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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION
3 CHELAN COUNTY)
)
4 Petitioner,)
)
5 vs.) DOCKET NO. TR-061442
) Volume III
6 THE BURLINGTON NORTHERN) Pages 50 - 55
SANTA FE RAILWAY COMPANY,)
7)
)
8 Respondent.)

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10 A prehearing conference in the above matter
11 was held on November 9, 2007, at 9:32 a.m., at 1300
12 South Evergreen Park Drive Southwest, Olympia,
13 Washington, before Administrative Law Judge THEODORA
14 MACE.

15 The parties were present as follows:

16 CHELAN COUNTY, by LOUIS N. CHERNAK (via
17 bridge), Civil Deputy Prosecuting Attorney, 401
18 Washington Street, Fifth Floor, Post Office Box 2596,
Wenatchee, Washington 98807; telephone, (509)
667-6643.

19 BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY,
20 by BRADLEY P. SCARP and KELSEY E. ENDRES, Attorneys at
21 Law, Montgomery, Scarp, McDougall, 1218 Third Avenue,
27th Floor, Seattle, Washington 98101; telephone,
(206) 625-1801.

22 WASHINGTON UTILITIES AND TRANSPORTATION
23 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney
24 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504;
25 telephone, (360) 664-1225

Kathryn T. Wilson, CCR, Court Reporter

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1 PROCEEDINGS

2 JUDGE MACE: Let's be on the record in Docket
3 TR-061442. This is the case of Chelan County against
4 Burlington Northern Santa Fe Railway Company. I'm
5 Theodora Mace, the administrative law judge who has
6 been assigned to this case. I'm sure we have taken the
7 oral appearances of counsel before, so if you would
8 just briefly introduce yourself for the record, and
9 we'll start with Mr. Scarp.

10 MR. SCARP: Bradley Scarp for BNSF Railway
11 Company. The information you already have on the
12 record is still current. Also with me...

13 MS. ENDRES: Kelsey Endres.

14 MR. THOMPSON: Jonathan Thompson for
15 Commission staff.

16 MR. CHERNAK: This is Louis N. Chernak for
17 Chelan County, and the information you have for me is
18 all still current too. Thank you.

19 JUDGE MACE: From my point of view, the
20 purpose of this prehearing conference is to see where
21 we are in this case and to set a schedule, if that's
22 appropriate, since I entered an order in August, as I
23 recall, finding that the Commission did have
24 jurisdiction over this matter. So can one of you,
25 Mr. Scarp, Mr. Thompson, or Mr. Chernak, let me know

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1 what's going on in the case and where we are with it
2 and what should we do now? Should we be setting a
3 schedule?

4 MR. SCARP: Mr. Chernak, I'm not sure that
5 it's necessary to this proceeding, but just by way of
6 reminder, I was waiting on a letter from you following
7 up on our telephone conversation.

8 MR. CHERNAK: I have Mr. Pezoldt with me
9 here, and we were talking about that, and we will be
10 trying to supply that as quickly as we can.

11 MR. SCARP: That relates to some logistical
12 questions and various things regarding the actual
13 structure design and things, because we are still
14 operating in something of a vacuum relating to the
15 project and the scope of the project, etcetera, but
16 that aside, I would agree that we probably need --
17 there has been some data requests to Chelan County and
18 responses. Those were within the past, I think the
19 responses were within the past month or so, so from our
20 point of view, I would say that yeah, we probably need
21 to move along. I welcome Mr. Chernak's comments.

22 MR. CHERNAK: And I think we probably will
23 send out one set of data requests as well, and that
24 will be forthcoming fairly quickly, and we do have, I
25 guess, established the parameters of what I guess what

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1 we call -- the information about the trestle itself and
2 the structure, but I do think we need to set a date so
3 we have a time line for this.

4 We need an evidentiary hearing date. I'm not
5 sure that we will be -- for me, at least, the month of
6 December is pretty much out for setting any kind of
7 deadlines if I could let the tribunal know that, so it
8 would probably be after the first of the year we could
9 start doing things.

10 JUDGE MACE: I would like to let the parties
11 talk about what they want to do for scheduling. I'm
12 assuming you are still going to be filing direct
13 testimony, response testimony, rebuttal, etcetera,
14 prior to the evidentiary hearing, so you want to set a
15 schedule for that.

16 MR. CHERNAK: Yes.

17 JUDGE MACE: I would be willing to give you
18 time to address that now. We could go off the record,
19 and Mr. Thompson, you haven't chimed in here. Do you
20 and does Staff have a position on this?

21 MR. THOMPSON: Not particularly because we
22 don't plan to be involved in terms of having testimony
23 or anything like that. We are just sort of in a
24 monitoring mode at this point.

25 JUDGE MACE: Then I will let you all talk

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1 about the scheduling on your own. I don't need to be a
2 part of that, and I will recess for 10 or 15 minutes
3 and see if you can come up with a schedule, and then we
4 can record it for the record and we will be back on
5 track. We are recessed until ten minutes to ten, about
6 ten minutes.

7 (Recess.)

8 JUDGE MACE: Let's go back on the record in
9 Docket TR-061442. The parties have discussed
10 scheduling for this proceeding and proposed a filing
11 date of March 3rd for testimony from Chelan County, a
12 filing date of March 31st for direct testimony from
13 BNSF -- these are all 2008 dates, obviously -- rebuttal
14 filing date of April 21st, and a hearing date of May
15 16th, and on that hearing date, it could be an
16 evidentiary hearing or it might be oral argument
17 because the parties will already have pretty much
18 refined where the issues are. They won't need to cross
19 witnesses, and we will just proceed with oral argument,
20 or possibly this will all settle and we won't even need
21 the evidentiary hearing date.

22 I advised the parties off the record that I
23 thought this was a pretty generous schedule and have a
24 fond hope that we can hold onto this schedule and that
25 the parties will be able within the time frame we have

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1 now, which is a good five or six months, to flesh out
2 whatever issues there are between them about the cost
3 of this project and allocation issues and who will bear
4 the costs so that we can get resolution by May 16th or
5 as soon thereafter as we need.

6 Is there anything else we need to address
7 before I adjourn? The parties are conducting discovery
8 and will be conducting discovery. That's my
9 understanding from Mr. Scarp and Mr. Chernak, and I
10 encourage you to continue that. Anything else?

11 MR. SCARP: Nothing further.

12 MR. CHERNAK: I would appreciate it if we
13 could speak sometime next week, Mr. Scarp, if you have
14 time.

15 MR. SCARP: I'm generally available.

16 MR. CHERNAK: I'll call you up.

17 (Prehearing adjourned at 9:59 a.m.)

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