BEFORE THE WASHINGTON

## UTILITIES AND TRANSPORTATION COMMISSION

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| BNSF RAILWAY COMPANY,  Petitioner,  v.  YAKIMA COUNTY,  Respondent.  . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | )  )  )  )  )  )  )  )  )  )  ) | DOCKET TR-140382 and  DOCKET TR-140383  ORDER 02  ORDER GRANTING STAFF’S MOTION AND REVISING PROCEDURAL SCHEDULE  **(Evidentiary Hearing Set for April 28-29, 2015, at 9:30 a.m.)** |

1. **NATURE OF PROCEEDING.** This proceeding arises out of petitions from BNSF Railway Company (BNSF) filed with the Washington Utilities and Transportation Commission (Commission) on March 10, 2014, seeking closure of the N. Stevens highway-rail grade crossing near the City of Toppenish, Yakima County (Docket TR-140382), and closure of the Barnhart highway-rail grade crossing near the City of Mabton, Yakima County (Docket TR-140383). Yakima County objected to the proposed closures, as did the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) and the Washington Farm Bureau.
2. **CONFERENCE.** On October 28, 2014, the Commission issued a Notice Suspending the Procedural Schedule and Notice of Telephonic Prehearing Conference. The Commission convened a second prehearing conference in Olympia, Washington on Tuesday, November 04, 2014, before Administrative Law Judge Rayne Pearson.
3. **APPEARANCES.** Tom Montgomery, Seattle, represents petitioner BNSF. Ethan Jones, Toppenish, represents the Yakama Nation. R. Joseph Sexton, Seattle, represents the Yakama Nation as co-counsel. Patrick Oshie, Assistant Attorney General, Olympia, WA, represents the Commission’s regulatory staff (Commission Staff or Staff).[[1]](#footnote-1) Respondent Yakima County did not appear at the hearing. Updated contact information for the parties’ representatives is attached as Appendix A to this order.
4. **COMMISSION STAFF’S MOTION TO WITHDRAW.** On October 28, 2014, Commission Staff filed a motion to withdraw from this proceeding, citing Staff time constraints. Staff further expressed confidence that the parties to the case, Yakima County, Yakama Nation, and BNSF Railway Company, have the resources to fully develop the facts necessary for the Commission to decide this matter. Staff will, however, be available as needed to act in an advisory capacity to the Commission.
5. None of the parties present at the prehearing conference objected to Staff’s motion, and the motion was granted.
6. **PROCEDURAL SCHEDULE.** The Commission adopts the following procedural schedule:

Wednesday, December 31, 2014 Pre-Filed Testimony – Petitioner

Friday, February 13, 2015 Response Testimony – Opponents

Friday, March 13, 2015 Rebuttal & Cross-Answer Testimony – All

Tuesday, April 28, 2015 Evidentiary Hearing (beginning at 9:30 a.m.)

and Wednesday, April 29, 2015 (if necessary)

Tuesday, April 28, 2015 Public Hearing (beginning at 6:00 p.m.)

Monday, June 1, 2015 Simultaneous Post-Hearing Briefs

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

1. **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to electronically submit to the Commission all proposed cross-examination exhibits **by 5:00 p.m. on Monday, April 13, 2015**, and file hard copies of the same **by noon on Tuesday, April 14, 2015.** Each party’s cross-examination exhibit list must also be filed with the Commission and served on all parties by noon on April 14, 2015.
2. **THE COMMISSION GIVES NOTICE That it will hold a public comment hearing in these matters at 6:00 p.m. on Tuesday, April 28, 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 Yakima County by March 13, 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.
3. **THE COMMISSION FURTHER GIVES NOTICE That it will hold** **an evidentiary hearing in these matters** **at 9:30 a.m. on** **Tuesday, April 28, 2015, and continuing as required on Wednesday, April 29, 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 Yakima County by March 13, 2015, a separate notice will issue setting forth the specific location of the evidentiary hearing, and confirming the date and time.

Dated at Olympia, Washington, and effective November 6, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON

Administrative Law Judge

**APPENDIX A**

**PARTIES’ REPRESENTATIVES**

**DOCKETS TR-140382 & TR-140383**

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| **PARTY** | **REPRESENTATIVE** | **PHONE** | **FACSIMILE** | **E-MAIL** |
| BNSF Railway  Petitioner | Tom Montgomery  Montgomery Scarp MacDougall, PLLC  1218 Third Avenue, Ste 2700  Seattle, WA 98101 | 206-625-1801 | 206-625-1807 | [tom@montgomeryscarp.com](mailto:tom@montgomeryscarp.com)  [teresa@montgomeryscarp.com](mailto:teresa@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](mailto:richard.wagner@bnsf.com) |
| Yakima County  Respondent | Kenneth W. Harper  Menke Jackson Beyer, LLP  807 North 39th Avenue  Yakima, WA 98902 | 509-575-0313 |  | [kharper@mjbe.com](mailto:kharper@mjbe.com) |
| Gary Ekstedt  Yakima County  Dept of Public Services  County Engineer / Assistant Director  128 N. 2nd Street, Room 408 (Courthouse)  Yakima, WA 98901-2639 | 509-574-2300 | 509 574-2301 |  |
| Yakama Nation  Intervenor | Ethan Jones  Associate Attorney  Confederated Tribes and Bands of the Yakama Nation  P.O. Box 151  Fort Road  Toppenish, WA 98948 | 509-865-7268 | 509-865-4713 | [ethan@yakamanation-olc.org](mailto:ethan@yakamanation-olc.org) |
| R. Joseph Sexton  Galanda Broadman, PLLC  8606 35th Avenue NE, Ste. L1  P.O. Box 15146  Seattle, WA 98115 | 206-557-7509 | 206-299-7690 | [joe@galandabroadman.com](mailto:joe@galandabroadman.com) |
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**APPENDIX B**

**PROCEDURAL SCHEDULE**

**DOCKETS TR-140382 & TR-140383**

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| **EVENT** | **DATE** |
| Direct Testimony  Petitioner BNSF | Wednesday, December 31, 2014 |
| Response Testimony  Respondents | Friday, February 13, 2015 |
| Rebuttal/Cross Answer Testimony  All Parties | Friday, March 13, 2015 |
| Cross-Examination Exhibits & List | Monday, April 13, 2015 |
| Evidentiary Hearing | Tuesday, April 28, 2015  and Wednesday, April 29, 2015 |
| Public Hearing | Tuesday, April 28, 2015 (evening) |
| Simultaneous Post-Hearing Briefs | Monday, June 1, 2015 |

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*.* [↑](#footnote-ref-1)