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BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

<hr/>)
CHELAN COUNTY,)Docket TR-041066
	Petitioner,)Volume II
)Pages 15-25
v.)
)
CASCADE AND COLUMBIA RIVER RAILROAD,)
	Respondent.)
<hr/>)
CASCADE AND COLUMBIA RIVER RAILROAD,)Docket TR-041076
	Petitioner,)
)
v.)
)
CHELAN COUNTY,)
	Respondent.)
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A pre-hearing conference in the above-entitled matter was held at 9:31 a.m. on Wednesday, April 6, 2005, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge THEODORA MACE.

The parties present were as follows:

COMMISSION STAFF, by Jonathan Thompson, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

CHELAN COUNTY, by Louis Chernak, Deputing Prosecuting Attorney, 200 N. Chelan, Wenatchee, Washington, 98801.

Barbara L. Nelson, CCR
Court Reporter

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1 CASCADE AND COLUMBIA RIVER RAILROAD, by
2 Buck D. Workman, Vice President and General Manager,
3 901 East Omak Avenue, Omak, Washington 98841.
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1 JUDGE MACE: Good morning. Let's be on the
2 record in Docket Number TR-041066 and Docket Number
3 TR-041076. These are respectively Chelan County
4 versus Cascade and Columbia River Railroad, and
5 Cascade and Columbia River Railroad versus Chelan
6 County.

7 My name is Theodora Mace, I'm the
8 Administrative Law Judge who's been assigned to this
9 case. We are convened here in the offices of the
10 Washington Utilities and Transportation Commission in
11 Olympia, Washington, on April 6th, 2005, for an
12 evidentiary hearing in these dockets. They've been
13 consolidated for purposes of hearing.

14 I'd like to have the oral appearances now of
15 counsel or of the parties. If you have already given
16 your long form of appearance, with address and
17 telephone and fax, you don't need to do that today.
18 And I'll begin with Staff.

19 MR. THOMPSON: I'm Jonathan Thompson,
20 Assistant Attorney General, representing the
21 Commission Staff, and I believe we did give a long
22 form earlier.

23 JUDGE MACE: Mr. Chernak.

24 MR. CHERNAK: My name is Louis Chernak,
25 C-h-e-r-n-a-k. I'm representing Chelan County, and I

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1 believe we also put in a long form appearance.

2 MR. WORKMAN: Buck Workman, with Cascade and
3 Columbia River Railroad, and I believe I also have a
4 long form appearance in.

5 JUDGE MACE: And Mr. Workman, you're not an
6 attorney; is that right?

7 MR. WORKMAN: No, ma'am.

8 JUDGE MACE: Okay. Just for the record.
9 Well, we are convened for an evidentiary hearing, but
10 my understanding is that the parties may wish to
11 spend a little bit of additional time discussing a
12 possible resolution to this case, and I'm certainly
13 prepared to give them some additional time. Is there
14 anything -- before we adjourn to allow that, is there
15 anything we need to discuss on the record?

16 MR. CHERNAK: I don't think so. I think
17 we're having a pretty fruitful discussion, so maybe
18 we can make the hearing a little more expedited, in
19 any event.

20 JUDGE MACE: Very well. If everyone's
21 agreed, then I'll adjourn the hearing for at least a
22 half an hour, although if you feel like you want to
23 go back on the record before that, my office is just
24 across the hall, and you can come knock on my door.
25 So we'll be adjourned till 10:00.

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1 MR. CHERNAK: Thank you, Your Honor.

2 JUDGE MACE: Thank you.

3 (Recess taken.)

4 JUDGE MACE: All right. Let's be back on
5 the record. The parties have spent, oh,
6 approximately an hour discussing the issues in the
7 case, and I'm wondering if someone could make a
8 report on those discussions to me?

9 MR. THOMPSON: I guess I'll go ahead and do
10 that. Well, after discussing all the various issues
11 relating to both petitions, the County's petition to
12 upgrade the Chestnut Street crossing and the
13 Railroad's petition to close the A Street crossing,
14 the parties have decided that they can stipulate to
15 the County's proposed upgrade, the Chestnut Street
16 crossing and -- but that -- and there may be the
17 opportunity for resolving the matter of the closure
18 of the A Street crossing.

19 So I think at this time the parties would
20 either present a stipulation, I guess, for the -- to
21 allow the upgrade to be granted with respect to
22 Chestnut Street, and to bifurcate the case, and then
23 pick a hearing date, maybe in November, to allow
24 enough time to see if the possible resolution of the
25 A Street matter can be reached.

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1 JUDGE MACE: Why November?

2 MR. THOMPSON: Well, the possible resolution
3 is that -- would involve putting in signals at A
4 Street in lieu of closing it, and there are issues
5 regarding availability of funding for that, and there
6 is a funding cycle, as I understand it, that -- well,
7 that opens up in -- I think in the summer, and there
8 are just a lot of practical issues regarding
9 availability of signals and things of that nature.

10 JUDGE MACE: All right. Let me just take a
11 look here. So in effect, what the stipulation
12 involves is the withdrawal by the railroad of an
13 objection to the proposed upgrade of the Chestnut
14 Street crossing. Is that right, Mr. Workman?

15 MR. WORKMAN: At this time. I would like
16 to, yeah, reserve the --

17 JUDGE MACE: Well, the problem with that is
18 if I -- if there's a -- and maybe I'm
19 misunderstanding what your position is, but if you
20 stipulate to withdrawal, withdrawal of an objection,
21 I can actually process that application to approval,
22 and then you'd -- so the Commission would approve it,
23 there would be an order entered approving it.

24 Now, am I reading it incorrectly, that
25 you're proposing the whole thing be delayed until

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1 November, or are you saying yes, we can go ahead,
2 then, and take the Chestnut Street case to the
3 Commission?

4 MR. THOMPSON: I think you're right. We can
5 go ahead and take the Chestnut Street case to the
6 Commission. It's sort of like what would happen in
7 an ordinary case where a road authority petitions for
8 upgrade at a crossing, and if the railroad involved
9 has no objection, then it just files a waiver of
10 hearing, and I think that's essentially what would
11 happen in this case. So that case would be -- would
12 go to approval, and then the only question that would
13 remain is the railroad's petition to close the other
14 crossing, A Street.

15 JUDGE MACE: Okay. And so Mr. Workman, you
16 understand that that would be what would happen?

17 MR. WORKMAN: Yes.

18 JUDGE MACE: And you're requesting a waiver
19 of hearing on the Chestnut Street application?

20 MR. WORKMAN: Correct.

21 JUDGE MACE: Very well. Do you have a
22 specific date in mind in November?

23 MR. CHERNAK: Where's the -- there it is.

24 MR. WORKMAN: Whatever you want.

25 MR. CHERNAK: Your Honor, do you usually do

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1 these hearings on Wednesdays or --

2 JUDGE MACE: Oh, no, no. There's no --

3 MR. CHERNAK: What's convenient to you?

4 MR. WORKMAN: Middle of the week.

5 MR. CHERNAK: November 16th.

6 JUDGE MACE: Mr. Thompson, is that okay with
7 Staff?

8 MR. THOMPSON: I believe so, yes. I would
9 also add that it might be a good idea, for the
10 convenience of witnesses, to plan on having the
11 hearing over in Chelan County.

12 JUDGE MACE: We can do that. I think that's
13 not a problem. Well, the thing I'm pausing about is
14 to ask whether or not the parties want to waive an
15 initial order with regard to the Chestnut Street
16 crossing. If that happens, the case goes directly to
17 the Commission for a final order.

18 You'd still have an opportunity, if
19 something went awry, to file a petition for
20 reconsideration. Before I ask that question, though,
21 sometimes -- sometimes it takes an equal amount of
22 time to do an initial order and then get the
23 Commission's approval after there's no objection to
24 the initial order; but in any event, I'll ask whether
25 the parties would waive an initial order in this

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1 case.

2 MR. THOMPSON: Well, Staff certainly would.
3 Just for explanation, the initial order is the
4 Administrative Law Judge's recommended order, and
5 then -- she would issue that decision, and then
6 there'd be a period of time, I think a month, in
7 which the parties could decide whether they wanted to
8 appeal from that up to the Commissioners themselves
9 to make a decision. But in this case, I really think
10 that -- I can't imagine why there'd be any reason for
11 the petition not to be approved, since there's no
12 objection to it, so I think it would probably be more
13 expedient for the parties to waive the initial order,
14 so -- and Staff certainly would do so.

15 JUDGE MACE: Mr. Chernak.

16 MR. CHERNAK: Your Honor, Chelan County
17 would waive the initial order.

18 JUDGE MACE: And Mr. Workman.

19 MR. WORKMAN: Cascade and Columbia River
20 Railroad would also waive.

21 JUDGE MACE: Very well. What I'm going to
22 do, then, is prepare a final order for the Chestnut
23 Street case and prepare a pre-hearing conference
24 order for the A Street crossing case, indicating a
25 bifurcation of the two matters and setting forth a

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1 schedule. The schedule will call for an evidentiary
2 hearing November 16th. I may also include in the
3 schedule other dates. For example, the date for
4 filing exhibits and witnesses, a list of exhibits and
5 witnesses, and perhaps a briefing date and a target
6 order date, but those dates can be altered if we need
7 to do that.

8 I'm also trying to think if there's anything
9 else that we need to address. Do the parties have
10 anything else they want to address on the record
11 about the handling of these two cases?

12 MR. OWEN: I'd just say the chances are
13 pretty good that maybe there won't even need to be a
14 hearing.

15 JUDGE MACE: Well, and certainly I encourage
16 the parties to continue their discussion, discussions
17 of the A Street matter and to resolve them. That
18 would be, I think, probably the best possible thing.
19 That way everybody's interests would be served,
20 rather than having the Commission make a decision
21 that some party may not own, so to speak.

22 Could you introduce yourself for the record,
23 so that the reporter can --

24 MR. OWEN: I'm sorry. I'm Gary Owen, Chelan
25 County Public Works.

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1 JUDGE MACE: Gary Owen, thank you. All
2 right. If there's nothing else, then we're
3 adjourned. Thank you very much.

4 MR. CHERNAK: Thank you, everyone. Thank
5 you, Your Honor.

6 (Proceedings adjourned at 10:39 a.m.)

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