

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CLARK COUNTY,

Petitioner,

v.

BURLINGTON NORTHERN SANTE
FE RAILWAY,

Respondent.

DOCKET TR-190228

ORDER 01

PREHEARING CONFERENCE
ORDER; NOTICE OF HEARING
(Set for February 26, 2020,
at 10:30 a.m.)

- 1 **NATURE OF PROCEEDING.** On April 2, 2019, Clark County filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Installation of Median Barriers at a Highway-Rail Grade Crossing (Petition). The Petition seeks to install median barriers at the crossing at NW 122 Street, Vancouver, Washington.
- 2 On April 4, 2019, the Commission sent a letter to BNSF Railway Company (BNSF) requesting a response to the Petition within 20 days indicating its support or opposition. BNSF did not respond.¹
- 3 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Lacey, Washington, on July 15, 2019, before Administrative Law Judge Rayne Pearson.
- 4 **APPEARANCES.** Taylor Hallvik, Deputy Prosecuting Attorney, Clark County Prosecutor's Office, Vancouver, Washington, represents Clark County. Travis Owsley, Assistant General Attorney, Fort Worth, Texas, represents BNSF. Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission Staff.²

¹ Pursuant to RCW 81.53.060, the Commission must establish a time and place for hearing the Petition unless BNSF waives its right to a hearing. BNSF's failure to respond to the Commission's request does not constitute such a waiver.

² In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do

Contact information for the parties' representatives is attached as Appendix A to this Order.

5 **PETITIONS FOR INTERVENTION.** No party sought to intervene in the proceeding.

6 **DISCOVERY.** The parties requested that the Commission's discovery rules be made available. The parties may conduct discovery under the Commission's discovery rules, WAC 480-07-400 – 425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters to the Commission for formal resolution.

7 **PROCEDURAL SCHEDULE.** The parties agreed upon, and the Commission adopts, the preliminary procedural schedule set forth in Appendix B to this Order.

8 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:

(a) Parties must submit electronic copies of all documents by 5 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. Documents that include information designated as confidential must comply with the requirements in WAC 480-07-160. Parties must submit documents electronically through the Commission's web portal (www.utc.wa.gov/e-filing). If a party is unable to use the web portal to submit documents for filing, the Commission will accept a submission via email to records@utc.wa.gov provided the email: (1) explains the reason the documents are not being submitted via the web portal, and (2) complies with the requirements in WAC 480-07-140(5)(b).

(b) Parties must also file **one original paper copy** (with original signatures, if applicable) of the documents with the Commission by 5 p.m. on the next business day following the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. The documents must conform to the formatting and other

not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

requirements in WAC 480-07-395 and WAC 480-07-460, and must comply with the requirements in WAC 480-07-160 for documents that contain information designated as confidential. All hard copy filings must be mailed or otherwise delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, 621 Woodland Square Loop S.E., P.O. Box 47250, Olympia, Washington 98504-7250.

- (c) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (rayne.pearson@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

- 9 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file and serve all proposed cross-examination exhibits by **12 p.m. on January 20, 2020**. The Commission requires electronic copies in searchable Adobe Acrobat (.pdf), and **one original paper copy** of each of the exhibits. If any of the exhibits contain information that is designated as confidential or highly confidential, the party must also file one electronic copy (in Adobe Acrobat (.pdf)) and one original paper copy of the redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.
- 10 **EXHIBIT LISTS.** Each party must file a list of all exhibits the party intends to introduce into the evidentiary record, **including all prefiled testimony and exhibits**, as well as cross-examination exhibits. The parties must file and serve their exhibit lists by **12 p.m. on January 20, 2020**.
- 11 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge and the other parties by **12 p.m. on January 20, 2020**.
- 12 **THE COMMISSION GIVES NOTICE That it will hold a public comment hearing in these matters at 6 p.m. on Wednesday, February 26, 2020, at the Clark County Public Services Center, 1300 Franklin Street, Vancouver, Washington,** to afford members of the public an opportunity to present oral comments on the issues presented by this case.

13 **THE COMMISSION FURTHER GIVES NOTICE** That it will hold an evidentiary hearing in these matters at 10:30 a.m. on Wednesday, February 26, 2020, at the Clark County Public Services Center, 1300 Franklin Street, Vancouver, Washington.

14 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Lacey, Washington, and effective July 18, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/Rayne Pearson
RAYNE PEARSON
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET TR-190228**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Clark County	Taylor Hallvik Deputy Prosecuting Attorney Clark County Prosecutor's Office P.O. Box 5000 Vancouver, WA 98666	360-397-2478 Ext. 5866	Taylor.Hallvik@clark.wa.gov
BNSF	Travis Owsley Assistant General Attorney, BNSF Railway 2500 Lou Menk Drive Fort Worth, TX 76131	871-352-2255	Travis.Owsley@bnsf.com
Staff	Jeff Roberson Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504-0128	360-664-1188	Jeff.Roberson@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-190228**

EVENT	DATE
Settlement Conference	September 12, 2019
Clark County Direct Testimony	September 30, 2019
BNSF and Commission Staff Response Testimony	October 28, 2019
Rebuttal/Cross Answering Testimony (All Parties)	December 2, 2019
Discovery Cutoff	January 6, 2020
Cross-Examination Exhibits, Witness Lists, and Time Estimates	January 20, 2020 (by 12 p.m.)
Evidentiary Hearing	February 26, 2020, at 10:30 a.m.
Public Comment Hearing	February 26, 2020, at 6 p.m.
Simultaneous Post-Hearing Briefs	March 26, 2020