

Docket No. TR-150284 - Vol. I

Washington Utilities and Transportation Commission v.
BNSF Railway Company

May 18, 2015

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,) DOCKET TR-150284) Pages 1 - 9

Complainant,)
v.)
BNSF RAILWAY COMPANY,)
Respondent.)

PREHEARING CONFERENCE - VOLUME I
PAGES 1 - 9
ADMINISTRATIVE LAW JUDGE KOPTA

9:59 A.M.

MAY 18, 2015

Washington Utilities and Transportation Commission
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REPORTED BY: RYAN ZIEGLER, RPR, CCR #3348

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OLYMPIA, WASHINGTON; MAY 18, 2015
9:59 A.M.

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PROCEEDINGS

THE COURT: Let's be on the record in Docket TR-150284, captioned Washington Utilities and Transportation Commission versus BNSF Railway Company. Gregory J. Kopta, the Administrative Law Judge, will be presiding in this proceeding, and we are here today on March (sic) 18th, at 10 a.m., to discuss scheduling and other issues that we address in a prehearing conference.

So let's begin by taking appearances, starting with Staff as the Complainant.

MR. BEATTIE: Thank you, Judge Kopta. My name is Julian Beattie. I'm with the Attorney General's office, and I'm appearing on behalf of Commission Staff. My notice of appearance is in the record.

THE COURT: Okay. Thank you. And for the Company?

MR. DIJULIO: Steve DiJulio, Foster Pepper, for BNSF. With me is Brooke Kuhl, counsel at BNSF, and Chris Emch, also from Foster Pepper. Good morning.

THE COURT: Thank you. Good morning. Is there anyone else who wants to make an

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appearance? Hearing none, then we will proceed to our list of issues.

The first is interventions. I have not seen any petitions to intervene. Is there anyone who wishes to intervene orally? Hearing none, then we will have no interventions.

Second, electronic service. Do the parties agree to electronic service? I see nods.

MR. BEATTIE: Yes. Staff consents to electronic service.

MR. DIJULIO: BNSF agrees to electronic service.

THE COURT: Okay. Thank you.

Then discovery. Do the parties want to have the Commission's discovery rules available?

MR. BEATTIE: Staff would request to invoke those discovery rules.

THE COURT: All right. Then we will make those available.

And I believe that takes us to schedule, unless there are other issues that anyone else wants to address. I have received a proposed schedule from Staff, and as we discussed off the record, those dates seem acceptable, at least in terms of my availability and the Commissioner's availability for the event of evidentiary

1 hearing.
 2 My only concern is that it's a rather
 3 extended schedule, with hearings not until the middle of
 4 January of next year, so I'm wondering if there's a reason
 5 why we need to take that long.
 6 Generally, at least under the statute, the
 7 Commission is directed to complete complaint proceedings
 8 within ten months. This would take us well beyond ten
 9 months, so I'm -- would like to have some discussion about
 10 why the time is needed. I know you all -- Staff is not
 11 filing testimony until mid September, so three months. Is
 12 it really going to take that long?
 13 MR. BEATTIE: Thank you, Judge Kopta.
 14 Staff believes that discussions will be
 15 productive with the Company, but may take some time, and
 16 given that the summer months are coming up and vacations
 17 to -- you know, will be occurring, we just wanted to build
 18 in plenty of time for settlement discussions.
 19 I will note that we did not actually reserve
 20 any dates because we haven't had a time -- any time to
 21 discuss with the Company, you know, actually get some of
 22 those dates on the calendar. But I think that that would
 23 be the main reason from Staff is just building in extra
 24 time, I guess, for settlement discussions.
 25 I'm going to look at my client over here and

1 see if they have anything to add for whether that was the
 2 main driving factor. I believe that was the main driving
 3 factor.
 4 THE COURT: Okay. And is that Company's
 5 understanding as well?
 6 MR. DIJULIO: Yes. We were responding -- we
 7 believe, first of all, in response to Mr. Beattie's
 8 comment, that the case is --
 9 THE COURT: Is your microphone on, Mr. -- the
 10 red light should be -- there you go.
 11 MR. DIJULIO: For the Company, BNSF does
 12 believe that this case is readily susceptible to
 13 settlement, and we do expect that there may be some time
 14 involved with that. We'd comment that we believe that that
 15 would happen with or without mediation, but we're certainly
 16 willing to participate in mediation if that becomes
 17 necessary as well.
 18 And in responding to the Staff-proposed
 19 schedule, we believe it's an appropriate schedule and
 20 provides sufficient time for settlement discussions or, if
 21 necessary, then, full hearing preparation.
 22 THE COURT: All right. And so the Company is
 23 willing to waive that ten-month target deadline for
 24 resolution of the complaint?
 25 MR. DIJULIO: Company so waives.

1 THE COURT: Okay. Do you have a date for an
 2 initial settlement conference? We usually like to put that
 3 in our schedule, and right now, the schedule that you
 4 provided to me just has a "to be determined" slot next to
 5 the settlement conference.
 6 MR. BEATTIE: Judge Kopta, we do not have a
 7 date. We are planning to meet after this -- after this
 8 hearing, so I suppose in some ways, that could be
 9 considered our -- you know, our first -- our first meeting,
 10 but we don't have any formal settlement dates proposed.
 11 Maybe that is something we will discuss at -- at today's
 12 informal meeting.
 13 THE COURT: Well, I think the main reason
 14 that we have that in there is just to hold people's feet to
 15 the fire, and it sounds to me like, based on our
 16 discussion, given that we are establishing a schedule that
 17 allows for settlement, that that is already something
 18 that's well within the contemplation of the parties and not
 19 something that the Commission needs to give any further
 20 encouragement to.
 21 So I don't -- I don't need to have a date,
 22 but I was just curious if, in subsequent discussions,
 23 whether you had come up with any dates.
 24 MR. BEATTIE: And -- and we do not have any
 25 formal dates at this point.

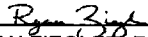
1 THE COURT: All right. That's fine. Well,
 2 then I will include that schedule in the prehearing
 3 conference order.
 4 Is there anything else that we need to talk
 5 about while we're here this morning?
 6 MR. BEATTIE: Nothing from Staff.
 7 MR. DIJULIO: The only thing that we could
 8 think of is whether or not you wanted to address mediation
 9 in the prehearing statement, or if we cannot resolve the
 10 matter, that we bring that back before the administrative
 11 law judge. It doesn't matter one way or the other. It's
 12 just a practicality and expediency.
 13 THE COURT: And that's a good question. We
 14 generally include in our prehearing conference order the
 15 invitation to engage in alternative dispute resolution,
 16 including mediation, and it talks about the availability of
 17 mediation. So it seems to me, at this point, we're -- it's
 18 a little premature to talk about mediation, but certainly
 19 to the extent that the parties find themselves in need of
 20 that particular service, then you can request it, and we
 21 will make arrangements to have someone available to assist.
 22 All right. With that, then, I believe we're
 23 adjourned. Thank you.
 24 (Proceedings concluded at 10:07 a.m.)
 25 * * * * *

CERTIFICATE

STATE OF WASHINGTON
COUNTY OF KING

I, Ryan Ziegler, a Certified Shorthand Reporter in
and for the State of Washington, do hereby certify that the
foregoing transcript of the proceedings held May 18, 2015,
is true and accurate to the best of my knowledge, skill, and
ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this May 27, 2015.


RYAN ZIEGLER, RPR, CCR



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