

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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

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).<sup>1</sup> Respondent Yakima County did not appear at the hearing. Updated

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<sup>1</sup> 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

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 and Wednesday, April 29, 2015	Evidentiary Hearing (beginning at 9:30 a.m.) (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.

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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 **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.

8 **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.

9 **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**

<u>PARTY</u>	<u>REPRESENTATIVE</u>	<u>PHONE</u>	<u>FACSIMILE</u>	<u>E-MAIL</u>
BNSF Railway Petitioner	Tom Montgomery Montgomery Scarp MacDougall, PLLC 1218 Third Avenue, Ste 2700 Seattle, WA 98101	206-625-1801	206-625-1807	<a href="mailto:tom@montgomeryscarp.com">tom@montgomeryscarp.com</a>  <a href="mailto:teresa@montgomeryscarp.com">teresa@montgomeryscarp.com</a>
	Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Avenue S. Suite 2D Seattle, WA 98134	206-625-6152		<a href="mailto:richard.wagner@bnsf.com">richard.wagner@bnsf.com</a>
Yakima County Respondent	Kenneth W. Harper Menke Jackson Beyer, LLP 807 North 39 <sup>th</sup> Avenue Yakima, WA 98902	509-575-0313		<a href="mailto:kharper@mjbe.com">kharper@mjbe.com</a>
	Gary Ekstedt Yakima County Dept of Public Services County Engineer / Assistant Director 128 N. 2 <sup>nd</sup> 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	<a href="mailto:ethan@yakamanation-olc.org">ethan@yakamanation-olc.org</a>
	R. Joseph Sexton Galanda Broadman, PLLC 8606 35 <sup>th</sup> Avenue NE, Ste. L1 P.O. Box 15146 Seattle, WA 98115	206-557-7509	206-299-7690	<a href="mailto:joe@galandabroadman.com">joe@galandabroadman.com</a>
	Al Pinkham Engineering Planner	509-865-5121 x6735		<a href="mailto:apinkham@yakama.com">apinkham@yakama.com</a>

**APPENDIX B**  
**PROCEDURAL SCHEDULE**  
**DOCKETS TR-140382 & TR-140383**

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
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