

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,	)	DOCKET TR-140382 and
	)	DOCKET TR-140383
Petitioner,	)	
	)	
v.	)	PREHEARING CONFERENCE
	)	ORDER; NOTICE OF HEARING
YAKIMA COUNTY,	)	<b>(Evidentiary Hearing Set for</b>
	)	<b>February 19-20, 2015, at 9:30 a.m.)</b>
Respondent.	)	
	)	
.....	)	

- 1     **NATURE OF PROCEEDING.** This proceeding arises out of petitions from BNSF Railway Company (BNSF) filed with the Washington Utilities and Transportation Commission (Commission) on March 10, 2014, seeking closure of the N. Stevens highway-rail grade crossing near the City of Toppenish, Yakima County (Docket TR-140382), and closure of the Barnhart highway-rail grade crossing near the City of Mabton, Yakima County (Docket TR-140383). Yakima County objected to the proposed closures, as did the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) and the Washington Farm Bureau.
  
- 2     **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington, on Friday, May 23, 2014, before Administrative Law Judge Adam E. Torem.
  
- 3     **APPEARANCES.** Tom Montgomery, Seattle, represents petitioner BNSF. Kenneth Harper, Yakima, represents respondent Yakima County. Ethan Jones, Toppenish, represents the Yakama Nation. Sally Brown, Senior Assistant Attorney General, Olympia, WA, represents the Commission’s regulatory staff (Commission Staff or Staff).<sup>1</sup> Contact information for the parties’ representatives is attached as Appendix A to this order.

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<sup>1</sup> 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

- 4 **INTERVENTION.** On May 23, 2014, the Yakama Nation made an oral motion to intervene in the proceeding.<sup>2</sup> The Yakama Nation asserted a substantial interest in public safety matters affecting the Yakama Reservation, particularly its continued ability to provide emergency medical and fire prevention services to residents in the vicinity of the crossings proposed for closure. The Yakama Nation also raised concerns about future access issues in areas that could be affected by closure of the crossings, including existing travel routes to sites of cultural and community significance and the economic well-being of leasehold farmers.
- 5 No party questioned the Yakama Nation's substantial interest in this matter or objected to its motion to intervene. The Commission finds that the Yakama Nation's motion demonstrates a substantial interest in this proceeding and that the Yakama Nation's participation will be in the public interest. The Yakama Nation's motion to intervene is granted.
- 6 **DISCOVERY.** The parties requested that the Commission make discovery available under Washington Administrative Code (WAC) 480-07-400 – 425. Pursuant to WAC 480-07-400(2)(b)(iv), the Commission finds that the needs of the case may require discovery and makes the discovery rules available to all parties. However, *the parties shall not schedule depositions without advance approval of the presiding officer.* The Commission urges the parties to work cooperatively together to avoid having to bring discovery disputes forward for formal resolution.
- 7 **SEPA REVIEW.** BNSF confirmed at the prehearing conference that it previously concluded the necessary State Environmental Policy Act (SEPA) review for the proposed crossing. Yakima County Public Services issued a Notice of Decision and Final Determination of Non-Significance (DNS) in December 2012 for both proposed crossings.

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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.

<sup>2</sup> On May 20, 2014, the Yakama Nation filed a Motion for Leave to File Amicus Brief in these dockets. The presiding officer deferred a ruling on this motion until later in the proceedings.

8 **PROCEDURAL SCHEDULE.** The parties agreed on, and the Commission adopts, the following procedural schedule:

Friday, October 31, 2014	Pre-Filed Testimony – Petitioner
Week of November 24, 2014	Settlement Conference
Monday, December 15, 2014	Response Testimony – Opponents and Staff
Thursday, January 15, 2015	Rebuttal & Cross-Answer Testimony – All
Thursday, February 19, 2015 and Friday, February 20, 2015	Evidentiary Hearing (beginning at 9:30 a.m.) (if necessary)
Thursday, February 19, 2015	Public Hearing (beginning at 6:00 p.m.)
Monday, March 30, 2015	Simultaneous Post-Hearing Briefs

The procedural schedule is included in this Order as Appendix B.

9 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to electronically submit to the Commission all proposed cross-examination exhibits **by 3:00 p.m. on Monday, February 2, 2015**, and file hard copies of the same **by noon on Tuesday, February 3, 2015**. Except as otherwise agreed between parties, proposed cross-examination exhibits must be served on all parties at the time they are filed with the Commission. Two copies must be furnished to the party sponsoring the witness the party intends to cross examine with the exhibits. Parties may waive the right to service of cross examination exhibits in whole or in part. This may be appropriate, for example, when a proposed exhibit has been previously furnished during the discovery process. Cross-examination exhibits must be accompanied by an exhibit list and must be organized according to the witness the party intends to cross examine with the exhibits. Cross-examination exhibits not conforming to these requirements may be rejected. Each party's cross-examination exhibit list must also be filed with the Commission and served on all parties by noon on February 3, 2015.

10 **PUBLIC COMMENT HEARING.** As noted above, the Commission will conduct a public comment hearing on **Thursday, February 19, 2015, at approximately 6:00 p.m.** to afford members of the public an opportunity to present oral comments on the issues presented by this case. A separate notice will be issued setting forth the specific location in Yakima County where the public comment hearing will be held and confirming the date and time.

11 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter commencing on **Thursday, February 19, 2015, at 9:30 a.m.**, and continuing as required on Friday, February 20, 2015, at a location to be designated in Yakima County. A separate notice will be issued setting forth the specific location of the evidentiary hearing and confirming the date and time.

12 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an **original plus 3 copies** of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

13 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

14 An electronic copy of all filings must be provided through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail delivery to <records@utc.wa.gov >. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette, a flash drive, or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

15 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the

filing process, but must file an original, plus 3 paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal ([www.utc.wa.gov/efiling](http://www.utc.wa.gov/efiling)) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov). Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge at [atorem@utc.wa.gov](mailto:atorem@utc.wa.gov) as well as to the parties to the proceeding.

- 16 **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 does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.
- 17 **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 May 27, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

**APPENDIX A  
PARTIES' REPRESENTATIVES  
DOCKETS TR-140382 & TR-140383**

<u>PARTY</u>	<u>REPRESENTATIVE</u>	<u>PHONE</u>	<u>FACSIMILE</u>	<u>E-MAIL</u>
BNSF Railway Petitioner	Tom Montgomery Montgomery Scarp MacDougall, PLLC 1218 Third Avenue, Ste 2700 Seattle, WA 98101	206-625-1801	206-625-1807	<a href="mailto:tom@montgomeryscarp.com">tom@montgomeryscarp.com</a>  <a href="mailto:teresa@montgomeryscarp.com">teresa@montgomeryscarp.com</a>
	Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Avenue S. Suite 2D Seattle, WA 98134	206-625-6152		<a href="mailto:richard.wagner@bnsf.com">richard.wagner@bnsf.com</a>
Yakima County Respondent	Kenneth W. Harper Menke Jackson Beyer, LLP 807 North 39 <sup>th</sup> Avenue Yakima, WA 98902	509-575-0351		<a href="mailto:kharper@mjbe.com">kharper@mjbe.com</a>
	Gary Ekstedt Yakima County Dept of Public Services County Engineer / Assistant Director 128 N. 2 <sup>nd</sup> Street, Room 408 (Courthouse) Yakima, WA 98901-2639	509-574-2300	509 574-2301	
Yakama Nation Intervenor	Ethan Jones Associate Attorney Confederated Tribes and Bands of the Yakama Nation P.O. Box 151 Fort Road Toppenish, WA 98948	509-865-7268	509-865-4713	<a href="mailto:ethan@yakamanation-olc.org">ethan@yakamanation-olc.org</a>
	Al Pinkham Engineering Planner	509-865-5121 x6735		<a href="mailto:apinkham@yakama.com">apinkham@yakama.com</a>

<u>PARTY</u>	<u>REPRESENTATIVE</u>	<u>PHONE</u>	<u>FACSIMILE</u>	<u>E-MAIL</u>
Commission Staff	Sally Brown Senior Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1193	360-586-5522	<a href="mailto:sbrown@utc.wa.gov">sbrown@utc.wa.gov</a>

**APPENDIX B**  
**PROCEDURAL SCHEDULE**  
**DOCKETS TR-140382 & TR-140383**

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
Direct Testimony Petitioner BNSF	Friday, October 31, 2014
Settlement Conference	Week of November 24, 2014
Response Testimony Respondents and Staff	Monday, December 15, 2014
Rebuttal/Cross Answer Testimony All Parties	Thursday, January 15, 2015
Cross-Examination Exhibits & List	Monday, February 2, 2015
Evidentiary Hearing	Thursday, February 19, 2015 and Friday, February 20, 2015
Public Hearing	Thursday, February 19, 2015 (evening)
Simultaneous Post-Hearing Briefs	Monday, March 30, 2015