

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| <p>CLARK COUNTY</p> <p style="text-align: center;">Complainant,</p> <p>v.</p> <p>BURLINGTON NORTHERN SANTA FE RAILROAD (BNSF),</p> <p style="text-align: center;">Respondent.</p> | <p>DOCKET TR-240364</p> <p>ORDER 01</p> <p>PREHEARING CONFERENCE ORDER AND NOTICE OF HYBRID EVIDENTIARY HEARING (Set for September 8, 2025, at 9:00 a.m.)</p> |
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BACKGROUND

- 1 **NATURE OF PROCEEDING.** On May 15, 2024, Clark County Public Works filed with the Washington Utilities and Transportation Commission (Commission) a petition to modify a highway-rail grade crossing.

- 2 **CONFERENCE.** The Commission convened a virtual prehearing conference on July 16, 2024, before Administrative Law Judge M. Hayley Callahan.

- 3 **APPEARANCES.** Kevin A. McDowell represents Clark County, Michael E. Chait represents BNSF, and Lisa W. Gafken represents the Commission. Contact information for the parties’ representatives is attached as Appendix A to this Order.

- 4 **DISCOVERY.** In order to facilitate an efficient resolution to this matter, discovery will be immediately available to the parties and shall be conducted 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 forward for formal resolution.

- 5 **PROCEDURAL SCHEDULE.** The parties presented an agreed procedural schedule at the prehearing conference. The parties additionally recommended that a public comment hearing be held on the same day as the evidentiary hearing in the evening. The Commission adopts the proposed procedural schedule, which is attached to this Order as

Appendix B. The parties may modify the date of the settlement conference by providing written notice to the Commission.

- 6 **DOCUMENT FILING AND SERVICE REQUIREMENTS.** Parties must file and serve all pleadings, motions, briefs, and other pre-filed 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](#) and the Protective Order in these dockets.
 - (b) 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\(5\)\(b\)](#).
 - (c) If any of the exhibits contain information designated as confidential, parties must file an electronic copy of the redacted version in searchable PDF (Adobe Acrobat or comparable software) of each such exhibit.
 - (d) The Commission is continuing to suspend requirements for paper filings in this case for all submissions dating after the Company’s initial testimony.
 - (e) Documents filed with the Commission must conform to the formatting and other requirements in [WAC 480-07-395](#) and [WAC 480-07-460](#). Further, filed documents designated as confidential must comply with the requirements in [WAC 480-07-160](#) and the Protective Order in this docket.
 - (f) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (hayley.callahan@utc.wa.gov) by 5 p.m. on the filing deadline unless the Commission orders otherwise. Pursuant to [WAC 480-07-365\(2\)\(c\)](#), all electronic documents submitted to the Commission must also be delivered to all parties and the presiding administrative law judge “at the same time” that the documents are submitted to the Commission or shortly thereafter. Please note as well that failing to provide a courtesy copy to the presiding administrative law judge may result in a delayed ruling on a motion or other filing. If parties are unable to email copies, they may furnish electronic copies by delivering them on a flash drive only.

- 7 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5 p.m. on September 1, 2025**. The Commission requires electronic copies in searchable PDF (Adobe Acrobat or comparable software). If any of the exhibits contain information designated as confidential, parties must file an electronic copy of the redacted version in searchable PDF (Adobe Acrobat or comparable software) of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits.
- 8 **EXHIBIT LISTS.** With each submission of pre-filed testimony and exhibits, the party making the submission must include a preliminary exhibit list that identifies each submitted exhibit in the format the Commission uses for exhibit lists it prepares for evidentiary hearings. Each party must file and serve a final list of all exhibits the party intends to introduce into the evidentiary record, including all pre-filed testimony and exhibits, as well as cross-examination exhibits by **5 p.m., September 1, 2025**.
- 9 **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 (hayley.callahan@utc.wa.gov) and the other parties by email on **September 1, 2025, by 5:00 p.m.**
- 10 **PUBLIC COMMENT HEARING.** The parties agreed to schedule a public comment hearing in the evening of **September 8, 2025**.
- 11 **NOTICE OF EVIDENTIARY HEARING.** The Commission will hold a hybrid evidentiary hearing in this docket on **Monday, September 8, 2025, at 9:00 am**. Parties may attend the hearing in person at the Commission’s headquarters or virtually via Zoom. To attend the hearing via Zoom, [click here to join meeting](#), or call (253) 215-8782 and enter the Conference ID: 894 5327 4970# and use the Passcode: 898703#.
- 12 **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 has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Michael Howard, Director, Administrative Law Division (360-664-1139).
- 13 **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 this Order, in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this docket, subject to Commission review.

DATED at Lacey, Washington, and effective July 24, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ M. Hayley Callahan

M. Hayley Callahan

Administrative Law Judge

APPENDIX A
PARTIES' REPRESENTATIVES
DOCKET TR-240364

| PARTY | REPRESENTATIVE | PHONE | E-MAIL |
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| Utilities and Transportation Commission Staff | Lisa W. Gafken Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504-0128 | 206-714-3551 | lisa.gafken@atg.wa.gov |
| Clark County | Kevin A. McDowell Deputy Prosecuting Attorney Clark County Prosecuting Attorney's Office PO Box 5000 Vancouver, WA 98666-5000 | 564-397-4396 | kevin.mcdowell@clark.wa.gov |
| BNSF | Michael E. Chait Fennemore Craig, P.C. 1425 Fourth Avenue Suite 800 Seattle, WA 98101-2272 | 206-749-0500 | mchait@fennemorelaw.com |

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-240364**

| EVENT | DATE |
|---|--------------------------|
| BNSF Answer | August 20, 2024 |
| Clark County Direct Testimony | April 17, 2025 |
| BNSF and Commission Staff Response Testimony | June 3, 2025 |
| Settlement Conference | June 25, 2025 |
| Clark County Rebuttal/BNSF and Commission Staff cross-answering testimony | July 10, 2025 |
| Discovery Cutoff | August 13, 2025 |
| Cross-examination exhibits, witness lists, and time estimates, and Exhibit Errata | September 1, 2025 |
| Evidentiary Hearing | September 8, 2025 |
| Public Comment Hearing | September 8, 2025 |
| Simultaneous Post-Hearing Briefs | October 8, 2025 |