

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,)	DOCKET TR-150189
)	
Petitioner,)	ORDER 01
)	
v.)	PREHEARING CONFERENCE
)	ORDER; NOTICE OF HEARING
WHATCOM COUNTY,)	(Evidentiary Hearing Set for
)	Tuesday, December 1, 2015,
Respondent.)	at 9:30 a.m., and Wednesday,
)	December 2, 2015, at 9:30 a.m.)
.....)	

1 **NATURE OF PROCEEDING.** This proceeding arises out of a petition filed by BNSF Railway Company (BNSF) with the Washington Utilities and Transportation Commission (Commission) on February 4, 2015, seeking closure of a highway-rail grade crossing located at Valley View Road in Whatcom County. Whatcom County objected to the proposed closure.

2 **CONFERENCE.** On June 8, 2015, the Commission convened a prehearing conference before Administrative Law Judge Rayne Pearson to determine the scope of the issues to be presented in this docket and to adopt a procedural schedule.

3 **APPEARANCES.** Bradley Scarp and Kelsey Endres, Montgomery Scarp, PLLC, Seattle, Washington, represent Petitioner BNSF. Daniel Gibson, Whatcom County Prosecutor’s Office, Bellingham, Washington, represents Respondent Whatcom County. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹ Contact information for the parties’ representatives is attached as Appendix A to this order.

4 **INTERVENTION.** No party sought to intervene in the proceeding.

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.

- 5 **CONSENT TO ELECTRONIC SERVICE.** All parties have consented 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 under the Commission’s discovery rules, WAC 480-07-400 – 425.
- 7 **PROCEDURAL SCHEDULE.** The parties agreed upon, and the Commission adopts, the preliminary procedural schedule set forth in Appendix B to this Order.
- 8 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and submit electronically all proposed cross-examination exhibits **by 5:00 p.m. on Wednesday, November 4, 2015.** The Commission requires **two (2)** copies of the fully unredacted version of exhibits. The Commission also requires one (1) copy 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 web pages. Except as otherwise agreed between parties, proposed cross-examination exhibits must be served on all parties at the time they are filed with the Commission. One (1) additional copy must be furnished to the party sponsoring the witness the party intends to cross examine with the exhibits. Parties may waive the right to service of cross-examination exhibits in whole or in part. This may be appropriate, for example, when a proposed exhibit has been previously furnished during the discovery process.
- 9 The exhibits must be accompanied by an exhibit list and 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. Each party’s cross-examination exhibit list must also be filed with the Commission and served on all parties **by 5:00 p.m. on Wednesday, November 4, 2015.**
- 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. Cross-examination time estimates are not filed but must be provided to the administrative law judge and the other parties **by 5:00 p.m. on November 23, 2015.**

11 **THE COMMISSION GIVES NOTICE That it will hold a public comment hearing in these matters at 6:00 p.m. on Tuesday, December 1, 2015, tentatively scheduled to be held in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington,** to afford members of the public an opportunity to present oral comments on the issues presented by this case. If the parties agree and propose to the Commission an alternate location in Whatcom County by October 16, 2015, a separate notice will issue setting forth the specific location where the public comment hearing will be held, and confirming the date and time.

12 **THE COMMISSION FURTHER GIVES NOTICE That it will hold an evidentiary hearing in these matters at 9:30 a.m. on Tuesday, December 1, 2015, and continuing as required on Wednesday, December 2, 2015, tentatively scheduled to be held in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** If the parties agree and propose to the Commission an alternate location in Whatcom County by October 16, 2015, a separate notice will issue setting forth the specific location of the evidentiary hearing, and confirming the date and time.

13 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus **one (1) copy** of the unredacted versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and one (1) 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.

14 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.

15 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 >. 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. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

- 16 **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 one (1) paper copy, 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 must submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Parties must simultaneously provide e-mail courtesy copies of filings to Judge Pearson at rpearson@utc.wa.gov, as well as to the parties to the proceeding. Parties may agree to waive the requirement to serve paper copies of all documents on each other and may serve such copies electronically if they memorialize such an agreement by letter and provide a courtesy copy of the letter to the Commission.
- 17 **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.
- 18 **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 June 9, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

APPENDIX A
PARTIES' REPRESENTATIVES
DOCKET TR-150189

<u>PARTY</u>	<u>REPRESENTATIVE</u>	<u>PHONE</u>	<u>FAX</u>	<u>E-MAIL</u>
BNSF Railway Petitioner	Bradley Scarp Kelsey Endres Montgomery Scarp MacDougall, PLLC 1218 Third Avenue Suite 2500 Seattle, WA 98101	206-625-1801	206-625-1807	brad@montgomeryscarp.com kelsey@montgomeryscarp.com
	Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Avenue S. Suite 2D Seattle, WA 98134	206-625-6152		richard.wagner@bnsf.com
Whatcom County Respondent	Daniel L. Gibson Chief Civil Deputy Prosecuting Attorney Whatcom County Prosecuting Attorney 311 Grand Avenue Suite 201 Bellingham, WA 98225	360-676-6784	360-738-2532	dgibson@co.whatcom.wa.us
	Joseph P. Rutan, PE County Engineer/Interim PW Director Whatcom County Public Works Department 322 N. Commercial Street Suite 210 Bellingham, WA 98225	360-715-7450		jrutan@co.whatcom.wa.us
Commission Staff Respondent	Julian Beattie Assistant Attorney General 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225		jbeattie@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-150189**

<u>EVENT</u>	<u>DATE</u>
Direct Testimony Petitioner BNSF	Friday, August 7, 2015
Response Testimony Respondents Whatcom County and Commission Staff	Monday, September 21, 2015
Rebuttal/Cross Answer Testimony All Parties	Wednesday, October 21, 2015
Cross-Examination Exhibits & List	Wednesday, November 4, 2015
Evidentiary Hearing	Tuesday, December 1, 2015 and Wednesday, December 2, 2015
Public Hearing	Tuesday, December 1, 2015 (evening)
Simultaneous Post-Hearing Briefs	Friday, January 8, 2016