

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION

Petitioner,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-171142

ORDER 01

PREHEARING CONFERENCE
ORDER; NOTICE OF HEARING
**(Evidentiary Hearing Set for
Wednesday, August 1, 2018,
at 9:30 a.m., and Thursday, August 2,
2018, at 9:30 a.m.)**

- 1 **NATURE OF PROCEEDING.** On November 20, 2017, the Washington State Department of Transportation (WSDOT) filed with the Washington Utilities and Transportation Commission (Commission) a petition seeking approval to modify highway-rail grade crossing warning signals along SR-223 at Toppenish, Yakima County (Petition).
- 2 On November 21, 2017, the Commission sent a letter to BNSF Railway Company (BNSF) requesting a response to the Petition within 20 days indicating its support or opposition.
- 3 On December 23, 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 February 12, 2018, before Administrative Law Judge Rayne Pearson.
- 5 **APPEARANCES.** L. Scott Lockwood, Assistant Attorney General, Tumwater, Washington, represents WSDOT. Jennifer L. Willingham, General Attorney, Fort Worth, Texas, represents BNSF. Julian Beattie, Assistant Attorney General, Olympia,

Washington, represents Commission Staff.¹ Contact information for the parties' representatives is attached as Appendix A to this Order.

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

7 **DISCOVERY.** The parties did not request that the Commission's discovery rules be made available at this stage of the proceeding. The parties may make such a request at a later date.

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

9 **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

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.

otherwise. The documents must conform to the formatting and other 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, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W., 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.

- 10 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file and serve all proposed cross-examination exhibits by **noon on July 18, 2018**. 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.
- 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 **noon on July 18, 2018**.
- 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 by **noon on July 18, 2017**.
- 13 **THE COMMISSION GIVES NOTICE That it will hold a public comment hearing in these matters at 6 p.m. on Wednesday, August 1, 2018, tentatively scheduled to be held in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington**, to afford members of the public an opportunity to present oral comments on the issues presented by this case. If the parties

agree and propose to the Commission an alternate location in Yakima County by June 15, 2018, a separate notice will issue setting forth the specific location where the public comment hearing will be held, and confirming the date and time.

14 **THE COMMISSION FURTHER GIVES NOTICE That it will hold an evidentiary hearing in these matters at 9:30 a.m. on Wednesday, August 1, 2018, and continuing as required on Thursday, August 2, 2018, tentatively scheduled to be held in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** If the parties agree and propose to the Commission an alternate location in Yakima County by June 15, 2018, a separate notice will issue setting forth the specific location of the evidentiary hearing, and confirming the date and time.

15 **MEDIATION.** The parties have agreed to participate in mediation, which will be held at the Commission's headquarters in Olympia, Washington on Monday, March 5, 2018, beginning at 10 a.m. Judge Marguerite Friedlander, from the Commission's Administrative Law Division, will mediate the parties' dispute. In light of the parties' agreement to mediate, the Commission waives the requirement that an initial settlement conference date be included in the procedural schedule.²

16 **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 February 16, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

² See WAC 480-07-700(3)(a).

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET TR-171142**

PARTY	REPRESENTATIVE	PHONE	E-MAIL
WSDOT	L. Scott Lockwood Assistant Attorney General Office of the Attorney General Transportation and Public Construction Division 7141 Cleanwater Drive SW Tumwater, WA 98501-6503 P.O. Box 40113 Olympia, WA 98504-0113	360-753-1620	ScottL@atg.wa.gov
BNSF	Jennifer L. Willingham General Attorney, BNSF Railway 2500 Lou Menk Drive Fort Worth, TX 76131	871-352-2160	Jennifer.Willingham@bnsf.com
Staff	Julian Beattie 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	360-664-1225	Julian.beattie@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-171142**

EVENT	DATE
Mediation Conference	March 5, 2018, at 10 a.m.
WSDOT Direct Testimony	April 13, 2018
BNSF and Commission Staff Response Testimony	May 25, 2018
Rebuttal/Cross Answering Testimony (All Parties)	June 25, 2018
Cross-Examination Exhibits, Witness Lists, and Time Estimates	July 18, 2018 (by noon)
Public Hearing	August 1, 2018, at 6 p.m.
Simultaneous Post-Hearing Briefs	September 7, 2018