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1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WHATCOM COUNTY, ) DOCKET TR-190918

)

5 Petitioner, )

)

6 vs. )

)

7 BURLINGTON NORTHERN SANTE )

FE RAILWAY, )

8 )

)

9 Respondent. )

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11 PREHEARING CONFERENCE, VOLUME I

12 Pages 1-10

13 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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15 January 30, 2020

16 1:30 p.m.

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Washington Utilities and Transportation Commission

18 621 Woodland Square Loop Southeast

Lacey, Washington 98503

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REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

21

Buell Realtime Reporting, LLC

22 1325 Fourth Avenue, Suite 1840

Seattle, Washington 98101

23 (206) 287-9066 | Seattle

(360) 534-9066 | Olympia

24 (800) 846-6989 | National

25 www.buellrealtime.com

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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:

6 JEFF ROBERSON

Office of the Attorney General

7 Utilities and Transportation Division

P.O. Box 40128

8 Olympia, Washington 98504

(360) 664-1188

9 jeff.roberson@utc.wa.gov

10

11 FOR WHATCOM COUNTY:

12 (Via phone)

CHRISTOPHER QUINN

13 Whatcom County Prosecutor's Office

311 Grand Avenue

14 Bellingham, Washington 98225

(360) 778-5710

15 cquinn@co.whatcom.wa.us

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17 ALSO PRESENT:

18 BETTY YOUNG

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1 LACEY, WASHINGTON; JANUARY 30, 2020

2 1:30 P.M.

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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.

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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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3 STATE OF WASHINGTON

4 COUNTY OF THURSTON

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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.

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13 Tayler Garlinghouse, CCR 3358

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