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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY,)	Docket TR-140382 and
)	Docket TR-140383
Petitioner,)	Pages 39 - 52
)	
v.)	
)	
YAKIMA COUNTY,)	
)	
Respondent.)	

TELEPHONIC PREHEARING CONFERENCE - VOLUME II

Pages 39 - 52

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

2:35 P.M.

NOVEMBER 4, 2014

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0041

1 OLYMPIA, WASHINGTON, NOVEMBER 4, 2014

2 2:35 P.M.

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

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7 JUDGE PEARSON: Let's be on the record in
8 consolidated dockets, TR-140382 and TR-140383, captioned: BNSF
9 Railway Company v. Yakima County.

10 Today is Wednesday, November 4, 2014, at
11 approximately 2:35 p.m., and we are here for a telephonic
12 prehearing conference to establish a new procedural schedule
13 with an evidentiary hearing in April 2015, as well as to hear
14 Staff's motion to withdraw from this proceeding.

15 My name is Rayne Pearson, and I am the administrative
16 law judge presiding over this case. Commission Staff is present
17 with me in the hearing room.

18 Mr. Oshie, if you want to briefly give an appearance?

19 MR. OSHIE: Certainly, Judge.

20 My name is Patrick Oshie, representing Commission
21 Staff.

22 JUDGE PEARSON: Okay. And if the representative for
23 BNSF, Mr. Montgomery, if you could just introduce yourself on
24 the record.

25 MR. MONTGOMERY: Yeah. This is Tom Montgomery on

0042

1 behalf of BNSF Railway Company.

2 JUDGE PEARSON: Okay. Can you speak up a little bit,
3 Mr. Montgomery?

4 MR. MONTGOMERY: I sure can, Your Honor.

5 Tom Montgomery on behalf of BNSF Railway.

6 JUDGE PEARSON: Okay. And the representatives for
7 Yakama Nation, if you could introduce yourselves.

8 MR. SEXTON: Thank you, Your Honor. This is Joe
9 Sexton on behalf of Yakama Nation.

10 MR. JONES: And this is Ethan Jones on behalf of the
11 Yakama Nation.

12 JUDGE PEARSON: Okay. And is there anyone on the
13 bridge line representing Yakima County?

14 Okay. Hearing nothing, we'll proceed for now.
15 Hopefully, someone from the County will join us.

16 So, first, we'll take up Staff's motion to withdraw
17 from the proceeding.

18 Mr. Oshie, when you're ready.

19 MR. OSHIE: Thank you, Judge.

20 What Staff has requested is that it be able to
21 withdraw from this proceeding, and Staff proffers two of -- you
22 know, really two reasons for that. One, of course, is that
23 Staff is very, very busy right now and is unable, it believes,
24 to spend the time it feels necessary to provide information and
25 evidence sufficient for the -- for it in order to provide a

0043

1 record for this proceeding.

2 The second reason is that Staff, understanding that
3 Yakima County is involved in this case and the Yakama Nation is
4 involved in this case, it believes that the parties are
5 competent, they're represented by counsel, and that they will
6 provide a sufficient record for this Court to make a decision.

7 So those are the reasons Staff is asking to withdraw.
8 I think largely the reason is that it believes it unable to
9 devote the time necessary to this case.

10 JUDGE PEARSON: Okay. Thank you.

11 MR. OSHIE: Mm-hm.

12 JUDGE PEARSON: And it's my understanding that
13 although Staff will no longer be a party to the proceeding,
14 Staff will be able to advise the Commission with this
15 proceeding; is that correct?

16 MR. OSHIE: Yeah. Staff would be available to advise
17 the Commission. I think its participation with the judicial
18 side of the Commission would be, I think, largely a matter of
19 policy that the Commission has really employed when making these
20 decisions.

21 JUDGE PEARSON: Okay. Thank you.

22 Do any of the parties on the bridge line have an
23 objection to the Staff's motion, or any comments that they want
24 to make?

25 MR. SEXTON: This is Joe Sexton for Yakama Nation.

0044

1 Your Honor, we have no objection to the motion.

2 Thank you.

3 JUDGE PEARSON: Thank you.

4 Mr. Montgomery?

5 MR. MONTGOMERY: On behalf of BNSF Railway Company,
6 Your Honor, I would only comment that BNSF always values the
7 Staff's input and competence, and we would wish them well and we
8 will miss them and we do not oppose the motion.

9 I do, however, have a question of what the Staff's
10 being available to advise the Commission would look like as a
11 practical or logistical matter.

12 (Reporter interruption for clarification.)

13 JUDGE PEARSON: Can you speak up and repeat that?
14 The court reporter is having trouble hearing what you said.

15 MR. MONTGOMERY: Yeah. I'm really sorry. I need
16 Mr. Jones' speakerphone, I think.

17 BNSF will miss the Staff. We always value and
18 appreciate Staff's input; however, BNSF does not oppose the
19 motion.

20 However, I did say that I wonder when Staff -- when
21 you ask if Staff will be available to advise the Commission,
22 what that would look like as a practical and logistical matter.

23 JUDGE PEARSON: Okay. Mr. Oshie?

24 MR. OSHIE: Yes. Thank you, Judge.

25 Well, as I noted, Mr. Montgomery, I believe that what

0045

1 the Staff would be willing to do is to provide its expertise to
2 the Court where it comes down to matters of how similar cases
3 have been decided, the policies that have been employed that the
4 Commission will make in these decisions.

5 Staff does not believe that it will take a lot of
6 time in order to do that, and it's only as necessary as the
7 Court would feel necessary. It's not something that we would
8 insert ourselves or ask to insert ourselves in this process.
9 We're available if the Court believes that it would be helpful
10 for it to make a decision.

11 JUDGE PEARSON: Mr. Montgomery, did that address your
12 question?

13 MR. MONTGOMERY: Yeah, it does. I assume that would
14 be something done in writing, then? The Court would enter an
15 order or some other directive asking for the Staff's assistance
16 in some particular matter, perhaps, or is it ex parte? I'm just
17 wondering how it looks or how it plays out.

18 MR. OSHIE: Well, we haven't -- Mr. Montgomery, this
19 is Pat Oshie again.

20 We really haven't considered the mechanism by which
21 Staff would become involved in the decision-making process along
22 with Judge Pearson.

23 I suppose if you would like notice of Staff's
24 participation in a very -- are you thinking in a general way
25 just to know when Staff is involved?

0046

1 MR. MONTGOMERY: I guess I'm asking what Staff and
2 the Commission had in mind. I haven't encountered it before, so
3 I'm simply asking how --

4 MR. OSHIE: Mm-hm.

5 MR. MONTGOMERY: -- as you say, what the mechanism
6 is.

7 JUDGE PEARSON: One moment, Mr. Montgomery.

8 Mr. Montgomery, when Staff is not a party to a
9 proceeding, they frequently advise the Commission with respect
10 to policy matters and things of that nature.

11 MR. MONTGOMERY: Thank you, Your Honor.

12 JUDGE PEARSON: Okay. Since there were no objections
13 to Staff's motion, that motion to withdraw is granted.

14 And that brings us next to the schedule, and hearing
15 dates that are available are the week of -- any day the week of
16 April 13th, any day of the week of April 20th, as well as April
17 27th, 28th, and 29th.

18 Did the parties have a preference for any of those
19 dates?

20 MR. SEXTON: Your Honor, this is Joe Sexton on behalf
21 of the Yakama Nation. The parties -- I see the parties did meet
22 and confer pursuant to the Court's recommendation, and we had
23 some conflicts that unfortunately we weren't able to resolve.

24 On behalf of Yakama Nation, any of the dates listed
25 were pretty much wide open in April, so the Yakama Nation is

0047

1 okay with any day in the two weeks the Court just referenced, as
2 well as April 27, 28th, and 29. I think it's going to be up to
3 BNSF and the County to flush through their schedules and resolve
4 any conflicts they might have.

5 JUDGE PEARSON: Okay. And, Mr. Montgomery, what
6 dates would work for BNSF?

7 MR. MONTGOMERY: Given that I have a trial starting
8 April 20th, I guess I would prefer -- and it wouldn't last --
9 oh, boy. It shouldn't last, I guess is a better choice of
10 words, a week.

11 I guess the 27th, 28th -- or I'd say 28 and 29 would
12 be my preference.

13 JUDGE PEARSON: Okay. Well, we can schedule the
14 hearing. It was scheduled for two days, so I presume we're
15 going to want to again schedule it for two days. And the 28th
16 and the 29th are fine with my calendar, so we can go ahead and
17 set the hearing for those two days.

18 And do the parties wish to set a date or a date range
19 for a settlement conference here today, or do you prefer to work
20 that out amongst yourselves?

21 MR. SEXTON: Your Honor, this is Joe Sexton, again,
22 for the Yakama Nation.

23 We don't have a preference either way, I guess. We
24 may benefit from some additional discovery before engaging in a
25 settlement conference, so I guess the one preference I would say

0048

1 that the Nation does have is to push the entire schedule out
2 proportionately with respect to the new hearing date.

3 JUDGE PEARSON: Yes, that's what I plan to do.

4 MR. SEXTON: Thank you, Your Honor.

5 So we could have the settlement conference, I guess,
6 at a later date.

7 JUDGE PEARSON: Okay. I can leave that up to the
8 parties, too. I don't need to set one in the schedule.

9 MR. SEXTON: Okay.

10 JUDGE PEARSON: But the schedule that I have based on
11 the new hearing dates is prefiled testimony due on Wednesday,
12 December 31, 2014. Response testimony due Friday, February 13,
13 2015, with rebuttal and cross-testimony for all parties due on
14 Friday, March 13, 2015. And hearing dates of April 28th and
15 29th, and then, finally, the simultaneous post-hearing briefs
16 due Monday, June 1, 2015.

17 Do those dates work for the parties?

18 MR. MONTGOMERY: I believe so, Your Honor.

19 MR. SEXTON: Your Honor, they work for Yakama Nation.

20 MR. MONTGOMERY: And BNSF as well, Your Honor.

21 JUDGE PEARSON: Okay. Thank you.

22 So we will reserve a room at the Commission for both
23 days of the hearing on the 28th and 29th. It's up to the
24 parties to find a facility in Yakima to host the hearing, and if
25 you have not secured a space and notified me of that location by

0049

1 the date that rebuttal and cross-testimony is due, which is
2 Friday, March 13, 2015, we will hold both the evidentiary and
3 the public comment hearings here at the Commission's
4 headquarters in Olympia.

5 So please make sure that you notify me directly if
6 and when you secure a location, okay?

7 MR. SEXTON: Thank you, Your Honor. We will be sure
8 to notify the Court.

9 And I just wanted to clarify, I believe previously
10 that the public hearing was to be set at some location reserved
11 in Toppenish, Washington.

12 Am I mistaken?

13 (Reporter interruption for clarification.)

14 JUDGE PEARSON: He said "Toppenish, Washington."

15 I'm not aware of that. Let me see if that's in here.
16 Just give me one moment, please.

17 MR. SEXTON: Thank you, Your Honor.

18 MR. MONTGOMERY: Mr. Jones, that rings a bell with me
19 as well. Tom Montgomery, BNSF Railway.

20 Did the County offer up some sort of accommodation?

21 JUDGE PEARSON: What I see in the prehearing
22 conference order is that a separate notice will be issued
23 setting forth the specific location in Yakima County where the
24 public comment hearing will be held and confirming the date and
25 time. And same with the evidentiary hearing. The separate

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1 notice will be sent out at a designated location in Yakima
2 County, so it doesn't specifically say Toppenish.

3 MR. SEXTON: Joe Sexton again for Yakama Nation.
4 That makes sense, Your Honor. Toppenish is within the County,
5 and Toppenish is -- the reason I ask that, I think the parties
6 had that understanding. It may have not made it into any
7 written memorialization in the previous proceedings. But
8 Toppenish is the closest municipality, I think, to the areas
9 potentially impacted by the issues at hand.

10 JUDGE PEARSON: Okay.

11 MR. SEXTON: So I think that makes sense, and I thank
12 you for that.

13 (Reporter interruption for clarification.)

14 JUDGE PEARSON: Can you repeat that? I'm sorry. The
15 court reporter is having trouble hearing on the bridge line.

16 MR. SEXTON: Yes, Your Honor. This is Joe Sexton. I
17 think the parties -- I'm informed by my co-counsel that the
18 parties had discussed having the hearing in Toppenish,
19 Washington, because that's the closest municipality to the areas
20 potentially affected by the closures at issue in this matter.

21 Since Toppenish is in Yakima County, that makes sense
22 that whatever was reduced to writing references the County, and
23 then that I assume the parties will just work amongst ourselves
24 to set the hearing at the most convenient place.

25 JUDGE PEARSON: Okay. That sounds good.

0051

1 Okay. Is there anything else we need to address
2 while we're here today?

3 MR. SEXTON: I have nothing on behalf of Yakama
4 Nation, Your Honor.

5 JUDGE PEARSON: Thank you.

6 Mr. Montgomery?

7 MR. MONTGOMERY: No, other than clarification that
8 the parties will still have the obligation by March the 13th to
9 advise the Court what alternative arrangements have been made,
10 correct?

11 JUDGE PEARSON: Correct.

12 MR. MONTGOMERY: Okay. Whether it's Toppenish or
13 Yakima itself or whatever the parties can agree to?

14 JUDGE PEARSON: Correct.

15 MR. MONTGOMERY: Thank you.

16 JUDGE PEARSON: Okay. Thank you.

17 I will issue an order reflecting what we discussed
18 here today, and we are adjourned. Thank you.

19 MR. SEXTON: Thank you, Your Honor.

20 MR. MONTGOMERY: Thank you very much.

21 (Proceeding concluded at 2:48 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
and Notary Public 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.

IN WITNESS WHEREOF, I have hereunto set my hand and seal
this 13th day of November, 2014.

SHELBY KAY K. FUKUSHIMA, CCR

My commission expires:
June 29, 2017

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