

Docket No. TR-190918 - Vol. I

Whatcom County v. Burlington Northern Sante  
Fe Railway

January 30, 2020



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WHATCOM COUNTY, ) DOCKET TR-190918  
                          )  
Petitioner,        )  
                          )  
vs.                    )  
                          )  
BURLINGTON NORTHERN SANTE )  
FE RAILWAY,                )  
                          )  
Respondent.        )

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PREHEARING CONFERENCE, VOLUME I  
Pages 1-10  
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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January 30, 2020  
1:30 p.m.

Washington Utilities and Transportation Commission  
621 Woodland Square Loop Southeast  
Lacey, Washington 98503

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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1325 Fourth Avenue, Suite 1840  
Seattle, Washington 98101  
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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON

FOR COMMISSION STAFF:

JEFF ROBERSON  
Office of the Attorney General  
Utilities and Transportation Division  
P.O. Box 40128  
Olympia, Washington 98504  
(360) 664-1188  
jeff.roberson@utc.wa.gov

FOR WHATCOM COUNTY:

(Via phone)

CHRISTOPHER QUINN  
Whatcom County Prosecutor's Office  
311 Grand Avenue  
Bellingham, Washington 98225  
(360) 778-5710  
cquinn@co.whatcom.wa.us

ALSO PRESENT:

BETTY YOUNG

\* \* \* \* \*

1 LACEY, WASHINGTON; JANUARY 30, 2020

2 1:30 P.M.

3 --o0o--

4 P R O C E E D I N G S

5  
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

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

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

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

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.



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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JUDGE PEARSON: Okay. Thank you all for  
coming here today, and we are adjourned.

MR. QUINN: Thank you so much.

(Adjourned at 1:50 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand  
Reporter in and for the State of Washington, do hereby  
certify that the foregoing transcript is true and  
accurate to the best of my knowledge, skill and ability.

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Tayler Garlinghouse, CCR 3358