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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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PUGET SOUND AND PACIFIC)
RAILROAD,)

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Petitioner,)

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v.)

) Dockets TR-110157 and
) TR-110162

7

GRAYS HARBOR COUNTY,)
Respondent.)

) (Consolidated)

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PUGET SOUND AND PACIFIC)
RAILROAD,)

) TR-110159, TR-110160, and
) TR-11061 (Consolidated)

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Petitioner,)

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v.)

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CITY OF ELMA,)
Respondent.)

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PREHEARING CONFERENCE, VOLUME I

14

Pages 1-18

15

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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10:00 A.M.

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JULY 18, 2011

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Washington Utilities and Transportation Commission

1300 South Evergreen Park Drive Southwest

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Olympia, Washington 98504-7250

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A P P E A R A N C E S (Continued)

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OLYMPIA, WASHINGTON; JULY 18, 2011

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10:00 A.M.

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P R O C E E D I N G S

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JUDGE KOPTA: All right. Let's be on the record in Dockets TR-110157 and TR-110162, entitled Puget Sound and Pacific Railroad vs. Grays Harbor County and Dockets TR-110159, TR-110160 and TR-110161, entitled Puget Sound and Pacific Railroad vs. City of Elma.

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Today's date is July 18, 2011, a little after ten o'clock. I'm Administrative Law Judge Gregory Kopta, and we are here convened for a prehearing conference. And we'll start this morning by taking appearances for the record, starting with the Company.

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MS. MONTGOMERY: That would be me. I am Laura Montgomery from Gleaves Swearingen Potter & Scott in Eugene, Oregon. I represent the Puget Sound and Pacific Railroad.

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You want my address, correct?

JUDGE KOPTA: Please.

MS. MONTGOMERY: 975 Oak Street, Suite 800, Eugene, Oregon, 97401. My e-mail is Montgomery@gleaveslaw.com, M-O-N-T-G-O-M-E-R-Y@gleaveslaw. It's like the law firm, G-L-E-A-V-E-S-L-A-W.com. My phone number is (541) 686-8833, and my fax number -- which I never use -- is (541) 345-2034.

Is that everything?

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1 JUDGE KOPTA: I believe so. Thank you.

2 MS. MONTGOMERY: Thank you.

3 MR. GLENN: I guess I'll ask how much of the contact
4 information does the judge need? I can go through the thing.
5 I'm Dan Glenn, representing the City of Elma. Do you want me
6 to go through the street address, et cetera?

7 JUDGE KOPTA: If you would, please. The first
8 appearance, we always like to have the complete contact
9 information.

10 MS. MONTGOMERY: Sure. Mailing address is P.O. Box
11 49, Olympia 98507. The street address is 2424 Evergreen Park
12 Drive Southwest, Olympia. The telephone numbers would be
13 (360) 943-7700. Fax would be 943-7721. The e-mail address is
14 straightforward. Glenn, G-L-E-N-N, Satsop, S-A-T-S-O-P,
15 @msn.com.

16 I like to remember from whence I came. And I guess
17 I won't tell you what my Bar number is because it makes me feel
18 very old.

19 JUDGE KOPTA: Fair enough.

20 MS. MONTGOMERY: Being in this building makes me feel
21 old because I interned for Dick Hemstad in the Governor's
22 Office.

23 JUDGE KOPTA: Oh, my goodness. Okay.

24 MR. GLENN: I'll sit back down because I'm going over
25 time.

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1 JUDGE KOPTA: You don't need to stand, unless you
2 really have a predilection to stand.

3 MR. BAKER: Well, actually, it helps me to stretch my
4 back a little.

5 JUDGE KOPTA: Well, that's fine too.

6 MR. BAKER: I am James G. Baker. I'm a senior deputy
7 prosecuting attorney representing Grays Harbor County. Our
8 mailing address is 102 West Broadway, Room 102, Montesano,
9 Washington 98563. My telephone number is (360) 249-3951. Fax
10 number is (360) 249-6024. E-mail address is JBaker -- that's
11 J-B-A-K-E-R -- @co.grays-harbor.wa.us, and I think I covered
12 everything.

13 JUDGE KOPTA: I think so. Thank you.

14 MS. WOODS: Good morning, Your Honor. I'm Fronda
15 Woods, Assistant Attorney General for Utilities and
16 Transportation Commission Staff, and I would like to point out
17 that in the room this morning from the UTC Staff are Dave
18 Pratt, Kathy Hunter and Paul Curl.

19 My address is 1400 South Evergreen Park Drive
20 Southwest, P.O. Box 40128, Olympia, Washington 98504-0128. My
21 telephone number is area code (360) 664-1225. My fax number is
22 area code (360) 586-5522. My e-mail address is
23 FWoods@utc.wa.gov.

24 And I neglected to mention that John Cupp from UTC
25 Staff is here this morning as well.

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1 MR. FASSIO: Good morning, Your Honor. Michael
2 Fassio, Assistant Attorney General, also representing Utilities
3 and Transportation Commission Staff. I have the same address
4 and fax. And my phone number is (360) 664-1192, and e-mail
5 address is mfassio@utc.wa.gov.

6 JUDGE KOPTA: Thank you. Is there anyone else that
7 would like to make an appearance either here in the Commission
8 or on the bridge line? Hearing none, I will assume not.

9 First order of business would be to consider
10 petitions to intervene. The Commission has not received any
11 such petitions. I don't see anyone in the hearing room that
12 looks like they want to intervene, and at least they didn't
13 file any notice of appearance. But I will ask, is anyone
14 wishing to intervene in this proceeding that is not already a
15 party? Again, hearing nothing, I will assume not.

16 MR. GLENN: With the Court's permission, I would make
17 one note. Fire District No. 5, Grays Harbor Fire District No.
18 5, they've recently changed administration, and I believe
19 Mr. Baker and I both have received communication from their new
20 chief. Whether or not they will speak through us or intervene,
21 I don't know, but I just wanted to give you a heads-up that
22 they've just recently become more, if you will, involved.

23 JUDGE KOPTA: All right. I will note that, although
24 since they are not here, then I will assume at this point --

25 MR. GLENN: I agree.

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1 JUDGE KOPTA: -- that the players in this particular
2 round will be those that are in the room today.

3 So we are here to set up some procedural issues.
4 The first one being discovery. At this point, the Commission's
5 discovery rules are not yet available. Does any party wish to
6 have the Commission make a finding that would make the
7 discovery rules available in the proceeding?

8 MS. WOODS: This is Fronda Woods for Commission Staff.
9 Commission Staff would like to have the discovery rules be made
10 available. Because of the number of crossings involved in
11 these matters and the complexity of their interrelationships,
12 we think it would be a good idea to be able to inquire about
13 things that could affect the closures of the crossings.

14 JUDGE KOPTA: Okay. Any objection to making the
15 discovery rules available?

16 MS. MONTGOMERY: Would they be available to all
17 parties then?

18 JUDGE KOPTA: Absolutely.

19 MS. MONTGOMERY: No objection.

20 JUDGE KOPTA: Okay. Then we will make a finding that
21 this proceeding is one in which discovery will be available.

22 The next issue would be one of scheduling. Have the
23 parties met to discuss scheduling in this matter?

24 MS. WOODS: This is Fronda Woods for Commission Staff.
25 We did exchange some phone calls and e-mails about a potential

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1 schedule. I had an opportunity to speak with the attorneys for
2 the railroad and the county. The city's attorney I think was
3 on vacation during the time of those communications so we've
4 not been able to speak about possible --

5 MR. GLENN: This is Dan Glenn. I can indicate that I
6 have reviewed the schedule as contained in the e-mail, and we
7 have no problem with it.

8 JUDGE KOPTA: All right. Would you like to present
9 that now or should we have additional discussions off the
10 record? What's your preference?

11 MS. WOODS: Well, I can lay out the schedule that we
12 discussed, and if other parties want to weigh in on whether
13 that accurately represents what we discussed, that would be --

14 JUDGE KOPTA: Should we do that on the record or off
15 the record?

16 MR. BAKER: I think that can be done on the record.

17 MS. MONTGOMERY: I think it can be done on the record.

18 JUDGE KOPTA: Okay, then. Why don't you go ahead.

19 MS. WOODS: UTC Staff does prefer prefiled written
20 testimony and exhibits, which is the customary practice of the
21 Commission, and so the schedule that we have discussed assumes
22 that parties would be submitting prefiled testimony and
23 exhibits.

24 The first deadline would be September 16th, 2011,
25 for the railroad to file its written case in chief testimony

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1 and exhibits.

2 And the next deadline would be November 10th, 2011,
3 for all respondents to file written testimony and exhibits.

4 Following that, December 9, 2011, for all parties to
5 file rebuttal or cross-answering written testimony and
6 exhibits.

7 We didn't have a specific date proposed for an
8 evidentiary hearing. We talked about in January -- not the
9 first week, but maybe the second week or third week. I
10 understand that some of the other counsel have some conflicts
11 late in January, which we might need to discuss.

12 Commission Staff would also support having a public
13 comment hearing, setting aside an evening perhaps during the
14 evidentiary hearing, or not, in Elma, if a suitable location
15 can be found.

16 Post-hearing briefs to be determined, if needed.

17 JUDGE KOPTA: Okay. Any other parties have comments
18 or embellishments on what Staff has laid out as a proposed
19 schedule?

20 MS. MONTGOMERY: I believe that's accurate. I do -- I
21 am one of the attorneys that has conflicts late in January. I
22 believe it's the week of the 25th, that week, and through that
23 weekend is unworkable for me. I have prior commitments.

24 And I think Ms. Woods had indicated that also WTC
25 staff would be submitting their -- whatever they're going to be

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1 submitting in the evidentiary portion on the November 10th date
2 as well, if I understand that correctly.

3 MS. WOODS: That's correct.

4 MS. MONTGOMERY: That's the only change I would have.

5 JUDGE KOPTA: Okay. Anyone else or does that reflect
6 what your understanding of the proposal is?

7 MR. BAKER: Jim Baker for the County. I'm in
8 agreement with those dates. I am the other attorney, along
9 with Ms. Montgomery, that has a conflict the 26th and 27th of
10 January, I would not be available, but other than that, January
11 looks fine.

12 JUDGE KOPTA: Okay. At this point, anyone have an
13 estimate on the number of hearing days that would be required?

14 MS. MONTGOMERY: Laura Montgomery for PSAP. I believe
15 we discussed two days for the hearing and possibly one for
16 public comment, which would be separate from that. I can't
17 imagine -- particularly given the procedure in which it's
18 conducted, where everything is submitted in writing ahead of
19 time and all that is going to occur really is
20 cross-examination, if I understand correctly.

21 JUDGE KOPTA: That's correct.

22 MS. MONTGOMERY: I don't see how it could take longer
23 than that.

24 JUDGE KOPTA: All right. Well, I like to get an idea
25 from the parties what they think in terms of scheduling.

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1 Well, if everyone is in agreement with that
2 schedule, I don't have any problem with it. I will look at the
3 Commission's calendar and my own calendar to see when is the
4 best time to schedule hearing dates, and then I guess as far as
5 the public comment hearing, does anyone have some suggestions
6 in terms of where that might be held? I mean, it's not
7 necessarily something that we would need to decide today.

8 MR. GLENN: Dan Glenn for the City of Elma. The City
9 obviously has -- City Hall has a council chamber available for
10 that and would make that available on any schedule that would
11 be found appropriate by the Court.

12 JUDGE KOPTA: Okay. All right. Well, that will be
13 helpful just so we have a place that we can schedule. We can
14 do that later when we send out the notice, the public notice
15 about that hearing date.

16 One other issue, I know that there was some -- I had
17 heard some discussions of the possibility of conducting a
18 mediation to resolve some of these or all of these issues. Is
19 that anything that you all want to explore at this point or are
20 you pretty well set in your positions, and we need to go
21 through with the schedule?

22 MS. MONTGOMERY: PSAP is always ready and willing to
23 participate in mediation and would be happy to continue to do
24 that, even as we proceed with the schedule so that we don't
25 have to have any further delay. We would be happy to

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1 participate in mediation with a third-party mediator or
2 whoever.

3 JUDGE KOPTA: Well, the Commission does make available
4 mediation services. A different Administrative Law Judge would
5 be made available, if the parties request to have that happen,
6 and it would be something I would expect all parties to request
7 since mediation tends to be one of those things that unless
8 everyone is on board with it, it doesn't go anywhere. That's
9 why I ask if everyone is requesting mediation at this point or
10 not.

11 MR. GLENN: From the City's standpoint, we prefer not
12 to treat the federal way of handling things at this stage, and
13 if there's a way to solve it, then the answer is yes, we would
14 request a mediation. We received a suggestion that I think is
15 going to take some discussion. So yes. Short answer.

16 MR. BAKER: And I would agree with Mr. Glenn's
17 comments from the County's standpoint.

18 JUDGE KOPTA: And Staff?

19 MS. WOODS: Staff would support mediation if the other
20 parties want that to happen.

21 JUDGE KOPTA: All right. What I'm hearing then is
22 that there is a request for mediation, so we will go ahead and
23 set that up. I'll assign another Administrative Law Judge, and
24 he can take care of scheduling that with the parties directly.

25 We will be issuing a prehearing conference order

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1 that will include the schedule, along with hearing dates, and
2 separate notice of mediation scheduling. And I think that's
3 all on my list of things to discuss, unless parties have
4 something else that they want to raise at this point.

5 MS. WOODS: Your Honor, Fronda Woods for Commission
6 Staff.

7 The prehearing conference notice does have a little
8 section about SEPA, the State Environmental Policy Act. And
9 most actions of the UTC are categorically exempt from SEPA, but
10 gray crossing closures are not. So the UTC is required to
11 comply with the SEPA procedures should the UTC order a crossing
12 closure. Under the SEPA rules, local governments are elite
13 agencies when there's more than one jurisdiction involved, and
14 in this case, that's going to be the City of Elma for three of
15 the closures that have been proposed; Grays Harbor County for
16 the other two.

17 It's my understanding that the SEPA process has been
18 completed for the City, but not for the County, and perhaps the
19 other attorneys would want to comment on that.

20 JUDGE KOPTA: Before they do, is it your understanding
21 that that needs to have taken place before we enter into a
22 schedule or at least hearings; is there a particular timing in
23 the proceeding that that needs to be completed?

24 MS. WOODS: SEPA requires that for proposals for
25 actions that are not exempt, it has to be accompanied by either

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1 a threshold determination that an Environmental Impact
2 Statement is not needed or an Environmental Impact Statement.
3 So before the UTC could complete an order, the SEPA process
4 would need to be completed, but I don't think that has to be
5 done before we move forward with our hearing schedule.

6 JUDGE KOPTA: And is there some review by EPA or
7 another agency that is involved that needs to sign off on this
8 EPA review before the Commission can take action?

9 MS. WOODS: I don't think to. Again, the local
10 governments are the lead agencies for a proposal like this, and
11 the UTC is -- just kind of follows along.

12 JUDGE KOPTA: Well, I just want to make sure that we
13 don't spend a whole lot of time and effort that another agency
14 is going to review and say, oh, well, you needed an
15 Environmental Impact Statement and, you know, you didn't have
16 one, or the EIS that you put together is insufficient and
17 therefore you have to go back and do it again. So that's my
18 concern, is timing.

19 So the other counsel, if you would. Make sure your
20 microphone is on, Mr. Glenn.

21 MR. GLENN: Yes, sir.

22 JUDGE KOPTA: Where are we in terms of the SEPA review
23 process?

24 MR. GLENN: The City of Elma has completed a review
25 some time back, issued a mitigated declaration of

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1 nonsignificance. The period for appeal has passed.

2 JUDGE KOPTA: Okay. That sounds good.

3 MR. BAKER: As far as the County is concerned, I do
4 not believe the County has initiated that yet, so I will have
5 to notify our planning staff to get the ball rolling on it. I
6 can do that this afternoon.

7 JUDGE KOPTA: And as far as timing goes, when would
8 you anticipate being able to put together what you need to do?

9 MR. BAKER: Just a guesstimate, I would think within
10 the next month.

11 JUDGE KOPTA: Okay.

12 MR. BAKER: Yeah. It shouldn't interfere with any of
13 the deadlines that the Board is going to set.

14 JUDGE KOPTA: Okay. And that was obviously my primary
15 concern, is to make sure we get this done so it fits into the
16 schedule we've just talked about.

17 MR. BAKER: Right.

18 JUDGE KOPTA: Ms. Montgomery, does that accord with
19 your understanding?

20 MS. MONTGOMERY: The factual statements are accurate.
21 I believe that the City has done a mitigated determination of
22 nonsignificance, and the time for appeal did pass. I don't
23 believe I've seen anything from the County with respect to
24 that, and the railroad has not weighed in in any way on it at
25 this juncture.

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Lisa Buell, a Certified Shorthand Reporter and Notary
7 Public in and for the State of Washington, do hereby certify
8 that the foregoing proceedings are true and accurate to the best
9 of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 26th day of July, 2011.

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LISA BUELL, RPR, CRR, CCR

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17 My commission expires:

18 DECEMBER 2014

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