, at 9:30 a.m.

8 And we are here for a prehearing conference to
9 discuss scheduling and other procedural issues.

10 My name is Rayne Pearson. I'm an administrative
11 law judge with the Utilities and Transportation
12 Commission. And seated to my left is Judge Laura
13 Chartoff, who is co-presiding with me in this case.

14 So let's begin by taking appearances. I'll start
15 with staff, who can enter a short appearance. And then I
16 will take full appearances from the attorneys on the
17 phone.

18 So Mr. Roberson. Go ahead.

19 MR. ROBERSON: Good morning. My name is Jeff
20 Roberson, R-O-B-E-R-S-O-N. I'm the Assistant Attorney
21 General representing Commission Staff.

22 JUDGE PEARSON: And Ms. Willingham, if you could
23 enter a full appearance, stating your full name, spelling
24 your last name, and then providing your address, phone
25 number, and email address.

1 MS. WILLINGHAM: Yes, ma'am. This is Jennifer
2 Willingham, last name, W-I-L-L-I-N-G-H-A-M, attorney for
3 BNSF Railroad. My address is 2500 Lou Menk, that is
4 L-O-U, M-E-N-K, Drive, and then capital A, capital O,
5 capital B-3, Fort Worth, Texas, 76131. And I also have
6 Stephen Semenick with BNSF on the phone, as well. And
7 that last name is S-E-M-E-N-I-C-K, my email address is
8 jennifer.willingham, W-I-L-L-I-N-G-H-A-M, @bnsf.com.

9 MS. PEARSON: Thank you, Ms. Willingham.

10 And, Mr. Quinn, if you would similarly enter a
11 full appearance, stating your full name, spelling your
12 last name, and providing your address, telephone number,
13 and email address for the record.

14 MR. QUINN: Yes, ma'am.

15 Good morning. Christopher Quinn, Civil Deputy
16 Prosecuting Attorney appearing for Whatcom County,
17 representing the petitioner in this case. My address is
18 the Whatcom County Courthouse, 311 Grand Avenue, that's
19 Suite 201, in Bellingham, Washington, 98225. My email
20 address is letter C-Q-U-I-N-N @ C-O dot W-H-A-T-C-O-M dot
21 W-A dot U-S. My phone number is (360) 778-5710. I'm also
22 present at this time with Jim Karcher,
23 engineer with Whatcom County Public Works.

24 MS. PEARSON: Okay. Thank you.

25 Is there anyone else on the bridge line who

1 wishes to enter an appearance?

2 (No response.)

3 MS. PEARSON: Okay. Hearing nothing.

4 Is there any party on the bridge line seeking
5 intervention?

6 (No response.)

7 MS. PEARSON: Okay. Again hearing nothing.

8 We'll move on.

9 Do the parties want the discovery rules to be
10 available in this case?

11 MS. WILLINGHAM: Yes, your Honor.

12 MS. PEARSON: Okay.

13 MR. QUINN: Yes, from Whatcom County also, your
14 Honor.

15 MS. PEARSON: Okay. Then we will make those
16 available. Which brings us to the schedule.

17 Mr. Roberson, have the parties had a chance to
18 come to an agreed schedule?

19 MR. ROBERSON: Yes, your Honor. The parties have
20 agreed essentially on a schedule, although there's one
21 caveat, which is the parties are still trying to determine
22 when an appropriate date for a mediation or settlement
23 discussion would be.

24 MS. PEARSON: Okay.

25 MR. ROBERSON: But as to the agreed schedule,

1 direct testimony by Whatcom County would be due
2 November 2nd, 2018.

3 Response testimony from BNSF and staff would be
4 due December 14th, 2018.

5 Cross answering or rebuttal testimony would be
6 due January 11, 2019.

7 MS. PEARSON: Okay. Hold on one second. You
8 said January 11th?

9 MR. ROBERSON: Yes, your Honor.

10 MS. PEARSON: Okay. Okay.

11 MR. ROBERSON: Cross exhibits and the exhibit
12 list would be due February 15th, 2019.

13 MS. PEARSON: Sorry. Say that date again.

14 MR. ROBERSON: February 15th, 2019.

15 MS. PEARSON: Okay. Discovery cutoff?

16 MR. ROBERSON: That we didn't decide.

17 MS. PEARSON: Okay. What about a hearing date?

18 MR. ROBERSON: March 5th, 2019.

19 MS. PEARSON: Okay. And simultaneous
20 post-hearing briefs?

21 MR. ROBERSON: Public comment hearing would also
22 be on March 5th, 2019.

23 MS. PEARSON: Right.

24 MR. ROBERSON: And then simultaneous post-hearing
25 briefs would be due April 5, 2019.

1 And I also spoke with Mr. Quinn. And he's agreed
2 to provide a hearing room in Whatcom County for the
3 hearing.

4 MS. PEARSON: Okay. So the only issue is -- or
5 discovery cutoff is typically two weeks before the
6 hearing?

7 MR. ROBERSON: Typically.

8 MS. PEARSON: Okay. So let's just pick a date?
9 As you're aware the procedural rules require a settlement
10 date. And so, I'd like you to pick one now; otherwise,
11 I'm going to have to say in the order that you have three
12 business days to do so. And then we'll have to file
13 paperwork. And I'll have to issue a notice. And it's a
14 lot of extra work. So if we need to take a recess --

15 MR. QUINN: Whatcom County is open to a date that
16 would be acceptable to BNSF.

17 MS. WILLINGHAM: Your Honor, do you want us to go
18 off the record and we can --

19 JUDGE PEARSON: Sure. Why don't we take a
20 recess. I'll leave the room. And the parties can
21 discuss.

22 And then, Mr. Roberson, if you just want to let
23 me know. And this can be, you know, settlement or
24 mediation; it's up to you. The rule requires a settlement
25 hearing so -- or settlement conference. So it's up to you

1 how you want to handle that. So we will go ahead and go
2 off the record. And while we're off the record, if you
3 could also get a date for the discovery cutoff so that
4 when we come back, we can put that into the schedule, as
5 well.

6 MS. WILLINGHAM: Absolutely.

7 JUDGE PEARSON: And I will be in my office.

8 (Recessed from 9:35 a.m.
9 until 9:40 a.m.)

10 JUDGE PEARSON: Okay. So let's be back on the
11 record following a short recess.

12 And, Mr. Roberson, I understand that the parties
13 have agreed on a settlement conference date.

14 MR. ROBERSON: They have. October 24th, 2018.

15 JUDGE PEARSON: Okay. And at this time parties
16 are not requesting mediation?

17 MR. ROBERSON: Not at this time.

18 JUDGE PEARSON: Okay. But you'll let me know if
19 that changes so we can assign another judge to do the
20 mediation?

21 MR. ROBERSON: Yes, your Honor.

22 JUDGE PEARSON: Okay. What about the discovery
23 cutoff date?

24 MR. ROBERSON: February 12th, 2019.

25 JUDGE PEARSON: Okay. Then -- so, Mr. Quinn, do

1 you also have the room reserved up there in Bellingham for
2 the hearing?

3 MR. QUINN: I do not. I believe we wanted to
4 wait to hear on the court's preference, parties'
5 preference. But we will have it available.

6 JUDGE PEARSON: Okay. So this is the way it's
7 going to work: If you can confirm with me the exact
8 location and address and secure that, and email me and the
9 parties later today, then I can reflect that in the
10 prehearing conference order; otherwise, I will have to
11 schedule it here in Olympia and then again issue another
12 notice later down the road. So my preference is that if
13 you could make the reservation and let me know later
14 today, then we can lock that down.

15 MR. QUINN: Of course. I will have that to you
16 before noon today.

17 JUDGE PEARSON: That's great. Okay. And will
18 that be at the Whatcom County Courthouse?

19 MR. QUINN: The courthouse, your Honor.

20 JUDGE PEARSON: Okay. Great. Is there anything
21 else that we need to address while we're here today?

22 (No response.)

23 JUDGE PEARSON: No?

24 MR. QUINN: Not from Whatcom County, your Honor.

25 MR. ROBERSON: Not from staff's perspective.

1 MS. WILLINGHAM: Not from BNSF, your Honor.

2 JUDGE PEARSON: Okay. Thank you. So I will
3 issue an order reflecting the schedule that we discussed
4 here today.

5 And we are adjourned.

6 Thank you.

7 MR. ROBERSON: Thank you.

8 MS. WILLINGHAM: Thank you.

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10 (Proceedings concluded at 9:50 a.m.)

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C E R T I F I C A T E

I, KANDI CLARK, a duly authorized Court Reporter in and for the State of Washington, residing at Olympia, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify:

That the foregoing hearing transcribed by me by means of computer-aided transcription is a full, true, and complete transcript of the proceedings consisting of pages 1 through 11;

That as a CCR in this state, I am bound by the Rules of Conduct as Codified in WAC 308-14-130; that court reporting arrangements and fees in this case are offered to all parties on equal terms;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of August, 2018.

Kandi Kathryn Clark
CCR License #3008