

**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.

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

REPORTED BY: KANDI CLARK, CCR #3008, CSR

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

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

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

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

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

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

So Mr. Roberson. Go ahead.

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

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

APPEARANCES

FOR THE PETITIONER:  
CHRISTOPHER DAVID QUINN, ESQ.  
WHATCOM COUNTY PROSECUTOR'S OFFICE  
311 Grand Avenue, Suite 201  
Bellingham, Washington 98225-4048  
(360) 778-5710  
Email: cquinn@co.whatcom.wa.us  
(360) 778-5710  
(Appearing by telephone.)

FOR THE UTILITIES AND TRANSPORTATION COMMISSION STAFF  
JEFF ROBERSON  
ASSISTANT ATTORNEY GENERAL  
P.O. Box 40128  
Olympia, Washington 98504-0128  
(360) 664-1188  
Email: jroberso@utc.wa.gov

FOR THE RESPONDENT, BNSF RAILROAD:  
JENNIFER WILLINGHAM-LENTS, ESQ.  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas, 76131  
Email: jennifer.willingham@bnsf.com  
(Appearing by telephone.)

ALSO PRESENT:  
BETTY YOUNG  
STEPHEN SEMENICK  
JIM KARCHER

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

MS. PEARSON: Thank you, Ms. Willingham.

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

MR. QUINN: Yes, ma'am.

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

MS. PEARSON: Okay. Thank you.

Is there anyone else on the bridge line who

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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,

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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.

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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

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

6 That the foregoing hearing transcribed by me by  
7 means of computer-aided transcription is a full, true, and  
8 complete transcript of the proceedings consisting of pages  
9 1 through 11;

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

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

19 IN WITNESS WHEREOF, I have hereunto set my hand this  
20 17th day of August, 2018.

21  
22  
23  
24  
25  
Kandi Kathryn Clark  
CCR License #3008

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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<p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> 1:14 3:1,7 8:8 8:9 10:10 <b>Absolutely</b> 8:6 <b>acceptable</b> 7:16 <b>action</b> 11:10,11 <b>address</b> 3:24,25 4:3 4:7,12,13,17,20 9:8,21 <b>adjourned</b> 10:5 <b>administer</b> 11:3 <b>administrative</b> 3:10 <b>affirmations</b> 11:3 <b>agreed</b> 5:18,20,25 7:1 8:13 <b>ahead</b> 3:18 8:1 <b>answering</b> 6:5 <b>AOB-3</b> 2:15 <b>appearance</b> 3:15 3:23 4:11 5:1 <b>appearances</b> 2:1 3:14,16 <b>appearing</b> 2:7,16 4:16 <b>appropriate</b> 5:22 <b>April</b> 6:25 <b>arrangements</b> 11:8 <b>assign</b> 8:19 <b>Assistant</b> 2:10 3:20 <b>attorney</b> 2:10 3:20 4:2,16 11:9,10 <b>attorneys</b> 3:16 <b>August</b> 1:13 3:7 11:13 <b>authorized</b> 11:2,3 <b>available</b> 5:10,16 9:5 <b>Avenue</b> 2:4 4:18 <b>aware</b> 7:9</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B-3</b> 4:5 <b>back</b> 8:4,10 <b>barriers</b> 3:5</p>	<p><b>believe</b> 9:3 <b>Bellingham</b> 2:5 3:6 4:19 9:1 <b>BETTY</b> 2:19 <b>BNSF</b> 2:14 4:3,6 6:3 7:16 10:1 <b>bnsf.com</b> 4:8 <b>bound</b> 11:7 <b>Box</b> 2:10 <b>bridge</b> 4:25 5:4 <b>briefs</b> 6:20,25 <b>brings</b> 5:16 <b>BUILDING</b> 1:16 <b>BURLINGTON</b> 1:7 <b>business</b> 7:12</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>C</b> 11:1,1 <b>C-O</b> 4:20 <b>C-Q-U-I-N-N</b> 4:20 <b>capital</b> 4:4,4,5 <b>case</b> 3:13 4:17 5:10 11:8 <b>caveat</b> 5:21 <b>CCR</b> 1:23 11:7,19 <b>certify</b> 11:3 <b>chance</b> 5:17 <b>changes</b> 8:19 <b>Chartoff</b> 1:11 3:13 <b>Christopher</b> 2:3 4:15 <b>Civil</b> 4:15 <b>Clark</b> 1:23 11:2,18 <b>Cliffside</b> 3:5 <b>co-presiding</b> 3:13 <b>Codified</b> 11:7 <b>come</b> 5:18 8:4 <b>comment</b> 6:21 <b>Commission</b> 1:2,11 2:9 3:12,21 <b>COMMISSION'S</b> 1:17 <b>complete</b> 11:5 <b>computer-aided</b> 11:5</p>	<p><b>concluded</b> 10:10 <b>Conduct</b> 11:7 <b>conference</b> 1:12 3:8 7:25 8:13 9:10 <b>confirm</b> 9:7 <b>consisting</b> 11:5 <b>counsel</b> 11:10,10 <b>County</b> 1:4 2:4 3:4 4:16,18,23 5:13 6:1 7:2,15 9:18,24 <b>course</b> 9:15 <b>court</b> 11:2,7 <b>court's</b> 9:4 <b>courthouse</b> 4:18 9:18,19 <b>cquinn@co.what...</b> 2:6 <b>Cross</b> 6:5,11 <b>crossing</b> 3:5 <b>CSR</b> 1:23 <b>cutoff</b> 6:15 7:5 8:3 8:23</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>date</b> 5:22 6:13,17 7:8,10,15 8:3,13 8:23 <b>DAVID</b> 2:3 <b>day</b> 11:13 <b>days</b> 7:12 <b>December</b> 6:4 <b>decide</b> 6:16 <b>Deputy</b> 4:15 <b>determine</b> 5:21 <b>direct</b> 6:1 <b>discovery</b> 5:9 6:15 7:5 8:3,22 <b>discuss</b> 3:9 7:21 <b>discussed</b> 10:3 <b>discussion</b> 5:23 <b>Docket</b> 1:6 3:3 <b>dot</b> 4:20,20,21 <b>Drive</b> 1:17 2:15 3:6 4:4 <b>due</b> 6:1,4,6,12,25 <b>duly</b> 11:2</p>	<p style="text-align: center;"><b>E</b></p> <p><b>E</b> 11:1,1 <b>email</b> 2:6,12,16 3:25 4:7,13,19 9:8 <b>employee</b> 11:9,10 <b>engineer</b> 4:23 <b>enter</b> 3:15,23 4:10 5:1 <b>equal</b> 11:8 <b>ESQ</b> 2:3,14 <b>essentially</b> 5:20 <b>EVERGREEN</b> 1:17 <b>exact</b> 9:7 <b>exhibit</b> 6:11 <b>exhibits</b> 6:11 <b>extra</b> 7:14</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>F</b> 11:1 <b>FE</b> 1:7 <b>February</b> 6:12,14 8:24 <b>fees</b> 11:8 <b>file</b> 7:12 <b>filed</b> 3:4 <b>financially</b> 11:11 <b>FLOOR</b> 1:16 <b>following</b> 8:11 <b>foregoing</b> 11:4 <b>Fort</b> 2:15 4:5 <b>full</b> 3:16,23,23 4:11 4:11 11:5</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>General</b> 2:10 3:21 <b>go</b> 3:18 7:17 8:1,1 <b>going</b> 7:11 9:7 <b>Good</b> 3:19 4:15 <b>grade</b> 3:5 <b>Grand</b> 2:4 4:18 <b>great</b> 9:17,20</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>hand</b> 11:12 <b>handle</b> 8:1</p>	<p><b>hear</b> 9:4 <b>hearing</b> 1:17 5:3,7 6:17,21 7:2,3,6,25 9:2 11:4 <b>HEMSTAD</b> 1:16 <b>hereunto</b> 11:12 <b>highway</b> 3:5 <b>Hold</b> 6:7 <b>Honor</b> 5:11,14,19 6:9 7:17 8:21 9:19,24 10:1</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>install</b> 3:4 <b>interested</b> 11:11 <b>intervention</b> 5:5 <b>issue</b> 7:4,13 9:11 10:3 <b>issues</b> 3:9</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>January</b> 6:6,8 <b>Jeff</b> 2:9 3:19 <b>Jennifer</b> 2:14 4:1 <b>jennifer.willingh...</b> 4:8 <b>jennifer.willingh...</b> 2:16 <b>Jim</b> 2:20 4:22 <b>jrberso@utc.wa...</b> 2:12 <b>judge</b> 1:11,11 3:3 3:11,12,22 7:19 8:7,10,15,18,19 8:22,25 9:6,17,20 9:23 10:2</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>Kandi</b> 1:23 11:2,18 <b>Karcher</b> 2:20 4:22 <b>Kathryn</b> 11:18 <b>know</b> 7:23,23 8:18 9:13</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>L-O-U</b> 4:4</p>
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