

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TR-150284
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 01
)	
v.)	
)	PREHEARING CONFERENCE
BNSF RAILWAY COMPANY,)	ORDER; NOTICE OF HEARING
)	(Set for January 19-20, 2016, at
Respondent.)	9:30 a.m.)
)	
.....)	

1 **NATURE OF PROCEEDING.** On March 19, 2015, the Washington Utilities and Transportation Commission (Commission), based on allegations of its Staff, initiated a complaint against BNSF Railway Company (BNSF). The complaint alleges that between November 1, 2014, and February 24, 2015, BNSF failed to report 14 hazardous material releases in the manner required by WAC 480-62-310. RCW 81.04.380 provides that each day’s continuance of a violation constitutes a separate and distinct violation, therefore, Staff alleges that BNSF committed 700 violations of WAC 480-62-310.

2 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on May 18, 2015, before Administrative Law Judge Gregory J. Kopta.

3 **APPEARANCES.** P. Stephen DiJulio, Foster Pepper PLLC, Seattle, Washington, represents BNSF. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹ Contact information provided at the conference for the parties’ representatives is attached as Appendix A to this order.

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.

4 **PETITIONS FOR INTERVENTION.** No party appeared at the conference seeking
to intervene.

5 **CONSENT TO ELECTRONIC SERVICE.** All parties have agreed to service
electronically. The Commission, therefore, may serve only electronic copies of
notices and orders in this docket to the party and representative email addresses on
file with the Commission.

6 **DISCOVERY.** Discovery will be conducted pursuant to 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 forward for formal
resolution.

7 **PROCEDURAL SCHEDULE.** The parties agreed on a procedural schedule during
the conference. The Commission adopts this procedural schedule, which is attached
to this Order as Appendix B.

8 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the
Commission and serve all proposed cross-examination exhibits by **5:00 p.m. on
January 12, 2016.** The Commission requires electronic copies and **four** paper copies
of the fully unredacted version of exhibits. The Commission also requires one paper
copy and one electronic copy in .pdf (Adobe Acrobat) format of a redacted set of any
confidential exhibits so that these can be made available by the Commission in
response to a public records request or posted to the Commission's website. The
paper copies of the exhibits must be organized into sets that are **tabbed, labeled, and
grouped** according to the witness the party intends to cross examine with the exhibits.
Cross-examination exhibits not conforming to these requirements may be rejected.

9 **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 list
by provide a list by **5:00 p.m. on January 12, 2016.**

- 10 **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 **5:00 p.m. on January 12, 2016.**
- 11 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter on **January 19, 2016, at 9:30 a.m.**, in the Commission’s Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing will continue, as necessary, on January 20, 2016.
- 12 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus **four** (4) 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) or by e-mail delivery to [<records@utc.wa.gov>](mailto:records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a flash drive, DVD, 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 except as otherwise provided in this order or the Commission’s procedural rules. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

- 15 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties must submit documents electronically to the Commission on the filing deadline established in the procedural schedule and must file an original, plus **four** (4) paper copies of the documents with the Commission by 5:00 p.m. on the first business day following the filing deadline as provided in WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously serve the other parties and provide e-mail courtesy copies of filings to the presiding administrative law judge (gkopta@utc.wa.gov).
- 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 19, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET TR-150284**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
BNSF Railway Company	2650 Lou Menk Drive Fort Worth, TX 76131			
	P. Stephen DiJulio Foster Pepper PLLC 1111 Third Avenue Suite 3400 Seattle, WA 98101-3299	206-447-4400	206-447-9700	dijup@foster.com
	Christopher G. Emch			emchc@foster.com
Staff	Julian Beattie Assistant Attorney General Office of the Attorney General 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	jbeattie@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-150284**

EVENT	DATE
Staff Direct Testimony and Exhibits	September 15, 2015
Company Response Testimony and Exhibits	November 10, 2015
Staff Rebuttal Testimony and Exhibits	December 22, 2015
Filing of Cross-Examination Exhibits, Witness Lists, and Time Estimates	January 12, 2016
Evidentiary Hearing	January 19 – 20, 2016
Simultaneous Post-Hearing Briefs	February 26, 2016