

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WHATCOM COUNTY,

Petitioner,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-180466

ORDER 02

GRANTING PETITION TO INSTALL  
MEDIAN BARRIERS AT A  
HIGHWAY-RAIL GRADE  
CROSSING

**INTRODUCTION**

- 1 **Procedural History.** On May 30, 2018, Whatcom County (County) filed with the Washington Utilities and Transportation Commission (Commission) a petition seeking to install mountable median barriers at the crossing on Cliffside Drive (Crossing) in Bellingham, Washington (Petition). BNSF Railway Company (BNSF) objected to the proposed crossing modification, requesting instead that the Commission require the County to install non-traversable, concrete median barriers.
- 2 The Commission convened a prehearing conference before Administrative Law Judges Rayne Pearson and Laura Chartoff on August 2, 2018, to determine the scope of the issues to be presented in this docket and to adopt a procedural schedule.
- 3 Judge Pearson and Judge Chartoff visited the Crossing and toured the surrounding area on March 4, 2019. The Commission conducted an evidentiary hearing in Bellingham before Judge Pearson and Judge Chartoff on March 5, 2019.
- 4 The presiding officers conducted a public comment hearing on the evening of March 5. In addition, the Commission accepted written comments on this matter from the date of the County's initial filing until March 8. In total, the Commission received and considered comments from eight individuals, all of whom support the installation of median barriers at the Crossing. Three of the individuals are neutral with respect to the type of barrier to be installed at the crossing, and five of them support the County's proposal.

**Pursuant to RCW 80.01.060(3)  
This packet is the final  
Order in this docket.**

5 On April 5, 2019, the parties filed simultaneous post-hearing briefs.

6 Christopher Quinn, Deputy Prosecuting Attorney, Whatcom County Prosecutor's Office,  
Bellingham, Washington, represents the County. Kelsey Endres, Montgomery Scarp  
MacDougall, PLLC, Seattle, Washington, represents BNSF. Jeff Roberson, Assistant  
Attorney General, Olympia, Washington, represents Commission staff (Staff).<sup>1</sup>

7 **Background.** The Crossing is located in a residential, waterfront area of Bellingham that  
provides access to approximately 44 residences. Cliffside Drive is a no-outlet local access  
road, and the crossing provides the only ingress and egress to and from the neighborhood.

8 The County filed its Petition in response to a request from local residents to obtain a quiet  
zone designation for the Crossing. Title 49 Code of Federal Regulations (C.F.R.) §  
222.21 requires that trains sound horns when they approach a highway-rail grade crossing  
with two long blasts, one short blast, and another long blast lasting at least 15 seconds,  
but no more than 20 seconds, before the train enters the crossing. The horn blasts must be  
repeated or prolonged until the train occupies the crossing.

9 A quiet zone is a section of rail line at least one-half mile in length in which there is a  
public at-grade railroad crossing and trains do not sound their horns. Each public  
highway-rail grade crossing in a new quiet zone must be equipped with active grade  
crossing warning devices comprised of both flashing lights and gates, signage warning  
that trains do not sound their horns at the crossing, and automatic bells.<sup>2</sup>

10 A public authority may designate a quiet zone without Federal Rail Administration  
(FRA) review and approval by taking one of the following actions:

- Implement one or more FRA-approved Supplemental Safety Measures (SSMs);

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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 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> 49 C.F.R. § 222.35.

- Establish that the Quiet Zone Risk Index (QZRI)<sup>3</sup> for the crossing is below the Nationwide Significant Risk Threshold (NSRT)<sup>4</sup> with or without additional SSMs; or
- Implement SSMs that reduce the QZRI to a level at or below the risk index with horns.<sup>5</sup>

11 SSMs are safety systems or procedures that serve as effective substitutes for train horns and are used to prevent highway-rail casualties.<sup>6</sup> Approved SSMs include, but are not limited to, a four-quadrant gate system, gates with non-traversable curbs or mountable channelization devices on both approaches to the crossing that extend at least 100 feet from the gate arm, or crossing closure.

12 In its Petition, the County proposes to install an 18-foot long precast curb at the northeast quadrant of the crossing to protect the crossing gate assembly. The County also proposes to install a mountable median that will extend 100 feet both east and west of the crossing. The mountable median is constructed of a sturdy composite material that is approximately 11 inches wide and 4 inches tall. The 44-inch sections fasten together and would be anchored to the pavement. The County proposes to install reflective channelization devices at 80-inch intervals. The channelization devices are 40 inches tall and approximately 9 inches wide with reflective sheeting on both sides. The County states in its Petition that the break-away reflective channelization devices provide an effective deterrent for typical motorists while allowing emergency vehicles to traverse the median and use the full width of the road.

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<sup>3</sup> 49 C.F.R. Part 222, Appendix D, defines the QZRI as the average severity weighted collision risk for all public highway-rail grade crossings that are part of a quiet zone. The QZRI takes into consideration the absence of a train horn and any safety measures that are present or planned to be installed.

<sup>4</sup> 49 C.F.R. Part 222, Appendix D, defines the NSRT as the average severity weighted collision risk for all public highway-rail grade crossings equipped with lights and gates nationwide where train horns are routinely sounded. The FRA developed this risk index to serve a threshold of permissible risk for quiet zones.

<sup>5</sup> 49 C.F.R. § 222.39.

<sup>6</sup> 49 C.F.R. § 222.9.

- 13 According to the County's Petition, the current average daily traffic (ADT) for the Crossing is 300 vehicles, and the Crossing is used predominately by neighborhood residents. No school or city buses use the Crossing. An average of 17 freight trains and 4 passenger trains per day travel both northbound and southbound at a speed of 45 miles per hour.
- 14 The existing warning devices at the Crossing consist of two entrance gates, advanced warning signs, automatic bells, and 8 flashing lights that will be upgraded to LED bulbs when median barriers are installed.
- 15 The County proposes that its Public Works' Maintenance and Operations Division maintain the barriers, and that all damage will be repaired immediately upon discovery. The County also plans to conduct annual inspections to address any degradation issues with the median or channelization devices.
- 16 BNSF objects to the County's Petition and proposes the County be required to install concrete, non-traversable barriers at the Crossing.

## **EVIDENCE**

### **A. Proponents –County and Staff**

- 17 **County.** The County presented testimony and exhibits sponsored by Cody Swan, County project engineer.
- 18 Mr. Swan testified that Cliffside Drive community members requested that the Crossing be considered for quiet zone designation. In response to that request, the County convened a diagnostics team comprised of staff from the County, BNSF, the FRA, and the Commission. On March 16, 2018, the County submitted its notice of intent to establish a quiet zone to all agencies, BNSF, and Amtrak.
- 19 Mr. Swan explained that the QZRI measures the risk to the public in the absence of a train horn that sounds as a warning just prior to a train passing through an at-grade crossing. In order to be eligible for quiet zone designation, the QZRI must fall below the NSRT. The following table illustrates Mr. Swan's testimony related to the NSRT and the Crossing's current and proposed QZRI ratings.

NSRT for crossings with warning lights and gates	14,723
Current QZRI for the Crossing without horns	13,837.78
Current QZRI for the Crossing with horns	8,296.03
QZRI for the Crossing with proposed mountable median barriers and without horns	3,459.45

According to Mr. Swan's calculations, the Crossing is eligible for a quiet zone designation without the addition of any SSMs. Mr. Swan testified that the Crossing will be safer with no horns and the proposed barriers than it is in its current configuration.

- 20 Mr. Swan also noted that the proposed mountable median barriers are designated by the FRA and the Commission as acceptable SSMs, and that they will be easier for the County to maintain than the concrete barriers BNSF proposes to be installed. According to Mr. Swan, the County can stock the parts necessary to replace channelization devices, whereas repairing damage to a concrete median would require hiring a third-party contractor.
- 21 Finally, Mr. Swan testified that the County Fire Marshal has experienced difficulty with ingress and egress for its emergency vehicles at the Yacht Club Road crossing in the County, where concrete barriers were installed in 2017. The Fire Marshal also reported to Mr. Swan that concrete barriers increase the risk of damage to emergency vehicles.
- 22 In his rebuttal testimony, Mr. Swan noted that, even though there is no requirement to do so, the County has planned to install additional FRA-approved SSMs to further reduce the risk to motorists below the current risk index with horns. Mr. Swan further explained that the FRA rules do not require installation of a specific SSM; rather, the County can choose to implement any of the approved SSM options set out in 49 C.F.R. Part 222, Appendix A.

23 In its post-hearing brief, the County argues that the undisputed evidence shows that the proposed improvements will make the Crossing much safer, reducing the risk of collision by 75 percent. Thus, the County asserts that the Commission should find that the proposed installation of mountable medians at the Crossing best serves the interest of public safety and should grant the Petition.

24 In addition, the County argues that BNSF's request to install an alternate type of concrete median barrier is not properly before the Commission as a petition pursuant to RCW 81.53.060. Nor does the County believe that public safety requires the installation of BNSF's proposed alternative, which is only nominally more effective at reducing risk. The County argues that RCW 81.53 does not require that only the most effective alteration be used. Instead, the County urges the Commission to focus on the characteristics of Cliffside Drive and the neighborhood it services when determining which option best meets public safety needs.

25 **Staff.** Staff presented testimony and exhibits from Betty Young, transportation planning specialist. Ms. Young explained that the Commission does not have any authority to approve or deny the proposed establishment of a quiet zone, but its Staff generally participates in on-site diagnostic team meetings. By law, however, the County must obtain Commission approval of any proposed safety modifications made as part of a quiet zone designation. Ms. Young further testified that the FRA has determined that channelization devices, like the barriers the County proposes to install, have an effectiveness rating of 0.75, which means they reduce the risk of accidents by 75 percent. Non-traversable curbs, which BNSF proposes to install, have an effectiveness rating of 0.80, which means they reduce the risk of accidents by 80 percent.

26 Staff does not believe that the County should be required to install the concrete barriers as BNSF recommends. Rather, Staff recommends the Commission approve the County's Petition, which proposes to provide a significantly greater degree of safety at the Crossing than currently exists.

27 In its post-hearing brief, Staff argues that the Commission should determine that public safety requires installation of the County's proposed mountable medians and grant the Petition. Staff agrees that the County is free to establish a quiet zone under the federal rules without any alternations to the Crossing but that public safety is greatly enhanced by the proposed alteration. Staff argues that the Commission should grant the Petition on that basis.

28 Staff rejects BNSF’s safety and maintenance concerns, arguing that “BNSF fails to show that its proposal would result in a material public safety improvement over the County’s, either generally or in light of the specific conditions at Cliffside Drive.”<sup>7</sup> Staff notes that the FRA, after study, determined that gates and mountable channelization devices are nearly as effective as gates and non-traversable curbs, assigning effectiveness ratings of 0.75 and 0.8 to each, respectively.<sup>8</sup> Staff argues that these effectiveness ratings are controlling. Further, Staff argues that BNSF failed to show increased effectiveness of non-traversable curbs under the site-specific conditions at the Crossing.

**B. Opponent – BNSF**

29 BNSF presented testimony from Stephen Semenick, manager of public projects for Washington and British Columbia, and Dusty Arrington, an independent accident reconstruction specialist.

30 Mr. Semenick testified that BNSF strongly prefers the County be required to install non-traversable concrete medians, which are generally six inches high. Mr. Semenick argues that mountable medians allow drivers to drive over the median and around crossing gates, whereas concrete barriers provide a greater risk reduction of a collision with a train in a quiet zone. Mr. Semenick testified that, in his experience, channelization panels are often bent or broken. As an example, Mr. Semenick sponsored a photo of such panels that are part of an existing median barrier in Kent, Washington, which he contends is fairly representative of the condition of mountable medians throughout Kent. Mr. Semenick expressed concern that the County will not be able to prevent some time lag between channelization damage, discovery, and repair. On cross-examination, Mr. Semenick conceded that the mountable medians in Kent are located in an urban downtown area that differs from the Crossing.<sup>9</sup> Mr. Semenick further acknowledged that the involved citizens who live on Cliffside Drive and organized to obtain a quiet zone designation have a strong incentive to report a broken channelization device.<sup>10</sup>

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<sup>7</sup> Staff’s Post-Hearing Brief at 7, ¶18.

<sup>8</sup> *Id.* at ¶19.

<sup>9</sup> Semenick, TR 109:20-110:3.

<sup>10</sup> *Id.* at 117:7-18.

- 31 Mr. Semenick also disputes the County's ADT count, noting that the FRA's QZRI calculator has a preset count of 450 ADT for the Crossing. Finally, Mr. Semenick disputes Mr. Swan's representation that emergency vehicles will have increased difficulty accessing homes on Cliffside Drive if concrete medians are installed. On cross-examination, however, Mr. Semenick agreed that the County is best situated to address its own roadway needs.<sup>11</sup>
- 32 Mr. Arrington testified that he believes a mountable curb system will have only a limited ability to prevent cars from driving around lowered crossing gates when a train is approaching because it does not physically prevent any type of vehicle from crossing it. Although the reflective panels make the mountable curb more visible to drivers, Mr. Arrington argues that they do little to no damage to an impacting vehicle, and therefore will not deter a driver who is determined to circumvent lowered crossing gates.
- 33 On the other hand, Mr. Arrington contends, a non-traversable median will prevent low ground clearance cars from going over the curb system and around the lowered gates. Although larger vehicles will still be able to traverse the concrete curb system, Mr. Arrington argues that the curb will provide a substantial deterrent to such driver behavior. Mr. Arrington believes that most emergency vehicles would have enough ground clearance to traverse the concrete curb without coming into contact with it.
- 34 Mr. Arrington also echoes Mr. Semenick's concerns related to long-term maintenance issues for mountable curbs and channelization devices. For example, Mr. Arrington argues that curbs mounted to the road with mechanical fasteners damage roadway surfaces, causing the fasteners to dislodge. Similarly, Mr. Arrington contends that water can collect beneath glued curbs, causing the curb to separate from the roadway when the water freezes and expands. Third, Mr. Arrington asserts that channelization devices will turn black after approximately 200 impacts, while some devices will separate and fall from the curb, leaving debris on the roadway. On cross-examination, Mr. Arrington acknowledged that he did not review the County's maintenance plan for the channelization devices, and that he has no prior experience in the County.<sup>12</sup>

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<sup>11</sup> *Id.* at 114:15-25.

<sup>12</sup> Arrington, TR 128:18-25.



35 Mr. Arrington further testified that the County's representations that it will immediately replace damaged or missing channelization devices is unrealistic. In his evaluation, "they are not repaired unless the public complains about the aesthetics or until a significant portion of the system becomes damaged. I have seen many installations where much of the system has been missing or damaged for extended periods of time."<sup>13</sup> On the contrary, Mr. Arrington contends that concrete barriers are resilient and require very little maintenance.

36 Finally, Mr. Arrington pointed to the Commission's approval of the County's petition to install concrete median barriers at the Yacht Club Road crossing in Bellingham. In that proceeding, Staff opined that mountable curbs are less effective than non-traversable median barriers because non-traversable barriers provide a higher disincentive for drivers to disregard them because of the potential resulting damage to their vehicles.

37 In his rebuttal testimony, Mr. Arrington disputes the accuracy of the FRA's studies concluding that mountable curbs reduce accident rates by 75 percent and non-traversable curbs do so by 80 percent.

38 On cross-examination, Mr. Arrington confirmed that he has not visited the Crossing.

39 In its post-hearing brief, BNSF argues that the Commission should "exercise its full authority to determine whether an alternative supplemental safety measure is appropriate for this particular crossing, and not to simply approve the County's proposal because the FRA regulations permit the installation of a traversable median."<sup>14</sup> BNSF argues that safety, installation, maintenance, and repair factors establish that non-mountable concrete medians are the best SSM for the Crossing.

40 BNSF further argues that the FRA regulations likely underestimate the risk reduction from non-traversable medians. BNSF contends that the difference in risk reduction is significant; rather than a 5 percent difference, BNSF contends the Commission should recognize a 20 percent risk reduction between the two proposals.

41 BNSF also argues the County's costs would be the same for either proposal, and does not believe that the County's ability to install the mountable system is sufficient justification

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<sup>13</sup> DA-1T at 12:7-10.

<sup>14</sup> BNSF Railway Company's Post-Hearing Brief at 3, ¶2.

for the Commission to approve it. BNSF argues that mountable medians are easily damaged and require frequent repair, thereby reducing their effectiveness.

42 Finally, BNSF argues that the County did not present any data or statistics to quantify the frequency of emergency response or average response times, or offer the Fire Marshal as a witness to support its position that the non-mountable barrier could impact emergency response times. BNSF asserts that the County's decision to widen the shoulder on the westerly side of the Crossing ameliorates any concerns regarding emergency response times.

### DISCUSSION AND DECISION

43 As a preliminary matter, we reject the County's argument that BNSF's proposal is not properly before the Commission. Under RCW 81.53.060, a governing body of any city or town, the legislative authority of any county, or any railroad company whose road is crossed by any highway may file with the Commission a petition alleging that the public safety requires an alteration in the method and manner of an existing crossing and its approaches. When such petition is filed, the Commission will set a time and place for hearing, during which "all persons and parties interested are entitled to be heard and introduce evidence."

44 The statute permits, but does not require, BNSF to file a petition proposing its own alteration to the Crossing. In the absence of such a petition, the Commission may hear BNSF's objection to the County's Petition and consider the evidence BNSF offers in support of its position. In addition, the statute grants the Commission broad authority to determine "whether the style and nature of construction of the crossing shall be changed . . . or any other change that the Commission may find advisable or necessary."<sup>15</sup> Accordingly, we conclude that BNSF's objection is properly before the Commission for consideration. We turn now to the merits of the Petition.

45 As described above, the FRA is the only agency authorized to designate quiet zones, and the County may designate a quiet zone without FRA review and approval if the County implements one or more FRA-approved SSMs.<sup>16</sup> The County proposes to do just that.

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<sup>15</sup> *Id.*

<sup>16</sup> *See* 49 C.F.R. § 222.

The single issue before the Commission is whether “the public safety requires . . . an alteration in the method and manner of an existing crossing and its approaches, or in the style and nature of construction of an existing . . . crossing.”<sup>17</sup> As the petitioner in this matter, the County carries the burden of proving, by a preponderance of the evidence, that public safety requires the alteration of the crossing as proposed in its Petition. We conclude that the County has carried that burden.

46 No party disputes that public safety requires the installation of a median barrier at the Crossing, and we agree. The quiet zone designation will increase the risk to pedestrians and the motoring public to a degree that all parties find unacceptable. Additionally, all parties agree that the County’s proposed installation of mountable medians with channelization devices will substantially reduce the risk of collisions at the Crossing. The evidence shows that the FRA has approved the type of median barriers the County proposes to install as an SSM in quiet zones, and the FRA has determined that these barriers reduce the risk of collisions by 75 percent.<sup>18</sup> No party disputes that the Crossing will be substantially safer as a quiet zone under the County’s plan than it is currently with trains sounding their horns.<sup>19</sup>

47 Because the County has met its obligation to produce evidence to support its Petition, the burden shifts to BNSF to prove that evidence is insufficient. BNSF has not done so. BNSF has not disproved – and indeed does not dispute – that the measures the County proposes will increase the Crossing’s safety. Instead, BNSF produced evidence that concrete median barriers would enhance safety even more and requests the Commission find that the public safety requires the installation of concrete median barriers. We disagree.

48 We decline to adopt a standard for public safety that considers only the FRA ratings of particular SSMs. Rather, the Commission considers all factors that are relevant to a particular crossing and the surrounding area when determining the public safety impacts of the alternative SSMs. Such factors here include the roadway authority’s ability to swiftly and economically make repairs, whether the barriers will impact emergency

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<sup>17</sup> RCW 81.53.060.

<sup>18</sup> CS-1T at 4:12-14.

<sup>19</sup> CS-6T at 7:9-10.

vehicle response times, and whether the barriers will damage larger vehicles providing vital services. These factors all weigh in favor of the County's proposal.

49 The County proposes to install mountable medians with channelization devices because its Public Works' Maintenance and Operations Division employees will be able to maintain and repair the barriers.<sup>20</sup> BNSF contends that, unlike concrete medians, mountable barriers are typically in a constant state of disrepair, but the evidence in the record supports a finding that the County will ensure that any damage is immediately repaired. Mr. Swan testified credibly that the County plans to inspect the median barriers as part of its regular monthly sign inspection rounds, and will stock the parts necessary to promptly repair and replace channelization devices. In contrast, repairing damage to a concrete median would require a third-party contractor, resulting in delay.<sup>21</sup> BNSF made no attempt to rebut or disprove Mr. Swan's testimony. In addition, the examples of disrepair cited by BNSF were not located in the County, but were instead located in high-traffic, urban locations with vastly different configurations and characteristics.<sup>22</sup>

50 The County witness also testified that the proposed barriers are easier for emergency services vehicles to cross,<sup>23</sup> and that concrete barriers increase the risk of damage to larger vehicles, including solid waste collection trucks. Although the County did not offer a witness from the fire department, Mr. Swan testified credibly that the Fire Marshal's experience at the Yacht Club Road crossing informed the County's decision to seek approval to install mountable barriers in this proceeding.<sup>24</sup> BNSF did not offer any evidence to rebut Mr. Swan's testimony, but noted in its post-hearing brief that the Yacht Club Road crossing has a T-shaped configuration while the Crossing does not. Despite this difference, a similar risk exists here; if emergency vehicles have to slow down to prevent an impact with concrete barriers, emergency response times will necessarily be delayed. BNSF argues that widening the shoulder on the westerly side of the crossing alleviates this concern. We disagree. If vehicles are parked on the shoulder, or have pulled over to allow an emergency vehicle to pass, the emergency vehicle will no longer

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<sup>20</sup> CS-1T at 5:24, 6:1-4.

<sup>21</sup> CS-6T at 4:21-24, 5:1-3.

<sup>22</sup> CS-6T at 4:4-21.

<sup>23</sup> Swan, TR at 58:10-24; CS-1T at 6:4-9.

<sup>24</sup> Swan, TR at 75:13-25, 76: 1-13.

have the benefit of the space afforded by the shoulder and may have to cross the median to enter or exit the neighborhood. Concrete barriers would impede the speed of emergency vehicle ingress and egress in those circumstances because they are more difficult to pass without sustaining vehicle damage.

51 Finally, there is no evidence in the record to support BNSF's speculation that people may attempt to cross the mountable barriers to circumvent lowered gates in the absence of horns. BNSF presented no evidence that this behavior is of particular concern at this crossing. In fact, there is no evidence that this conduct has ever occurred since the Crossing was established in 1970. The record reflects that there has been only one incident at the Crossing, which occurred when a car stalled on the tracks in 1980. No one was in the vehicle when it was struck by a train.<sup>25</sup> The only modification that could prevent this type of incident from occurring again would be to close the Crossing. Short of that measure, BNSF could install four quadrant gates to prevent cars from entering the tracks entirely when the gates are lowered. BNSF has made no such proposal here.

52 We recognize that the FRA effectiveness rating for concrete median barriers is slightly higher (.80) than the rating for mountable medians with channelization devices (.75), but that difference does not outweigh the other factors we consider. BNSF argues that the FRA's rating for median barriers is based on incomplete and unscientific evaluation methods and would be much lower if they were established properly. The Commission, however, does not have the authority to re-evaluate FRA guidelines. Rather, as Staff notes in its post-hearing brief, FRA guidelines are controlling for the purposes of our analysis, and we find that the marginal increase in safety that concrete median barriers offer does not justify denying the County's Petition in favor of BNSF's proposal.

53 Based on the record evidence, we find that the County has met its burden of proving that public safety requires the Commission to grant its Petition. The evidence unequivocally shows that the installation of mountable median barriers with channelization devices will make the Crossing much safer than it is now. As the County correctly observes in its post-hearing brief, the issue is not whether BNSF's proposal is safer – no party disputes that it is – but whether BNSF has rebutted the County's proposal with evidence demonstrating that it is insufficient to meet public safety needs at that particular crossing.

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<sup>25</sup> BNSF's Response to Bench Request No. 1, U.S. DOT Crossing Inventory Form for Cliffside Drive.

We conclude that it has not. We find that the proposal set out in the County's Petition will both substantially increase public safety and best meet the County's needs. We therefore grant the Petition on that basis.

**FINDINGS AND CONCLUSIONS**

- 54 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the placement of, and alterations made to, at-grade highway railroad crossings on public roadways within the State of Washington.
- 55 (2) The Commission has jurisdiction over the subject matter of and the parties to this proceeding.
- 56 (3) The County petitioned the Commission on May 30, 2018, for authority to install mountable median barriers with channelization devices at the highway-railway at-grade crossing at Cliffside Drive in Whatcom County, Washington.
- 57 (4) The Crossing is located in a residential area. On an average day, 17 freight trains come through the crossing each day at a speed of 45 miles per hour, 4 passenger trains come through the crossing at a speed of 45 miles per hour, and between 300 and 450 vehicles make use of the crossing.
- 58 (5) The County is seeking a Quiet Zone designation at the Crossing, which will increase the risk of vehicle collisions at the crossing absent the installation of supplemental safety measures.
- 59 (6) All parties to this proceeding agree that upon the approval of the quiet zone, public safety requires the installation of median barriers at the crossing. Staff supports the County's Petition.
- 60 (7) BNSF requests the Commission require the County to install concrete, non-traversable median barriers at the Cliffside Drive Crossing.
- 61 (8) The installation of the County's proposed mountable median barriers will reduce the risk of collisions at the Crossing by 75 percent; according to federal rules, the Crossing with the proposed improvements will be safer than it is at present with warning horns and no median.
- 62 (9) The County prefers the proposed barriers because they are sufficient to substantially mitigate the increased risk from the absence of horns, County

employees can more easily inspect and maintain the barriers, and the barriers are easier for emergency services and solid waste collection vehicles to cross.

- 63 (10) BNSF's proposal to install concrete medians would further reduce the risk at the crossing. However, public safety does not require concrete medians because the County provided compelling reasons demonstrating that mountable medians best serve the public safety needs of the Crossing and the surrounding community.
- 64 (11) The record includes substantial evidence showing public safety requires the alteration of the Crossing as the County proposes.
- 65 (12) The Commission should grant the County's petition for authority to alter the crossing.

**ORDER**

THE COMMISSION ORDERS:

- 66 (1) Whatcom County's petition to install median barriers at the Cliffside Drive at-grade highway rail crossing is GRANTED.
- 67 (2) The Commission retains jurisdiction over the subject matter and the parties to the proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective May 15, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

### NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).