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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

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BNSF RAILWAY COMPANY, ) DOCKET TR-150189  
 ) Pages 1-11  
 v. )  
 )  
 Petitioner, )  
 )  
 WHATCOM COUNTY, )  
 )  
 Respondent. )

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PREHEARING CONFERENCE, VOLUME I  
Pages 1-11

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

1:32 P.M.

June 8, 2015

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest, Room 206  
Olympia, Washington 98504-7250

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028

Realtime Reporting, LLC  
1325 Fourth Avenue  
Suite 1840  
Seattle, Washington 98101  
206.287.9066 | Seattle  
360.534.9066 | Olympia  
800.846.6989 | National

www.buellrealtime.com

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, Washington 98504-7250  
360.664.1136

FOR COMMISSION STAFF:

JULIAN BEATTIE  
Assistant Attorney General  
1400 South Evergreen Park Drive  
Southwest  
P.O. Box 40128  
Olympia, Washington 98504-0128  
360.664.1189  
jbeattie@utc.wa.gov

FOR BNSF RAILWAY COMPANY:

BRADLEY SCARP  
KELSEY ENDRES  
Montgomery Scarp MacDougall  
1218 Third Avenue  
Suite 2500  
Seattle, Washington 98101  
206.625.1801  
brad@montgomeryscarp.com  
kelsey@montgomeryscarp.com

FOR WHATCOM COUNTY:

DANIEL L. GIBSON, via telephone  
Chief Civil Deputy Prosecuting Attorney  
Whatcom County Prosecuting Attorney  
311 Grand Avenue  
Suite 201  
Bellingham, Washington 98225  
360.676.6784  
dgibson@co.whatcom.wa.us

\* \* \* \* \*

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OLYMPIA, WASHINGTON, JUNE 8, 2015

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1:32 P.M.

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P R O C E E D I N G S

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JUDGE PEARSON: Then let's be on the record in Docket TR-150189, captioned BNSF Railway v. Whatcom County, which is a petition filed by BNSF to close a highway-rail grade crossing at Valley View Road in Ferndale in Whatcom County.

Today is Monday, June 8, 2015, at 1:30 p.m., and we're here for a prehearing conference to discuss scheduling and other procedural issues.

My name is Rayne Pearson. I'm the administrative law judge presiding over this case.

So let's begin by taking full appearances. We'll start with Staff and then continue with BNSF and then take the County over the phone because they're appearing on the bridge line today. Please state your name, spell your last name for the court reporter, who you represent, your address, phone number, e-mail address and fax number if you have one.

MR. BEATTIE: Okay. Thank you, Judge. My name is Julian Beattie, B-e-a-t-t-i-e. I'm with the Attorney General's Office, and I'm here representing Commission Staff. My mailing address is P.O. Box 40128, Olympia, Washington 98504. Also my notice of appearance is filed in the docket.

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1 JUDGE PEARSON: Okay. Thank you.

2 For BNSF?

3 MR. SCARP: Your Honor, Bradley Scarp, of Montgomery  
4 Scarp, for BNSF outside counsel. Our mailing address is filed  
5 with the docket, but it is 1218 Third Avenue, 25th Floor.  
6 That's Seattle, Washington 98101. E-mail is Brad, B-r-a-d, @  
7 montgomeryscarp.com.

8 JUDGE PEARSON: Okay. Thank you.

9 And for Whatcom County?

10 MR. GIBSON: Yes. My name is Daniel Gibson. That's  
11 D-a-n-i-e-l, G-i-b-s-o-n. I'm a deputy prosecutor in the civil  
12 division of the Whatcom County Prosecutor's Office. I submitted  
13 my notice of appearance just this past Friday, one business day  
14 ago.

15 My mailing address here is 311 Grand Avenue, Suite  
16 201. That's Bellingham, Washington 98225. My phone number is  
17 area code 360.676.6784. My e-mail address is d-g-i-b-s-o-n --  
18 dgibson@co.whatcom -- that's w-h-a-t-c-o-m -- .wa.us.

19 JUDGE PEARSON: Okay. Thank you.

20 Is there anyone else for the County?

21 MR. GIBSON: I have present with me two of our staff  
22 members, Joe Rutan, our County engineer, who had previously  
23 submitted a letter to the Commission, and Roland Middleton, who  
24 also works with Public Works.

25 JUDGE PEARSON: Okay. Thank you. And I believe I

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1 missed someone for BNSF.

2 MS. ENDRES: Yes. Kelsey Endres, E-n-d-r-e-s, on  
3 behalf of BNSF. My e-mail is Kelsey, K-e-l-s-e-y,  
4 @montgomeryscarp.com. We also have Rick Wagner on behalf of  
5 BNSF here with us today.

6 JUDGE PEARSON: Okay. Thank you.

7 Is there anyone else on the bridge line today?

8 Okay. Hearing nothing, is there any party that is  
9 seeking intervention? It doesn't appear there are any extra  
10 parties in the room today.

11 Do the parties want the discovery rules to be  
12 available in this case?

13 MR. BEATTIE: Yes, Judge. Staff requests that the  
14 discovery rules be imposed.

15 JUDGE PEARSON: Okay. Thank you.

16 And do each of you consent to electronic service if  
17 the Commission decides to serve documents that way?

18 MR. SCARP: BNSF is certainly willing to accept  
19 electronic service.

20 JUDGE PEARSON: Okay. Thank you.

21 MR. GIBSON: Yeah, and Whatcom County is as well.

22 JUDGE PEARSON: Thank you.

23 MR. BEATTIE: Same with Staff.

24 JUDGE PEARSON: Okay. Thank you.

25 And that brings us to the schedule.

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1                   Do the parties need a recess to discuss scheduling,  
2 or do you have a proposed schedule ready?

3                   MR. BEATTIE: Judge Pearson, I previously circulated  
4 a proposed schedule. And it's my understanding that the dates  
5 are acceptable to all the parties, but I suppose it would be  
6 good to confirm that on the record here.

7                   JUDGE PEARSON: Sure.

8                   MR. GIBSON: It is certainly acceptable to Whatcom  
9 County.

10                  MR. SCARP: The dates I don't have in front of me,  
11 but to which we were agreeable, I believe, was a hearing  
12 December 1; posthearing briefs of January 8th; and the  
13 prehearing deadlines we are agreeable to.

14                  JUDGE PEARSON: Okay. That sounds good.

15                  So, Mr. Beattie, do you want to read that schedule  
16 into the record?

17                  MR. BEATTIE: Certainly. So we have our first due  
18 date of August 7, 2015, for the Petitioner to file direct  
19 testimony. And this is prefiled and written testimony.  
20 Responsive testimony from the Respondents, who, in this case,  
21 are Whatcom County and UTC Staff, and that's on September 21,  
22 2015. Rebuttal and cross-answering testimony from all parties  
23 on October 21, 2015. Exhibits identified by November 4, 2015.  
24 We have an evidentiary hearing scheduled for Tuesday, December  
25 1st, and Wednesday, December 2nd. And it's our understanding

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1 that this will be scheduled within Whatcom County, although the  
2 location has not yet been set. There will be a public hearing  
3 on the evening of Tuesday, December 1st, following the  
4 conclusion of that day's portion of the evidentiary hearing.  
5 And then, finally, posthearing briefs will be submitted by all  
6 parties on Friday, January 8, 2016.

7 JUDGE PEARSON: Okay. Thank you. So we will reserve  
8 a room at the Commission for both days of the hearing, and it's  
9 up to the parties to find a facility in or near Ferndale,  
10 somewhere in Whatcom County, to host the hearing.

11 And if you have not secured a space and notified us  
12 of that location by at least 45 days before the hearing date, we  
13 will hold the hearing here at the Commission's headquarters in  
14 Olympia. So please make sure that you notify me directly when  
15 you secure a location.

16 MR. GIBSON: Okay. And, Judge Pearson, when you say  
17 notify you directly, will you be subsequently -- I expect that  
18 you'll be providing us with the address for that?

19 JUDGE PEARSON: I'm sorry. What did you say?

20 MR. GIBSON: You'll be providing us with the contact  
21 information for that shortly?

22 JUDGE PEARSON: For me?

23 MR. GIBSON: Yes.

24 JUDGE PEARSON: You can send it to me at my e-mail,  
25 which is: rpearson@utc.wa.gov.

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1 MR. GIBSON: rpearson.

2 Is that p-i-e-r or p-e-a-r?

3 JUDGE PEARSON: No, it's P-e-a-r-s-o-n.

4 MR. GIBSON: At?

5 JUDGE PEARSON: utc --

6 MR. GIBSON: utc.wa.gov?

7 JUDGE PEARSON: -- .wa.gov, yes.

8 MR. GIBSON: Okay. Very good.

9 JUDGE PEARSON: Okay. Is there anything else that we  
10 need to address?

11 MR. SCARP: Can you clarify what you just said about  
12 the hearing, the location? Were you talking about here?

13 JUDGE PEARSON: It will be held here unless the  
14 parties find another place to hold it in Whatcom County at least  
15 45 days before the hearing date.

16 MR. SCARP: And the public hearing, obviously, will  
17 be the location in Whatcom County?

18 JUDGE PEARSON: If you don't find a place to hold it,  
19 it will be here as well.

20 MR. SCARP: Okay.

21 JUDGE PEARSON: Okay. Anything else?

22 MR. GIBSON: Nothing from the County, Your Honor.

23 MR. SCARP: Nothing. Your Honor, I do understand --  
24 and I told Mr. Beattie -- we understand there's going to be an  
25 amended SEPA checklist. BNSF received a letter from Department



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1 of Ecology and a revised form, and so I inquired about that.  
2 And I was told that if it is not provided, filed this week, it  
3 will be next week.

4 JUDGE PEARSON: Okay.

5 MR. SCARP: So I don't see that changing any  
6 scheduling issues.

7 JUDGE PEARSON: Okay.

8 MR. GIBSON: I'm sorry. I had a little difficulty  
9 hearing that.

10 You mentioned a revised SEPA checklist is being  
11 submitted?

12 JUDGE PEARSON: Can you just make sure you're  
13 speaking directly into the microphone?

14 MR. SCARP: Yeah. My understanding an amended  
15 revised or amended the -- the Department of Ecology has changed  
16 its form checklist in my understanding. It's contained in a  
17 letter that DOE sent.

18 So, anyway, my understanding is that will be amended  
19 and filed next week -- by next week.

20 JUDGE PEARSON: Okay.

21 MR. GIBSON: Okay. So BNSF will be filing by next  
22 week?

23 MR. SCARP: That's what I'm advised, correct.

24 MR. GIBSON: Okay. Very good. Thank you.

25 JUDGE PEARSON: Okay. Anything else? No?

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1 MR. BEATTIE: Nothing else.

2 JUDGE PEARSON: Okay. Then I will issue an order  
3 reflecting what was discussed here today and the procedural  
4 schedule and we are adjourned. Thank you.

5 MR. SCARP: Thank you.

6 MR. GIBSON: Thank you.

7 (Proceeding concluded at 1:41 p.m.)

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4 COUNTY OF KING )

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter  
7 and Notary Public in and for the State of Washington, do hereby  
8 certify that the foregoing transcript is true and accurate to  
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal  
11 this 17th day of June, 2015.

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SHELBY KAY K. FUKUSHIMA, CCR

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16 My commission expires:

June 29, 2017

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