



factual allegations of the County's affidavit supporting the petition. The County submitted a reply to the answer.<sup>2</sup>

The Commission grants the motion to bifurcate issues. Within reasonable limits, fiscal considerations do not drive reasonable engineering. Segregating the issues will allow the parties to focus on the relevant issues -- need for the grade separation and, if one is needed, the proper engineering to accomplish it. That approach will, as the County contends, allow the speediest construction to alleviate congestion and traffic hazards at the site, should the assertions in the County's affidavit be consistent with findings in the pertinent final order.

Despite BN's contentions, the Commission does not see that fund allocation has any direct bearing on the other issues. Putting allocation aside until other issues are settled will reduce the need for delay while funding issues are argued and resolved, and will reduce a need for appeal if the only disagreement is as to funding. At least one analogous proceeding has been delayed for several years while BN exercises its right to judicial review of the allocation of funding. The Commission's first responsibility is to the safety of the public.

#### Motion for Discovery Process

BN has moved to have the proceeding declared of precedential value so as to invoke the Commission's formal discovery rule, WAC 480-09-480. This action would further formalize process, injecting the potential for delay into affairs that may be handled more quickly and conveniently in an informal manner, and which have no clear prejudice to the parties' positions. The Commission is concerned that the parties now show little effort to communicate directly<sup>3</sup>, and there is no claim that any information is proprietary.

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<sup>2</sup>Replies are not allowed without prior approval from the Commission. WAC 480-09-425. The reply will not be considered.

<sup>3</sup>Burlington Northern moves to strike all or part of a county supporting affidavit, contending that it misrepresents Burlington Northern's motives and its concerns for public safety. The Commission will make no finding or conclusions based on the offensive portions of the affidavit, other than to note that the parties are not communicating optimally. The Commission will take steps, noted below, to improve communication.

The issues in the proceeding appear to be relatively straightforward and of a sort presented in every such proceeding. There is no indication that the proceeding will be more precedential than any similar proceeding, there is no indication that the parties cannot cooperate and exchange information willingly, and there is every indication that granting the motion would extend the time and the expense of concluding the adjudication. Therefore, the Commission will deny respondent's motion.

#### Consultation Among the Parties

The Commission does believe that it is essential that the parties begin communicating in a way that allows them to share information, to discover areas in which they agree, and to provide a forum for narrowing differences and opportunities for reaching consensus in areas in which they disagree. Therefore, the Commission directs the Commission Staff to engage the parties in dialogue and to schedule one or more meetings at which the parties shall discuss the issues freely and off the record.

Commission Staff shall determine the manner and schedule for proceeding. The Commission understands that BN needs to complete preliminary work before it can discuss seriously the essential issues, and the Commission expects that BN will pursue that task expeditiously and in good faith. The Commission requests that Commission Staff report immediately in the event any party appears not to be acting in good faith, and directs it to report in writing, in general terms, as to the status of the discussions no later than February 28, 1994.

Commission Staff shall submit a written stipulation of issues on which agreement is reached on or before April 30, 1994, unless the time is extended by letter from the Secretary of the Commission.

#### O R D E R

THE COMMISSION ORDERS That Spokane County's motion to bifurcate issues for hearing is granted;

THE COMMISSION FURTHER ORDERS That Burlington Northern's motion to declare the proceeding one of precedential value is denied;

AND THE COMMISSION ORDERS That Commission Staff shall engage the parties in discussion, shall schedule meetings as required, and as soon as reasonably feasible shall report to the Commission as directed in the text of this order, all to the end

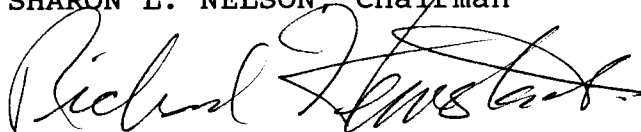
that the contested issues be reduced or eliminated and that the public interest be served by rapid and equitable consensus as to means to reduce hazards of a potentially unsafe situation.

DATED at Olympia, Washington and effective this 15<sup>th</sup> day of December 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner