

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,)	DOCKET TR-070696
)	
Petitioner,)	ORDER 02
)	
v.)	SECOND PREHEARING
)	CONFERENCE ORDER;
CITY OF MOUNT VERNON,)	NOTICE OF THIRD
)	PREHEARING CONFERENCE
Respondent.)	(ARGUMENT ON MOTIONS)
)	(September 19, 2007, at 9:30 a.m.)
.....)	

1 **NATURE OF PROCEEDING.** Docket TR-070696 involves a petition by Burlington Northern Santa Fe Railway Company (BNSF) to abandon and close to public use a railroad-highway grade crossing located at Hickox Road, Mount Vernon, Skagit County, WA (US DOT #084737D) in accordance with Revised Code of Washington (RCW) 81.53.060.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) issued a Notice of Second Prehearing Conference on Friday, July 20, 2007, for the purpose of creating a procedural schedule for the case and addressing any objections to the first Prehearing Conference Order (Order 01). Administrative Law Judge (ALJ) Adam E. Torem convened the second prehearing conference in this docket at Olympia, Washington, on Wednesday, August 1, 2007.

3 **APPEARANCES.** Bradley Scarp, Montgomery Scarp MacDougall, PLLC, Seattle, Washington, represents BNSF. Kevin Rogerson, City Attorney, Mount Vernon, Washington, represents the City of Mount Vernon. Stephen Fallquist, Civil Deputy Prosecuting Attorney, Mount Vernon, Washington, represents Skagit County. Scott Lockwood, Assistant Attorney General, Olympia, Washington, represents the Freight Systems Division of the Washington State Department of Transportation (WSDOT), Tumwater, Washington. Brian Snure, Snure Law Office, PSC, Des Moines, Washington, represents Skagit County Fire Protection District No. 3, Conway, Washington. Gary T. Jones, Jones & Smith, Mount Vernon, Washington, represents David Boon, Yvonne Boon, and Western Valley Farms, LLC, local residents and their

corporation. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").¹ An updated version of the parties' contact information is attached as Appendix A.

4 **OBJECTIONS TO PREHEARING CONFERENCE ORDER.** On Monday, July 30, 2007, Petitioner BNSF timely filed an objection to the Prehearing Conference Order's characterization of "regional transportation planning" as a proper issue for hearing. *See Order 01, ¶ 10.* Further discussion confirmed that the objection could be satisfactorily addressed by changing the phrasing to "existing regional transportation planning." While BNSF indicated no further objection to this language, it reserved its right to later object to evidence presented by other parties during the proceeding.

5 The City of Mount Vernon also timely filed an objection to the Prehearing Conference Order's indication that various hearing issues were impliedly limited to only the bullet points specifically listed. *See Order 01, ¶ 10.* After discussion, the City agreed that modifying the list language to reflect that each topic includes but is not limited to the bullet points would address almost all of their objections. The remainder of the City's objections will be taken up in motions, subject to the schedule set out below.

6 **CLARIFICATION OF ISSUES TO BE PRESENTED FOR HEARING.** Upon consideration of the objections from BNSF and the City of Mount Vernon, and upon further review of RCW 81.53.060 and the scope of similar proceedings previously conducted by the Commission and related agencies, paragraph 10 of Order 01 is modified as follows:

The issues to be presented at the hearing on the merits in this case shall generally be:

¹ In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455.*

- Requirements of Public Safety, *including but not limited to*:
 - Impact of Closure on Local Emergency Preparedness
 - Effect on Response Times for Emergency Services
 - Effect on Flood Hazard Evacuations (incl. farm animals)
- Public Convenience and Necessity of Use of Hickox Road Crossing, *including*:
 - Impact of Closure on Existing Regional Transportation Planning
- Alternatives to Closure, *including*:
 - Adequacy of WSDOT Study Supporting Closure

7 **PROCEDURAL SCHEDULE.** The parties agreed upon a basic framework for a procedural schedule during the conference, both for the filing of motions, responses, and replies, as well as for submission of preliminary witness lists, pre-filed testimony, and the scheduling week for the hearing on the merits. The Commission adopts this updated procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order. The specific location(s) and date(s) for the hearing on the merits and the public comment hearing shall be finalized at a future prehearing conference.

8 **NOTICE OF THIRD PREHEARING CONFERENCE (ARGUMENT ON MOTIONS).** The Commission schedules a third prehearing conference in this matter, to begin on **Wednesday, September 19, 2007, at 1:45 p.m., in the WSDOT Second Floor Conference Room, Goldsmith Bldg, 401 Second Avenue South, Suite 200, Seattle, Washington.** Due to the off-site location of this conference, a teleconference bridge line may not be available; parties wishing to participate in or observe this session must attend in person.

9 **CLARIFICATION OF DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties providing an electronic copy of filings through the Commission's Web Portal (www.wutc.wa.gov/e-filing) must ensure a courtesy copy is also sent by e-mail to the presiding officer and all other parties. All previous guidance contained in the previous Prehearing Conference Order (Order 01) remains binding.

10 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order, read in conjunction with the previously issued Prehearing Conference Order (Order 01), will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective August 14, 2007.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

APPENDIX A				
PARTIES' REPRESENTATIVES				
DOCKET TR-070696				
PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
BNSF	BRADLEY SCARP Montgomery Scarp MacDougall, PLLC 1218 Third Avenue, Suite 2700 Seattle, WA 98101	206-625-1801	206-625-1807	brad@montgomervscarp.com
CITY OF MT VERNON	KEVIN ROGERSON City Attorney 910 Cleveland Avenue P.O. Box 809 Mount Vernon, WA 98273	360-336-6203	360-336-6267	kevinr@ci.mount-vernon.wa.us
SKAGIT COUNTY	STEPHEN R. FALLQUIST Civil Deputy Pros. Atty 605 S. 3 rd Street Courthouse Annex Mount Vernon, WA 98273	360-336-9460	360-336-9497	StephenF@co.skagit.wa.us
WSDOT – FREIGHT SYSTEMS DIVISION (Jeff Schultz)	SCOTT LOCKWOOD Asst. Attorney General 7141 Cleanwater Dr SW P.O. Box 40113 Olympia, WA 98504-0113	360-753-1620	360-586-6847	ScottL@atg.wa.gov

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
SKAGIT COUNTY FIRE PROTECTION DIST. No. 3	BRIAN K. SNURE Snure Law Office, PSC 612 S. 227 th Street Des Moines, WA 98198	206-824-5630	206-824-9096	Brian@snurelaw.com
WESTERN VALLEY FARMS, LLC as well as DAVID & YVONNE BOON	GARY T. JONES Jones & Smith Attorneys at Law 415 Pine Street P.O. Box 1245 Mount Vernon, WA 98273	360-336-6608	360-336-2094	gjones@jonesandsmith.com
COMMISSION STAFF	JONATHAN THOMPSON Asst. Attorney General 1400 S Evergreen Park Dr SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	JThompso@utc.wa.gov
ADMIN. LAW JUDGE	ADAM E. TOREM 1300 S Evergreen Park Dr SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1138	360-664-2654 [ALD fax only – do not use to file]	atorem@utc.wa.gov

APPENDIX B
UPDATED PROCEDURAL SCHEDULE
DOCKET TR-070696

EVENT	DATE	INTERVAL
Second Prehearing Conference	Weds, August 1, 2007	—
Filing of Motions	Tues, August 28, 2007	27 Days
Filing of Responses to Motions	Weds, Sept 12, 2007	15 Days
Filing of Reply Briefs to Motions	Mon, Sept 17, 2007	5 Days
Filing of Preliminary Witness Lists	Weds, Sept 19, 2007	2 Days
Hearing on Motions (@ WSDOT Conference Room in Seattle)	Weds, Sept 19, 2007	2 Days
Petitioner BNSF's and Proponents' Prefiled Direct Testimony	Mon, October 8, 2007	19 Days
Respondent City of Mt Vernon's and Other Opponents' Prefiled Direct Testimony	Mon, November 5, 2007	28 Days
All Parties' Prefiled Rebuttal Testimony	Fri, November 30, 2007	25 Days
Settlement Discussions	Week of Dec 10th, and Week of Dec 17th, 2007	10-20 Days
Evidentiary / Cross-Exam Hearing	Week of January 7, 2008	28 Days
Public Comment Hearing	Week of January 7, 2008	28 Days
Closing Arguments / Briefs	To be Determined	—