

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

CITY OF WENATCHEE,

Petitioner,

v.

BNSF RAILWAY CO.,

Respondent.

DOCKET TR-220540

ORDER 03

GRANTING PETITION TO MODIFY
WARNING DEVICES AT A PUBLIC
HIGHWAY-RAIL GRADE
CROSSING AT 9th STREET,
WENATCHEE

USDOT: 065838N

BACKGROUND

- 1 On July 15, 2022, the City of Wenatchee (City or Petitioner) filed with the Washington Utilities and Transportation Commission (Commission) a Petition to Modify Highway-Rail Grade Crossing Warning Devices (Petition). The Petition sought to modify warning devices at the crossing at 9th Street in Wenatchee, Washington, identified as USDOT 065838N.
- 2 BNSF Railway Co. (BNSF or Respondent) did not consent to entry of a Commission order without hearing. On August 8, 2022, BNSF filed a response by email to Staff expressing material opposition to the Petition.¹

2022-2025

- 3 The City's Petition involves a modification to highway-rail grade crossing warning devices at the City's 9th street crossing.² The Petition was originally filed on July 15, 2022, and was set to be heard on May 22, 2023.³ In April 2023, proposed testimony and exhibits were filed.

¹ The email chain was filed in the docket on August 15, 2022.

² Hughes, TR 17:9-11.

³ *City of Wenatchee v. BNSF Railway Co.*, Docket TR-220540, Order 01, Prehearing Conference Order; Notice of Hearing (Oct. 27, 2022).

- 4 On April 18, 2023, the Administrative Law Judge (ALJ) issued a notice suspending the schedule to accommodate the parties' request for a pause to settle the matter without going to hearing. On July 31, 2023, BNSF and the City informed the previous ALJ that "we just need to work through a maintenance agreement and then should be in a position to resolve the case."⁴ The ALJ requested an update on the proposed settlement by September 1, 2023.⁵
- 5 On September 11, 2023, the parties informed the ALJ that "[t]he City and BNSF tentatively agreed to a design change and yet need to work through a construction and maintenance agreement."⁶ The former ALJ requested a further update by October 1, 2023. No update was given.⁷
- 6 On January 29, 2025, the writing ALJ was assigned to this matter and requested an update; the parties told the ALJ that an agreement had been made and an update would be coming in "the next couple of weeks or so."⁸
- 7 On May 29, 2025, the ALJ requested another update and was informed that an agreement had been made, and steps were being taken for final approval.⁹

August 2025 Conference and subsequent filings

- 8 On August 4, 2025, the ALJ convened a second prehearing conference.¹⁰
- 9 BNSF explained the delays as the result of turnover of counsel, due in part to the evolving nature of the underlying dispute, which transitioned from federal litigation to alternative resolution closer to contract negotiation.¹¹ The Commission accepted this

⁴ Hughes, TR 17:16-19. *Smith*, Docket TR-220540, *Email Exchange from Steve Smith* (July 31, 2023).

⁵ Hughes, TR 17:29-30. *City of Wenatchee v. BNSF Railway Co.*, Docket TR-220540, Notice Suspending Procedural Schedule; Canceling Hearing; Requiring Settlement Filing or Status Update (April 18, 2023).

⁶ Hughes, TR 17:21-24.

⁷ Hughes, TR 17:24-25.

⁸ Hughes, TR 18:2-6.

⁹ Hughes, TR 18:7-10.

¹⁰ Hughes, TR 17:1-8. *City of Wenatchee v. BNSF Railway Co.*, Docket TR-220540, Notice of Second Prehearing Conference (June 3, 2025).

¹¹ Emch, TR 25:1-13.

explanation. However, it asked for future mindfulness of Washington Administrative Code (WAC) 480-07-345(2)(d) – the filing of withdrawal of counsel, which are a “must.”

- 10 No party moved for default.¹² No settlement was presented.¹³ When asked if the dispute at issue was resolved via a settlement, which was not presented to the presiding officer prior to execution, the parties were unclear. When asked about the absence of a settlement, Staff counsel opined that generally, the settlement agreements are not submitted for approval because the statute recognizes that the parties may contract instead of request an adjudication pursuant to Revised Code of Washington (RCW) 81.53.261.¹⁴ The relationship between the settlement agreement and a withdrawal was discussed.¹⁵ The parties promised to huddle and subsequently inform the presiding officer of the position of the parties and bring any necessary motions to so effectuate.¹⁶
- 11 On August 14, 2025, the City and BNSF (Stipulating Parties) filed a Stipulated Motion for leave to amend the Petition, and attached an Amended Petition, which “updates the railroad traffic information for the crossing, includes additional specificity for the changes at the crossing, and provides that the construction and maintenance agreement between Wenatchee and BNSF would govern the parties’ responsibilities for annual maintenance costs.”¹⁷
- 12 The Amended Petition (formatted like an application) contains four attachments: crossing illustrations; a 2017 Railway-Highway Crossings Program (Section 130) Application for Funding; a Highway-Rail Grade Crossing Diagnostic Evaluation Report; and a U.S. DOT Crossing Inventory.¹⁸ On page 8 of the application in the Amended Petition,¹⁹ where concerned parties can indicate they do not wish an adjudicated hearing, the space is blank

¹² Hughes, TR 19:14-20.

¹³ Roberson, TR 19:21-24.

¹⁴ Roberson, TR 22:11-20.

¹⁵ Hughes, TR 30:18-23.

¹⁶ Hughes, TR 37:1-11.

¹⁷ Staff’s Response to Motion to Stipulate at ¶ 4; *see also City of Wenatchee v. BNSF Railway Co.*, Docket TR-220540, Notice of Amended Petition (August 14, 2025).

¹⁸ *But* WAC 480-07-140(6)(b) (“The cover letter accompanying the submission must list all of the documents included in the submission using the same identifying information.”).

¹⁹ *City of Wenatchee v. BNSF Railway Co.*, Docket TR-220540, Stipulated Motion For Leave to Amend Petition at 11 (August 14, 2025); Notice of Amended Petition (August 14, 2025) (“Respondent respectfully reserves the right to a hearing in the event the Amended Petition is not accepted or the design changes for the crossing are not approved by the WUTC.”).

- a representative of BNSF did not so indicate.²⁰ The Amended Petition did not include the agreement which resolved this dispute referred to by BNSF and the City.

13 On August 18, 2025, Staff moved for leave to respond to the Stipulated Motion and attached a proposed response (Staff’s Response). Staff recommended that the presiding officer grant the City’s motion for leave to amend the Petition. Staff’s counsel represents, and the record confirms, that there has been agreement among the parties that an evidentiary hearing is not needed. To achieve the consensus position of resolution, Staff recommended construing BNSF’s August 14th “Notice” as a sufficient motion to withdraw from this adjudication, bringing the adjudication to a close, for further disposition by delegated order.²¹ Staff suggested that it was possible to construe the Amended Petition filing as a settlement.²² The Stipulating Parties expressed support.²³

14 On August 25, 2025, the Stipulating Parties filed a Corrected Stipulated Motion, which included a corrected version of the Amended Petition (Corrected Amended Petition). Similar to the Amended Petition, the Corrected Amended Petition did not include either a waiver of the hearing by BNSF, or a copy of the agreement that resolved the dispute between BNSF and the City. Along with the Corrected Amended Petition,²⁴ the Stipulated Motion stated in its entirety:

Pursuant to WAC 480-07-375, Petitioner moves the Commission for an Order authorizing the amendment of its Petition to Modify Warning Devices at a Highway-Railroad Grade Crossing as set forth on Exhibit “A” attached hereto. Respondent stipulates and agrees to the motion.

THIS MOTION is based upon the Petitioner and Respondent resolving the issues between them and entering into a Grade Crossing Construction and

²⁰ See also Emch, TR 31:17-18 (“But he explained that because we didn't check the waiver, we technically requested one.”); Smith, TR 30:9-11 (“BNSF didn’t waive its right to a hearing. So I think that's really what we are talking about.”).

²¹ Staff’s Response at ¶¶ 5, 15-17.

²² Staff’s Response at ¶ 14.

²³ BNSF Railway Company Response And Statement Of No Objection To WUTC Commission Staff’s August 18, 2025 Filings at 1:10-13 (“BNSF . . . respectfully states that it has no objection to the WUTC Commission Staff’s Motion For Leave To Respond and Response. . . or the proposed procedural process and requested relief described[.]”).

²⁴ But WAC 480-07-395(c)(v)(B); WAC 480-07-395(c)(vii).

Maintenance Agreement with design changes for the crossing as negotiated between them.

- 15 The Commission referred to the post-hearing submissions collectively as the 2025 Filings.
- 16 On February 2, 2026, the Commission issued Order 02, and on February 12, 2026, a Corrected Order 02, granting the Stipulated Parties' Motion to Amend and Staff's Motion for Leave to File a Response. The Commission construed the City and BNSF's filings as a stipulated motion to dismiss for lack of justiciability and granted the motion, provided that BNSF confirm its intent by filing a corrected Petition in which the waiver of hearing at Section 13 is completed. The Commission ordered that if the filing was made prior to the effective date of the Order, Staff may proceed in resolving the matter through the delegated order process.
- 17 On February 20, 2026, the City filed the Corrected and Amended Petition (Amended Petition) that included a completed waiver of hearing, signed by BNSF, at Section 13.
- 18 9th Street is a two-lane urban local roadway with a posted speed limit of 25 miles per hour. The estimated average annual daily traffic at this location is 4,358 vehicles. 9th Street is part of an established truck route with 10 percent commercial traffic and is part of an established school bus route with up to eight school buses using the crossing on school days. Up to 14 freight trains and two passenger trains operate over this line daily at up to 50 miles per hour.
- 19 Warning devices at the crossing consist of advance warning signs, multiple track signs, No Train Horn signs, pavement markings, reflectorized crossbucks, Emergency Notification System signs, a warning bell, cantilever and mast-mounted flashing lights, and vehicle gates.
- 20 According to the Amended Petition, the City proposes relocating advance warning signs, adding new pavement markings, and installing new cantilever-mounted flashing lights, a four-quadrant gate system for vehicles and pedestrians, a wider concrete crossing surface, new sidewalks, and illumination. The City also proposes installing a 100-foot non-traversable median on the west approach to the crossing.
- 21 The Amended Petition indicates that the parties have reached an agreement related to the apportionment of costs for the proposed upgrades.
- 22 Commission staff (Staff) has investigated the Amended Petition and recommends that it be granted subject to the following conditions: (1) the modifications must conform to

those described in and attached to the Amended Petition, (2) traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices, (3) the City must complete the proposed modifications within five years, and (4) the City must notify the Commission within 60 days upon completion of the modifications authorized herein. Acceptance of the changes is subject to inspection by Staff, who will verify that the crossing is in full compliance with the conditions specified herein.

DISCUSSION

23 Revised Code of Washington (RCW) 81.53.261 requires that the Commission grant approval prior to modifying a public railroad-highway grade crossing within the state of Washington. When the Commission directs the installation of warning devices, it will apportion installation and maintenance costs in accordance with the applicable statutes.²⁵ RCW 81.53.261 provides that the parties may enter into an agreement providing for the installation of signals or other warning devices or for the apportionment of the cost of installation and maintenance. The parties to this Amended Petition confirmed that they have reached an agreement related to cost apportionment. Accordingly, the Commission grants the Petition subject to the conditions that Staff recommends.

FINDINGS AND CONCLUSIONS

- 24 (1) The Commission is an agency of the state of Washington having jurisdiction over public railroad-highway grade crossings within the state of Washington.
- 25 (2) The 9th Street crossing, identified as USDOT 065838N, is a public railroad-highway grade crossing within the state of Washington.
- 26 (3) RCW 81.53.261 requires that the Commission grant approval prior to modifying a public railroad-highway grade crossing within the state of Washington. See also Washington Administrative Code (WAC) 480-62-150.
- 27 (4) Staff investigated the Amended Petition and recommends that it be granted with the conditions set out in paragraph 22, above.
- 28 (5) After examining the Amended Petition filed by City of Wenatchee on February 20, 2026, and considering all relevant matters and for good cause shown, the Commission grants the Amended Petition.

²⁵ See RCW 81.53.261–295.

ORDER

THE COMMISSION ORDERS:

- 29 The City of Wenatchee's Amended Petition to modify warning devices at a railroad-highway grade crossing located at 9th Street is granted, and the parties are directed to proceed with the modifications described in the Amended Petition, subject to the following conditions:
- (1) The modifications must conform to those described in and attached to the Amended Petition.
 - (2) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.
 - (3) The City of Wenatchee must complete the modifications within five years of the effective date of this Order.
 - (4) The City of Wenatchee must notify the Commission within 60 days upon completion of the modifications authorized herein.
 - (5) Acceptance of the changes is subject to inspection by Staff, who will verify that the crossing is in full compliance with the conditions specified herein.
- 30 The Secretary of the Commission has delegated authority over this matter pursuant to Order 01 in Docket A-180762. The Secretary finds this Order to be consistent with the public interest.

DATED at Lacey, Washington, and effective February 27, 2026.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFF KILLIP
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.