

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

BENTON COUNTY,	)	DOCKET TR-100572 (<i>Consolidated</i>)
)	
Petitioner,	)	ORDER 01
)	
v.)	
	)	ORDER OF CONSOLIDATION AND
BNSF RAILWAY COMPANY,	)	NOTICE OF PREHEARING
	)	CONFERENCE
Respondent.	)	(Set for August 11, 2010, 1:30 p.m.)
)	
.....)	
)	
BENTON COUNTY,	)	DOCKETS TR-100573, TR-100574,
	)	TR-100575 and TR-100576
Petitioner,	)	<i>(Consolidated)</i>
)	
v.	)	ORDER 01
)	
UNION PACIFIC RAILROAD,	)	ORDER OF CONSOLIDATION AND
	)	NOTICE OF PREHEARING
Respondent.	)	CONFERENCE
	)	(Set for August 11, 2010, 1:30 p.m.)
.....)	

1 On April 9, 2010, Benton County (County) filed with the Washington Utilities and Transportation Commission (Commission) four petitions to construct a highway-rail grade crossings at Piert Road, Benton County (Dockets TR-100572 through TR-100575), and a petition for the closure of a highway-rail grade crossing at Cochran Road, Benton County (Docket TR-100576).

2 On April 16, 2010, the Commission sent letters to BNSF Railway Company (BNSF) and Union Pacific Railroad (Union Pacific) notifying them of the petitions and requesting they respond within twenty days whether they support the petitions or not.

- 3 On May 4, 2010, Union Pacific filed with the Commission in Dockets TR-100572 through TR-100575, a letter requesting additional information and an additional twenty days to respond to the petitions.
- 4 On May 4, 2010, Union Pacific filed with the Commission in Docket TR-100576, a letter stating it does not object to the County's petition to close Cochran Road, but would like additional information as to where and how Cochran Road would be terminated on each side of the crossing.
- 5 On May 5, 2010, BNSF filed with the Commission a letter opposing the petitions and requesting additional time for the parties to discuss the issues.
- 6 On June 2, 2010, Commission Staff received an informal e-mail from Benton County requesting the matters be set for a prehearing conference in not less than 60 days to allow further discussion among the parties. Staff concurs with the County's request.
- 7 Inasmuch as the foregoing matters involve related principles of law and fact, it is appropriate that they be consolidated for hearing and determination pursuant to WAC 480-07-320.

ORDER OF CONSOLIDATION

- 8 THE COMMISSION ORDERS That these matters are consolidated for purposes of hearing and determination. The Commission reserves the right to hold separate hearings and to enter separate orders in the individual dockets as it deems appropriate.

NOTICE OF PREHEARING CONFERENCE

- 9 The Commission has jurisdiction over this matter under RCW Title 81, and has legal authority to regulate alterations in the style or nature of construction of existing grade crossing, and to apportion the expense of such a change between the railroad and the municipality or county affected pursuant to RCW 81.53, including without limitation, RCW 81.53.060 and RCW 81.53.110. Further, the Commission has legal authority to regulate the closure of railroad crossings pursuant to RCW 81.53, including without limitation, RCW 81.53.060. Statutes involved, in addition to those previously cited, include those within RCW 81.04, RCW 81.44, and RCW 81.53, including but not limited to RCW 81.04.110, RCW 81.44.010, RCW 81.53.060, RCW 81.53.261, and RCW 81.53.271.

- 10 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 and WAC 480-62 in this proceeding.
- 11 **THE COMMISSION GIVES NOTICE That it will hold a prehearing conference in these consolidated matters at 1:30 p.m., on August 11, 2010, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** The Commission prefers that Parties appear in person. However, if this imposes a hardship, Parties may attend the prehearing conference via the Commission's teleconference bridge line at **(360) 664-3846**. Please appear on the teleconference bridge no more than five minutes before the conference is scheduled to begin.
- 12 The purpose of the prehearing conference is to consider requests for intervention, to identify the relevant issues in the proceeding, to resolve scheduling and other procedural matters, including establishing dates for distributing evidence and workpapers and evaluating the need for public comment hearing(s) on the petitions, and to determine any other matters to assist the Commission in resolving these cases, as listed in WAC 480-07-430.
- 13 At the prehearing conference, the petitioner should be prepared to provide a status report on a schedule for completing required action(s), if any, under the State Environmental Policy Act (SEPA).
- 14 **INTERVENTION:** Persons seeking to intervene in the proceeding must file written petitions to intervene at least three business days before the date of the prehearing conference. *See WAC 480-07-355(a)*. In addition, party representatives must file notices of appearance with the Commission, as required by WAC 480-07-345(2), no later than the day before the conference. If any party or witness needs an interpreter or other assistance, they should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for the evidentiary hearings at the prehearing conference or by later written notice.

15 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

16 The names and mailing addresses of all known parties and their known representatives are as follows:

Petitioner: Benton County
Malcolm Bowie, PE
620 Market St.
P.O. Box 1001
Prosser, WA 99350
(509) 786-5611
malcolm.bowie@co.benton.wa.us

Representative: Jonathan J. Young
Senior Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
7122 W. Okanogan Pl.
Kennewick, WA 99336
(509) 735-3591
Jonathan.young@co.benton.wa.us

Respondent: BNSF Railway Company
Todd Kuhn, Manager Public Projects
2454 Occidental Avenue South, Suite 1A
Seattle, WA 98134
(206) 625-6146
Todd.kuhn@bnsf.com

Representative: Bradley P. Scarp
Montgomery Scarp MacDougall, PLLC
2700 Seattle Tower
1218 Third Avenue
Seattle, WA 98101
(206) 625-1801
Brad@montgomeryscarp.com

Respondent: Union Pacific Railroad Company
Terrel A. Anderson
Manager of Industry and Public Projects
9451 Atkinson Street
Roseville, CA 95747
(916) 789-5134
taanders@up.com

Representative: Carolyn Larson
Dunn Carney Allen Higgins & Tongue LLP
851 SW Sixth Avenue, Suite 1500
Portland, OR 97204
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cll@dunn-carney.com

Commission Staff: Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Fronda Woods
Assistant Attorney General
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1225
fwoods@utc.wa.gov

17 Administrative Law Judge Dennis J. Moss, from the Commission's Administrative Law Division, will preside during this proceeding.

- 18 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Olympia, Washington, and effective June 16, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

Inquiries may be addressed to:

Executive Director and Secretary
Washington State Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out this form and return it to Washington State Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket : _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary
Language: _____

Hearing Impaired (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____