

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF WENATCHEE,

Petitioner,

v.

BURLINGTON NORTHERN SANTE  
FE RAILWAY,

Respondent.

DOCKET TR-220540

ORDER 01

PREHEARING CONFERENCE  
ORDER; NOTICE OF HEARING  
**(Evidentiary hearing set for May 22,  
2023, at 9 a.m.; Public Comment  
Hearing set for May 22, 2023, at  
6 p.m.)**

- 1 **Nature of proceeding.** On July 15, 2022, the City of Wenatchee filed with the Washington Utilities and Transportation Commission (Commission) a Petition to Modify Highway-Rail Grade Crossing Warning Devices (Petition). The Petition seeks to modify warning devices at the crossing at 9th Street in Wenatchee, Washington.
- 2 On July 18, 2022, the Commission sent a letter to Burlington Northern Santa Fe Railway (BNSF) requesting a response to the Petition within 20 days indicating its support or opposition.
- 3 On August 15, 2022, BNSF filed a response opposing the Petition.
- 4 **Conference.** The Commission convened a virtual prehearing conference in this Docket on October 25, 2022, before Administrative Law Judge Rayne Pearson.
- 5 **Appearances.** Steve D. Smith, Davis Arneil Law Firm PC, Wenatchee, Washington, represents the City of Wenatchee. Christopher G. Emch, Thomas F. Ahearne, and Adrian Urquhart Winder, Foster Garvey PC, Seattle, Washington, and Trey Sargent, BNSF, Fort Worth, Texas, represent BNSF. Jeff Roberson, Assistant Attorney General, Tumwater, Washington, represents Commission 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

6 **Petitions to Intervene.** No party sought to intervene in this proceeding.

7 **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.

8 **Procedural schedule.** The parties agreed upon, and the Commission adopts, the procedural schedule set forth in Appendix B to this Order. WAC 480-07-700(5)(a) provides that the Commission will include in the procedural schedule the date for at least one settlement conference. Because the parties have not yet selected a date for a settlement conference, the Commission requires the parties to select a date for at least one settlement conference within 30 days. The parties shall notify the Commission of the date selected and may modify the date by notice to the presiding officer.

9 **Document filing and service requirements.** Parties must file and serve all pleadings, motions, briefs, and other prefiled materials in compliance with all 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. Paper copies are not required. Parties must comply with WAC 480-07-140(6) in formatting, organizing, and identifying electronic files. Parties must submit documents electronically through the Commission's web portal ([www.utc.wa.gov/e-filing](http://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](mailto: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 electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge ([rayne.pearson@utc.wa.gov](mailto:rayne.pearson@utc.wa.gov)) by 5 p.m. on the filing deadline unless the

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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.

Commission orders otherwise. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

- 10 **Cross-examination exhibits.** Parties are required to file and serve all proposed cross-examination exhibits by **12 p.m. on May 15, 2023**. The Commission requires electronic copies in searchable Adobe Acrobat (.pdf). The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.
- 11 **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 May 15, 2023**.
- 12 **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 via email by **12 p.m. on May 15, 2023**.
- 13 **The Commission gives notice that it will hold a virtual public comment hearing in these matters at 6 p.m. on Monday, May 22, 2023, to afford members of the public an opportunity to present oral comments on the issues presented by this case. To participate by phone, call (253) 215 8782 and use the Meeting ID: 865 8305 6936# and Passcode: 251709#. To participate via Zoom, please use the following link: [Click here to join meeting](#).**
- 14 **The Commission gives further notice that it will hold a virtual evidentiary hearing in these matters at 9 a.m. on Monday, May 22, 2023. To participate by phone, call (253) 215 8782 and use the Meeting ID: 865 8305 6936# and Passcode: XXXXX#. To participate via Zoom, please use the following link: [Click here to join meeting](#).**
- 15 **Notice to the 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 October 27, 2022.

Washington Utilities and Transportation Commission

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Administrative Law Judge

**Appendix A**

**Parties' Representatives  
Docket TR-220540**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>E-MAIL</b>
City of Wenatchee	Steve D. Smith City Attorney Davis Arneil Law Firm, PC 617 Washington St. Wenatchee, WA 98801	509-662-3551	<a href="mailto:steve@dadkp.com">steve@dadkp.com</a>
BNSF	Christopher G. Emch Thomas F. Ahearne Adrian Urquhart Winder Foster Garvey PC 1111 Third Ave., Suite 3000 Seattle, WA 98101  Trey Sargent General Attorney BNSF Railway Company 2500 Lou Menk Drive Fort Worth, TX 76131-2830	206-447-4400      817-352-2380	<a href="mailto:chris.emch@foster.com">chris.emch@foster.com</a> <a href="mailto:ahearne@foster.com">ahearne@foster.com</a> <a href="mailto:adrian.winder@foster.com">adrian.winder@foster.com</a>   <a href="mailto:trey.sargent@bsnf.com">trey.sargent@bsnf.com</a>
Staff	Jeff Roberson Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504-0128	360-522-0614	<a href="mailto:Jeff.Roberson@utc.wa.gov">Jeff.Roberson@utc.wa.gov</a>

**Appendix B  
Procedural Schedule  
Docket TR-220540**

<b>Event</b>	<b>Date</b>
BNSF Answer	<b>November 15, 2022</b>
City of Wenatchee Direct Testimony	<b>January 20, 2023</b>
BNSF and Commission Staff Response Testimony	<b>March 3, 2023</b>
Settlement Conference	<b>TBD</b>
Rebuttal/Cross Answering Testimony (All Parties)	<b>March 31, 2023</b>
Discovery Cutoff	<b>April 21, 2023</b>
Cross-Examination Exhibits, Witness Lists, and Time Estimates	<b>May 15, 2023 (by 12 p.m.)</b>
Evidentiary Hearing	<b>May 22, 2023, at 9 a.m.</b>
Public Comment Hearing	<b>May 22, 2023, at 6 p.m.</b>
Simultaneous Post-Hearing Briefs	<b>June 23, 2023</b>