

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

BENTON COUNTY,	)	DOCKET TR-100572 (<i>Consolidated</i>)
)	
Petitioner,	)	ORDER 03
)	
v.	)	PREHEARING CONFERENCE
	)	ORDER
BNSF RAILWAY COMPANY,)	
	)	and
Respondent.)	
	)	NOTICE OF HEARING
	)	(Set for December 14, 2010)
.....)	
)	
BENTON COUNTY,	)	DOCKETS TR-100573, TR-100574,
	)	TR-100575 and TR-100576
Petitioner,	)	(<i>Consolidated</i>)
)	
v.)	
	)	ORDER 04
UNION PACIFIC RAILROAD,)	
)	
Respondent.	)	PREHEARING CONFERENCE
	)	ORDER
.....)	

1 **NATURE OF PROCEEDINGS.** On April 9, 2010, Benton County (County) filed with the Washington Utilities and Transportation Commission (Commission) four petitions to construct a highway-rail grade crossings at Piert Road, Benton County (Dockets TR-100572 through TR-100575), and a petition for the closure of a highway-rail grade crossing at Cochran Road, Benton County (Docket TR-100576). The affected railroad companies, BNSF Railway Company (BNSF) and Union Pacific Railroad (Union Pacific) entered appearances and reserved their rights to contest the petitions.

2 On June 16, 2010, the Commission entered Order 01 in Docket TR-100572 and Order
02 in TR-100573, TR-100574, TR-100575 and TR-100576, consolidating the dockets
for hearing and determination. In these orders, the Commission also scheduled a
prehearing conference in the consolidated dockets for Wednesday, August 11, 2010.

3 The Commission granted the parties' request for a continuance to September 27,
2010, to give them an opportunity to address questions relating to ownership of the
southern two proposed railway crossings and to continue settlement negotiations.

4 The parties stated during the prehearing conference that they had resolved the issues
related to ownership and had reconfigured the project in such a way as to eliminate
their primary points of contention in Dockets TR-100573 – TR-100576. They
accordingly proposed to seek severance of those dockets and leave to withdraw the
associated petitions. Docket TR-100572 remains contested at this time.

5 **The undersigned presiding officer instructed the parties to file their requests for
severance and withdrawal of the petitions in Dockets TR-100573 – TR-100576,
indicating these would be favorably received by the Commission. In addition,
the presiding officer encouraged the parties to continue their efforts to resolve
the remaining issues in Docket TR-100572.**

6 **PARTY REPRESENTATIVES.** Jonathan J. Young, Senior Deputy Prosecuting
Attorney and Reid Hay, Deputy Prosecuting Attorney, Benton County Prosecuting
Attorney's Office, Kennewick, Washington, represent Benton County. Bradley Scarp
and Kelsey E. Endres, Montgomery Scarp MacDougall, PLLC, Seattle, Washington,
represent BNSF. Carolyn Larson, Dunn Carney Allen Higgins & Tongue LLP,
Portland, Oregon, represents Union Pacific. Fronda Woods, Assistant Attorney
General, Olympia, Washington, represents the Commission's Regulatory Staff
(Commission Staff or Staff).¹

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.*

7 **PETITIONS TO INTERVENE.** No petitions to intervene were filed.

8 **PROTECTIVE ORDER.** The parties did not request entry of a protective order at this time. If needed to promote the efficient exchange during discovery of documents that are represented as including sensitive commercial information, the parties can request by motion that one be entered.

9 **DISCOVERY.** Discovery will proceed informally or in accordance with the Commission's procedural rules, as appropriate. If parties perceive a need to shorten response times or otherwise deviate from standard discovery rules, they should first try to agree to appropriate protocols. If they cannot agree, the Commission will entertain appropriate motions.

10 **PROCEDURAL SCHEDULE.** The parties agreed to the following procedural schedule to govern Docket TR-100572:

Status Conference	October 22, 2010
Benton County Prefiled Testimony	November 1, 2010
BNSF Prefiled Testimony	November 29, 2010
Rebuttal and Cross- Answering Testimony	December 6, 2010
Hearing	December 14, 2010 Location TBD

Staff will file its testimony, if any, at appropriate times considering its positions relative to the issues that ultimately remain contested.

- 11 **THE COMMISSION GIVES NOTICE That it will conduct an evidentiary hearing in this proceeding on December 14, 2010. The location for the evidentiary hearing will be announced via subsequent notice.**
- 12 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the original plus **eight copies** of the unredacted versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and one copy of any redacted version(s). 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 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 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus **eight paper copies**, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. *WAC 480-07-145(6)*. Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge and advisory staff identified on Appendix A to this Order as well as to the parties to the proceeding.
- 15 **ALTERNATIVE 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.

16 **NOTICE TO PARTIES.** A party who objects to any portion of this Order must file a written objection within ten 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 October 5, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX

PARTIES' REPRESENTATIVES
DOCKETS TR-100572 – 100576

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Benton County	Reid Hay Deputy Prosecuting Attorney Benton County Prosecuting Attorney's Office 7122 W. Okanogan Pl. Kennewick, WA 99336	509-735-3591	509-36-3066	Reid.Hay@co.benton.wa.us
BNSF	Bradley Scarp Kelsey E. Endres Montgomery Scarp MacDougall, PLLC 2700 Seattle Tower 1218 Third Avenue Seattle, WA 98101	206-625-1801	206-625-1807	Brad@montgomeryscarp.com Kelsey@montgomeryscarp.com
Union Pacific Railroad Company	Carolyn Larson Dunn Carney Allen Higgins & Tongue LLP 851 SW Sixth Avenue, Suite 1500 Portland, OR 97204	503-417-5462	503-224-7324	CLL@dunn-carney.com
Commission Regulatory Staff	Frona Woods Assistant Attorney General 1400 S. Evergreen Park Dr. SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	FWoods@utc.wa.gov

APPENDIX B

PROCEDURAL SCHEDULE
DOCKET TR-100572 – TR-100576

EVENT	DATE	INTERVAL
Status Conference	October 22, 2010	
Benton County Prefiled Testimony	November 1, 2010	
BNSF Prefiled Testimony	November 29, 2010	28 days
Rebuttal and Cross- Answering Testimony	December 6, 2010	7 days
Evidentiary Hearing	December 14, 2010	8 days