

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WHATCOM COUNTY,

Petitioner,

v.

BNSF RAILWAY COMPANY,
Respondent.

DOCKET TR-170122

ORDER 01

PREHEARING CONFERENCE
ORDER; NOTICE OF SECOND
PREHEARING CONFERENCE
(Set for May 17, 2017, at 2 p.m.)

- 1 **NATURE OF PROCEEDING.** On February 27, 2017, Whatcom County filed with the Washington Utilities and Transportation Commission (Commission) a Petition for installation of median barriers at a highway-rail grade crossing located at Yacht Club Road, USDOT Crossing No. 084796F (Petition).
- 2 On February 28, 2017, the Commission sent a letter to BNSF Railway Company (BNSF) requesting a response to the Petition within twenty days indicating its support or opposition.
- 3 On March 10, 2017, BNSF filed with the Commission a notice of opposition and requested that the matter be scheduled for hearing.
- 4 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington, on April 24, 2017, before Administrative Law Judge Rayne Pearson.
- 5 **APPEARANCES.** Daniel Gibson, Chief Civil Deputy Prosecuting Attorney, Bellingham, Washington, represents Whatcom County. Jennifer L. Willingham, General Attorney, Fort Worth, Texas, represents BNSF. Brett P. Shearer, Assistant Attorney General, Olympia, Washington, represents Commission Staff.¹ Contact information for the parties' representatives is attached as Appendix A to this order.

¹ 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 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.

6 **AMENDED PETITION.** The parties agree that the procedural schedule should be held in abeyance pending Whatcom County's decision to file an amended petition, which may resolve the underlying dispute in this proceeding. The parties agree that Whatcom County should file any such amended petition by May 4, 2017.

7 **PETITIONS FOR INTERVENTION.** No party sought to intervene at this stage in the proceeding. In the event the parties are unable to resolve the underlying dispute, the Commission will entertain petitions for intervention at the second prehearing conference.

8 **DISCOVERY.** The Commission holds its determination on the availability of the Commission's discovery rules in abeyance until the second prehearing conference.

9 **NOTICE OF PREHEARING CONFERENCE.** The Commission will hold a second prehearing conference in this matter on **Wednesday, May 17, 2017, at 2 p.m. in Room 139, First Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive SW, Olympia, Washington.**

10 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Gregory J. Kopta, Director, Administrative Law Division (gkopta@utc.wa.gov or 360-664-1355).

11 **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 Olympia, Washington, and effective April 25, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET TR-170122**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Whatcom County	Daniel L. Gibson Chief Civil Deputy Whatcom County Prosecuting Attorney 311 Grand Ave., Suite 201 Bellingham, WA 98225	360-778-5710	dgibson@co.whatcom.wa.us
BNSF	Jennifer L. Willingham General Attorney BNSF Railway Co. 2500 Lou Menk Drive, AOB-3 Fort Worth, TX 76131-2828	817-352-1738	Jennifer.willingham@bnsf.com
Staff	Brett P. Shearer Assistant Attorney General Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1187	bshearer@utc.wa.gov