

Staff or Staff).¹ Contact information for the parties' representatives is attached as Appendix A to this order.

4 **INTERVENTION.** On May 31, 2013, the City of Richland filed a written motion to intervene in the proceeding. No party questioned the City of Richland's substantial interest in this matter or objected to its motion. The Commission finds that the City of Richland's motion demonstrated a substantial interest in this proceeding and that the City of Richland's participation will be in the public interest. The City of Richland's motion to intervene is granted.

5 **DISCOVERY.** TCRY's answer to the City of Kennewick's petition requested that the Commission make discovery available under Washington Administrative Code (WAC) 480-07-400 – 425. No party objected to that request. Pursuant to WAC 480-07-400(2)(b)(iv), the Commission finds that the needs of the case may require discovery and makes the discovery rules available to all parties. However, *the parties shall not schedule depositions without advance approval of the presiding officer.* The Commission urges the parties to work cooperatively together to avoid having to bring discovery disputes forward for formal resolution. **The discovery cutoff date is Friday, October 11, 2013;** all data requests must be issued and served by this date.

6 **SEPA REVIEW.** The City of Kennewick represented at the prehearing conference that it previously concluded the necessary State Environmental Policy Act (SEPA) review for the proposed crossing. The City of Kennewick issued a Mitigated Determination of NonSignificance (MDNS) in 2003 and the proposed crossing is also addressed in the City of Kennewick's Comprehensive Plan. The City of Kennewick will confirm to the Commission that its decade-old MDNS remains legally sufficient.

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 **PROCEDURAL SCHEDULE.** The parties agreed on, and the Commission adopts, the following procedural schedule:

Tuesday, September 3, 2013	Pre-Filed Testimony – Petitioner / Intervenor
Tuesday, October 1, 2013	Response Testimony – Respondents / Staff
Tuesday, October 22, 2013	Rebuttal & Cross-Answer Testimony – All
November 19-21, 2013	Evidentiary Hearing (beginning at 9:30 a.m.)
November 19 or 20, 2013	Public Hearing (beginning at 6:00 p.m.)
Friday, December 20, 2013	Simultaneous Post-Hearing Briefs

The procedural schedule is included in this Order as Appendix B.

8 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to electronically submit to the Commission all proposed cross-examination exhibits **by 3:00 p.m. on Tuesday, November 12, 2013**, and filed hard copies of the same **by noon on September 13, 2013**. 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. Two copies 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. Cross-examination exhibits must be accompanied by an exhibit list and must be organized 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 be filed with the Commission and served on all parties by 3:00 p.m. on November 12, 2013.

9 **PUBLIC COMMENT HEARING.** As noted above, the Commission will conduct a public comment hearing on **Tuesday, November 19, 2013 OR Wednesday, November 20, 2013, at approximately 6:00 p.m.** to afford members of the public an opportunity to present oral comments on the issues presented by this case. A separate notice will be issued setting forth the specific location in the City of Kennewick where the public comment hearing will be held and confirming the date and time.

10 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter commencing on **Tuesday, November 19, 2013, at 9:30 a.m.**, and continuing as required on Wednesday, November 20, 2013, and Thursday, November 21, 2013, at a location to be designated in the City of Kennewick. A separate notice will be issued setting forth the specific location of the evidentiary hearing and confirming the date and time.

11 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an **original plus 6 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.

12 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.

13 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 3.5-inch IBM-formatted high-density diskette, a flash drive, 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.

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 6 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/efiling) 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 at atorem@utc.wa.gov as well as to the parties to the proceeding.

- 15 **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.
- 16 **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 7, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
DOCKET TR-130499

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
City of Kennewick Petitioner	P. Stephen DiJulio Jeremy Eckert Foster Pepper PLLC 1111 3 rd Avenue, Suite 3400 Seattle, WA 98101	206-447-4400	206-447-9700	dijup@foster.com eckej@foster.com
	Peter Beaudry Public Works Director City of Kennewick 210 West 6 th Avenue P.O. Box 6108 Kennewick, WA 99336-0108			Peter.beaudry@ci.kennewick.wa.us
City of Richland Intervenor	P. Stephen DiJulio Jeremy Eckert Foster Pepper PLLC 1111 3 rd Avenue, Suite 3400 Seattle, WA 98101	206-447-4400	206-447-9700	dijup@foster.com eckej@foster.com
	Cindy Johnson, City Manager The City of Richland P.O. Box 190 Richland, WA 99352			
Port of Benton Respondent	Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland, WA 99352	509-943-2676	509-946-4257	tcowan@cowanmoore.com
	Scott D. Keller Port of Benton 3100 George Washington Way Richland, WA 99354			keller@portofbenton.com

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
TCRY Respondent	Paul J. Petit Tri-City & Olympia Railroad P.O. Box 1700 Richland, WA 99354 Brandon L. Johnson Minnick-Hayner, P.S. 249 West Alder P.O. Box 1757 Walla Walla, WA 99362	509-371-8313 509-527-3500	509-527-3506	paulpetit@tcry.com bljohnson@my180.net
	Rhett Peterson Tri-City & Olympia Railroad P.O. Box 1700 Richland, WA 99352			rhettwater@mac.com
	BNSF Railway Respondent (Waiver on File)	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Avenue, Suite 2700 Seattle, WA 98101	206-625-1801	206-625-1807
Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Avenue S. Suite 2D Seattle, WA 98134		Richard.wagner@bnsf.com		
UPRR Respondent (Waiver on File)	Carolyn Larson Attorney at Law Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Avenue, Suite 1500 Portland, OR 97204	503-224-6440	503-224-7324	cll@dunn-carney.com
	Terrel A. Anderson Manager Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson Street Roseville, CA 95747			taanders@up.com

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Commission Staff	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	ssmith@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-130499**

<u>EVENT</u>	<u>DATE</u>
Direct Testimony Petitioner City of Kennewick and Intervenor City of Richland	Tuesday, September 3, 2013
Response Testimony Respondents and Staff	Tuesday, October 1, 2013
Discovery Cutoff	Friday, October 11, 2013
Rebuttal/Cross Answer Testimony All Parties	Tuesday, October 22, 2013
Cross-Examination Exhibits & List	Tuesday, November 12, 2013
Evidentiary Hearing	Tuesday, November 19, 2013 Wednesday, November 20, 2013 Thursday, November 21, 2013
Public Hearing	Tuesday, November 19, 2013 (evening) <i>OR</i> Wednesday, November 20, 2013 (evening)
Simultaneous Post-Hearing Briefs	Friday, December 20 th , 2013