

Deposition of Docket No. TR-210814 - Vol. I

**City of Spokane Valley v. Union Pacific Railroad
Company**

January 13, 2022



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF SPOKANE VALLEY,)	
)	
Complainant,)	
)	
vs.)	DOCKET TR-210814
)	
UNION PACIFIC RAILROAD COMPANY,)	
)	
Respondent.)	

VIRTUAL PREHEARING CONFERENCE, VOLUME I
PAGES 1-12
ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

January 13, 2022

1:32 PM

Washington Utilities and Transportation Commission
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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

RAYNE PEARSON

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* * * * *

1 Remote Via Zoom; January 13, 2022

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

5
6 JUDGE PEARSON: Let's be on the record in Dockets
7 TR-210809 and TR-210814. Docket TR-210809 concerns a
8 petition filed by the City of Spokane Valley to modify
9 warning devices at a highway-railroad grade crossing located
10 at Barker Road, and Docket TR-210814 is a formal complaint
11 filed by the City of Spokane Valley against Union Pacific
12 Railroad.

13 Today is Thursday, January 13th, 2022, at
14 approximately 1:30 p.m. And we're here for a prehearing
15 conference to discuss scheduling and other procedural
16 issues, including Staff's motion to consolidate the two
17 dockets, and Union Pacific Railroad's motion to dismiss the
18 complaint and deny the petition on various grounds.

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

21 So let's start by taking short appearances
22 beginning with Staff.

23 MR. ROBERSON: Good afternoon, Judge Pearson. My
24 name is Jeff Roberson, R-O-B-E-R-S-O-N. I'm an Assistant
25 Attorney General representing Staff, and my contact

1 information is on file.

2 JUDGE PEARSON: Great, thank you. And for the
3 City of Spokane Valley?

4 MS. FOSTER: Good afternoon, Judge Pearson. Aziza
5 Foster, A-Z-I-Z-A, F-O-S-T-E-R, of Menke Jackson Beyer on
6 behalf of the City of Spokane Valley.

7 JUDGE PEARSON: Great, thank you. It sounds like
8 there was someone else on the line who's appearing for the
9 City?

10 MR. PLANT: Hi, Judge Pearson. This is Quinn
11 Plant, Q-U-I-N-N.

12 JUDGE PEARSON: Great. Okay, thank you.
13 Anyone else?

14 MS. REYNOLDS: Not for the City, Your Honor. For
15 the Railroad.

16 JUDGE PEARSON: Okay, yes. For the Railroad,
17 please go ahead.

18 MS. REYNOLDS: Good afternoon. My name is Rachel
19 Reynolds, R-A-C-H-E-L, R-E-Y-N-O-L-D-S, with the law firm of
20 Lewis Brisbois representing Union Pacific Railroad today.

21 JUDGE PEARSON: Great. Thank you. And is there
22 anyone else on the call who wishes to enter an appearance or
23 who is seeking to intervene in this proceeding? Okay.

24 Hearing nothing.

25 Let's first turn to Staff's motion to

1 consolidate. Both the City and the Railroad filed responses
2 joining with Staff's motion. So that motion is granted.

3 And I'll now turn to my ruling on Union
4 Pacific Railroad's motion to dismiss the complaint and deny
5 the petition.

6 I am denying both the motion to dismiss the
7 complaint and the request to deny the petition, and I will
8 briefly explain my reasoning. But my full decision will be
9 set out in the prehearing conference order.

10 First, Staff and the City are correct that
11 the Commission does not have the authority to determine
12 whether the laws it administers are constitutional, which
13 disposes of the Railroad's --

14 (Reporter clarification.)

15 JUDGE PEARSON: -- which disposes of Union
16 Pacific's argument that the complaint seeks relief that
17 violates the commerce clause, and that requiring Union
18 Pacific to maintain the proposed crossing devices is
19 arbitrary or unreasonable.

20 Staff also correctly observes that the ICCTA
21 does not preempt RCW 81.53.295. With respect to the
22 standard the Commission uses to evaluate a motion to
23 dismiss, the City is correct that the Commission must accept
24 the allegations set forth in the complaint as true. Because
25 the City has alleged that the project at issue will be

1 partially paid for with federal funds, the Commission
2 accepts that as true.

3 And finally, I disagree that the petition
4 fails to show that the public safety necessitates a change
5 to the existing warning devices. Accepting the facts in the
6 petition as true, the City explained that the changes are
7 necessary to accommodate traffic lanes and a multi-use path
8 as well as a projected increase in traffic due to new
9 development nearby. Again, I will expand on my decision in
10 the prehearing conference order. And now we can move on to
11 discovery.

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

14 MS. REYNOLDS: On behalf of the Railroad, yes.
15 Yes, Your Honor.

16 JUDGE PEARSON: Thank you.

17 And from -- sorry. Go ahead.

18 MR. PLANT: Your Honor, on behalf of the City, we
19 don't object if the Railroad wants the discovery rule.

20 MR. ROBERSON: Staff also has no objection.

21 JUDGE PEARSON: Okay. Thank you. We will make
22 the discovery rules available to the parties.

23 So that brings us to the schedule. Do the
24 parties need a recess to discuss scheduling?

25 MS. REYNOLDS: I think that would be helpful,

1 Judge. We have not discussed scheduling today except for a
2 substantive hearing on the motion, so I would appreciate
3 that on behalf of the Railroad.

4 JUDGE PEARSON: Okay. I have a small issue.
5 Let's go ahead and be in recess. We can go off the record.

6 (Off the record from 1:38 to 2:02 p.m.)

7 JUDGE PEARSON: Let's be back on the record
8 following a brief recess. And during the break, the parties
9 talked about a procedure schedule.

10 Were you all able to reach an agreement?

11 MR. ROBERSON: I think we're looking at a hearing
12 date in the second week of May, but we wanted to check your
13 availability.

14 JUDGE PEARSON: Sure. Did you have any particular
15 dates in mind?

16 MR. PLANT: I think from the City's side, we would
17 prefer it was not on a Monday or a Friday. Just to put that
18 out there.

19 JUDGE PEARSON: I have that same preference.

20 So it looks like I'm available May 10th;
21 really only May 10th, because of our open meeting and some
22 other obligations that I have.

23 So, Tuesday, May 10th, would work for me if
24 that works for the parties.

25 MS. REYNOLDS: I believe that works for the

1 Railroad, Judge. Thank you.

2 MR. ROBERSON: That works for Staff.

3 JUDGE PEARSON: Okay.

4 MR. PLANT: I think that works for the City as
5 well.

6 JUDGE PEARSON: Okay. Great. So working back
7 from there.

8 Mr. Roberson, do you have other dates that
9 you can read into the record?

10 MR. ROBERSON: We have not even considered them,
11 Judge Pearson. We were mostly trying to figure out when an
12 appropriate hearing time would be.

13 JUDGE PEARSON: Okay. Okay. So do you want to
14 take another break? Or do you want to --

15 MR. ROBERSON: Another break would help. You're
16 just going to want discovery cutoff at a settlement
17 conference date?

18 JUDGE PEARSON: Yeah. And prefile testimony,
19 response testimony, rebuttal and cross, answering, and then
20 briefing afterwards.

21 MR. ROBERSON: All right. I can't speak for the
22 parties, but I think Staff probably is not going to present
23 testimony. And I believe the parties are contemplating live
24 testimony, but I'll let them discuss that.

25 JUDGE PEARSON: Okay. That sounds good.

1 And then with respect to the hearing venue,
2 at this stage it's going to be virtual via Zoom, both the
3 evidentiary hearing and the public comment hearing. So we
4 can always modify that at a later date, but I -- with a
5 May hearing date, I highly doubt that will be possible. So
6 we will plan on hopefully conducting it via Zoom.

7 So I will -- we can go off the record.

8 (Off the record from 2:05 to 2:20 p.m.)

9 JUDGE PEARSON: Let's be back on the record
10 following another brief recess.

11 And Mr. Roberson, were the parties able to
12 agree on a schedule?

13 MR. ROBERSON: They were, Judge Pearson, pending
14 the dates working for you.

15 JUDGE PEARSON: Okay. Great.

16 MR. ROBERSON: So prefiled testimony from the
17 City, opening testimony would be due March 22nd, 2022.
18 Response testimony would be due April 12th, 2022. Any
19 cross-answering testimony or rebuttal testimony would be due
20 April 26th, 2022. There's a settlement conference scheduled
21 tentatively for April 22nd, and I think we've confirmed
22 that, but if we need to move it, we'll discuss it with you,
23 Judge Pearson. And then the last date as far as for
24 discovery would be May 4th, 2022. And the parties will try
25 to accelerate their answers to discovery, if possible, for

1 testimony near the discovery deadline.

2 JUDGE PEARSON: Okay. Would you like to address
3 the need and timing for post-hearing briefs at the hearing
4 then, as opposed to setting that date now?

5 MR. ROBERSON: We did not discuss that. That's
6 generally something I think we cover at the hearing. But
7 that's my bad. Sorry.

8 JUDGE PEARSON: That's okay. Usually we set it in
9 the schedule and what we discuss at the hearing is the
10 length. So I guess the question is whether you all -- I
11 mean, if I want post-hearing briefing, I can ask for it.
12 But if the parties feel strongly about it, I'm certainly
13 fine with addressing that at the hearing and deciding at
14 that time if we want to do one or two rounds as well.

15 MR. ROBERSON: From Staff's perspective, I think
16 one round would be sufficient. Ten days to get the
17 transcript and then two weeks for the brief. But --

18 MR. PLANT: From the City's perspective, we're
19 happy if you just want to address that at the hearing based
20 on how -- what information you feel would be most helpful to
21 you.

22 JUDGE PEARSON: Okay. Thank. All right. Well,
23 we'll say tentatively that we will anticipate that there
24 will be simultaneously post-hearing briefs, and then we can
25 set the deadline and discuss the need for responses, if any,

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at the time of the hearing.

So I will put that as a TBD placeholder in the procedural schedule attached to the order.

All right. Is there anything else that we need to address while we're here today?

MR. ROBERSON: Not from Staff.

JUDGE PEARSON: Okay.

MR. PLANT: Nothing.

JUDGE PEARSON: Okay. Thank you.

Ms. Reynolds, I saw you shake your head no, correct?

MS. REYNOLDS: Yes, thank you, Judge. For the good of the order, nothing further from the Railroad.

JUDGE PEARSON: Great. Thank you so much. All right. I will issue a record reflecting what was discussed here today, and we are adjourned. Thank you.

(Adjourned at 2:24 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF Thurston

I, April D. Biedermann, a Certified Court 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.

I do further certify that I am a disinterested person in this cause of action and that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of February, 2022.


April D. Biedermann, RSR, CCR

