

Docket No. TR-150189 - Vol. I

BNSF Railway Company v. Whatcom County

June 8, 2015

2015 JUN 29 AM 8:59



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BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

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

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

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1 OLYMPIA, WASHINGTON, JUNE 8, 2015
2 1:32 P.M.
3 -000-

PROCEEDINGS

5
6 JUDGE PEARSON: Then let's be on the record in Docket
7 TR-150189, captioned BNSF Railway v. Whatcom County, which is a
8 petition filed by BNSF to close a highway-rail grade crossing at
9 Valley View Road in Ferndale in Whatcom County.

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

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

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

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

1 APPEARANCES
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5 Transportation Commission
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37 dgibson@co.whatcom.wa.us
38 * * * * *

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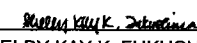
1 that this will be scheduled within Whatcom County, although the
 2 location has not yet been set. There will be a public hearing
 3 on the evening of Tuesday, December 1st, following the
 4 conclusion of that day's portion of the evidentiary hearing.
 5 And then, finally, posthearing briefs will be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

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?

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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1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
) ss
 4 COUNTY OF KING)
 5
 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.
 12
 13
 14 
 SHELBY KAY K. FUKUSHIMA, CCR
 15
 16 My commission expires:
 June 29, 2017
 17
 18
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 25

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