

Service Date: August 3, 2018

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WHATCOM COUNTY,

Petitioner,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-180466

ORDER 01

PREHEARING CONFERENCE  
ORDER; NOTICE OF HEARING  
**(Evidentiary Hearing Set for  
Tuesday, March 5, 2019, at 9:30 a.m.)**

- 1 **NATURE OF PROCEEDING.** On May 30, 2018, Whatcom County filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Installation of Median Barriers at a Highway-Rail Grade Crossing (Petition). The Petition seeks to install median barriers at the crossing on Cliffside Drive in Bellingham, Washington.
- 2 On May 31, 2018, 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 July 16, 2018, 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 August 2, 2018, before Administrative Law Judges Rayne Pearson and Laura Chartoff.
- 5 **APPEARANCES.** Christopher Quinn, Deputy Prosecuting Attorney, Whatcom County Prosecutor's Office, Bellingham, Washington, represents Whatcom County. Jennifer L. Willingham, General Attorney, Fort Worth, Texas, represents BNSF. Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Commission Staff.<sup>1</sup>

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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

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 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 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](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 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

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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.

schedule (or other deadline as applicable) unless the Commission orders 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](mailto: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 February 15, 2019**. 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 February 15, 2019**.
- 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 February 15, 2019**.
- 13 **THE COMMISSION GIVES NOTICE That it will hold a public comment hearing in these matters at 6 p.m. on Tuesday, March 5, 2019, at the Whatcom County**

Courthouse, 311 Grand Avenue, Bellingham, Washington, to afford members of the public an opportunity to present oral comments on the issues presented by this case.

14 **THE COMMISSION FURTHER GIVES NOTICE That it will hold an evidentiary hearing in these matters at 9:30 a.m. on Tuesday, March 5, 2019, in Room 513, Fifth Floor, Whatcom County Courthouse, 311 Grand Avenue, Bellingham, Washington.**

15 **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 August 3, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

**APPENDIX A**

**PARTIES' REPRESENTATIVES  
DOCKET TR-180466**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>E-MAIL</b>
Whatcom County	Christopher Quinn Deputy Prosecuting Attorney Whatcom County Prosecutor's Office 311 Grand Avenue, Suite 201 Bellingham, WA 98225	360-778-5729	<a href="mailto:cquinn@co.whatcom.wa.us">cquinn@co.whatcom.wa.us</a>
BNSF	Jennifer L. Willingham General Attorney, BNSF Railway 2500 Lou Menk Drive, AOB-3 Fort Worth, TX 76131	817-352-1738	<a href="mailto:Jennifer.Willingham@bnsf.com">Jennifer.Willingham@bnsf.com</a>
Staff	Jeff Roberson 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	360-664-1188	<a href="mailto:Jeff.Roberson@utc.wa.gov">Jeff.Roberson@utc.wa.gov</a>

**APPENDIX B**  
**PROCEDURAL SCHEDULE**  
**DOCKET TR-180466**

<b>EVENT</b>	<b>DATE</b>
Settlement Conference	<b>October 24, 2018</b>
Whatcom County Direct Testimony	<b>November 2, 2018</b>
BNSF and Commission Staff Response Testimony	<b>December 14, 2018</b>
Rebuttal/Cross Answering Testimony (All Parties)	<b>January 11, 2019</b>
Discovery Cutoff	<b>February 12, 2019</b>
Cross-Examination Exhibits, Witness Lists, and Time Estimates	<b>February 15, 2019 (by noon)</b>
Evidentiary Hearing	<b>March 5, 2019, at 9:30 a.m.</b>
Public Comment Hearing	<b>March 5, 2019, at 6 p.m.</b>
Simultaneous Post-Hearing Briefs	<b>April 5, 2019</b>