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**I. INTRODUCTION**

**A. Summary**

Chelan County's (County) petition to alter and relocate BNSF Railway Company's (BNSF) trestle is part of the County's effort to improve public safety on the Chumstick Highway. The County has improved sections of the Chumstick Highway to the south and north of highway milepost 1.83 where the Chumstick Highway passes under the BNSF trestle. Before making further improvements to the Chumstick Highway in the vicinity of the BNSF trestle, the County is awaiting the decision on the County's petition in this matter by the Washington Utilities and Transportation Commission (WUTC or Commission).

BNSF petitioned to dismiss the County's petition on the basis of federal preemption.<sup>1</sup> The WUTC issued its *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction* on August 20, 2007.<sup>2</sup> Neither party filed a petition for administrative review of the *Initial Order*.<sup>3</sup>

The Commission determined that the WUTC is not preempted from addressing the County's petition and allocating costs for improving the Under-crossing.<sup>4</sup>

The Commission also found that public safety requires amelioration of safety concerns at the railway under-crossing at milepost 1.83 on the Chumstick Highway.<sup>5</sup>

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<sup>1</sup> Respondent BNSF's Brief on Jurisdictional Issues, TR-061442, May 3, 2007.

<sup>2</sup> *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction*, TR-061442, August 20, 2007.

<sup>3</sup> WAC 480-07-825(a) and (b).

<sup>4</sup> *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction*, TR-061442, August 20, 2007, p. 10.

1 The County contends that the railway bridge (trestle) crossing over the Chumstick  
2 Highway at milepost 1.83 is a component of the public safety concerns at this  
3 undercrossing. At the under-crossing, the Chumstick Highway makes an abrupt change  
4 from a long, straight roadway to a sharp curve.. Sight distances at the Under-crossing are  
5 limited by the curve in the highway and the railway bridge piers. The concrete piers are  
6 also too close to the roadway and limit the roadway to a nonstandard, too-narrow width..  
7

8 In its *Initial Order*, the Commission ordered that the Commission will determine  
9 the appropriate cost allocation associated with the Chumstick Highway Improvement  
10 Project.<sup>6</sup>  
11

12 **B. Relief Requested**

13 The County requests that the costs of reconstruction of the trestle, including  
14 design, alteration, relocation, be apportioned by the Commission between the County and  
15 BNSF. The County agrees to pay the cost of its highway design and construction  
16 improvement and volunteers to pay one million dollars toward trestle design and  
17 reconstruction. The County asks that BNSF pay the railroad bridge design, construction,  
18 and shoo-fly costs less the County's one million dollar contribution.  
19

20 The County further asks that the Commission order the parties to cooperatively  
21 develop a design for the alteration, relocation, and configuration of the railroad bridge  
22 and the highway at the Under-crossing to improve public safety, and that the Commission  
23 order that each party be responsible for construction of its respective facilities in  
24 compliance with state law.  
25

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26 <sup>5</sup> *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction*, TR-061442, August 20, 2007, p. 11.

27 <sup>6</sup> *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction*, TR-061442, August 20, 2007, at p.

1 **II. WUTC AUTHORITY TO ORDER ALTERATION, RELOCATION, AND**  
2 **RECONSTRUCTION OF THE UNDER-CROSSING**

3 Chapter 81.53 of the Revised Code of Washington grants the Washington Utilities  
4 and Transportation Commission (“WUTC” or “Commission”) the authority to regulate  
5 highway-railroad crossings as required by public safety. “[T]he legislative authority of  
6 any county within which there exists an under-crossing . . . may file with the commission  
7 . . . its petition in writing, alleging public safety requires . . . an alteration . . . in the style  
8 and nature of construction of an existing . . . under-crossing, or a change in the location of  
9 an existing highway or crossing . . . .”<sup>7</sup> If the petition to alter and/or relocate an under-  
10 crossing is contested, the WUTC conducts a public hearing before an administrative law  
11 judge.<sup>8</sup> After a contested hearing, the administrative law judge issues an initial order  
12 which “resolve[s] contested issues on the basis of the official record in a proceeding.”<sup>9</sup>  
13 Initial orders are subject to further action by the Commission unless the Commission  
14 reviews the initial order.<sup>10</sup>  
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24 <sup>7</sup> RCW 81.53.060.

25 <sup>8</sup> RCW 81.53.060.

26 <sup>9</sup> WAC 480-07-820(1)(a) and WAC 480-07-825(1)(a) and (2).

27 <sup>10</sup> WAC 480-07-820(1)(a) and WAC 480-07-825(1)(a), (2), and (7).

1           **III. ANALYSIS: THE BNSF CHUMSTICK HIGHWAY UNDER-CROSSING**  
2           **SHOULD BE ALTERED AND RELOCATED AND COSTS SHOULD BE**  
3           **APPORTIONED BETWEEN THE COUNTY AND BNSF**

4           **A. Washington law requires the WUTC to make its decision on the County's**  
5           **petition based upon public safety concerns**

6           Washington law requires that a petition brought by the county legislative  
7           authority allege "that the public safety requires" alteration or relocation of any existing  
8           under-crossing.<sup>11</sup>

9           Chelan County filed the petition to alter and/or relocate the BNSF Chumstick  
10          Highway under-crossing and alleged that public safety requires alteration and/or  
11          relocation of the under-crossing.<sup>12</sup>

12          **B. The Chumstick Highway-BNSF Under-crossing is a public safety hazard**

13          The WUTC has already found that "The Chumstick Highway railway  
14          undercrossing at milepost 1.83 presents both highway and rail safety concerns that  
15          require amelioration."<sup>13</sup>

16          1. The County does not assert any safety concerns about physical  
17          deterioration of the BNSF railroad trestle at milepost 1.83 on the Chumstick Highway.  
18          Indeed, the County Public Works Director testified that the County had no safety  
19          concerns about the trestle being in a dilapidated condition.<sup>14</sup>

20  
21  
22  
23          <sup>11</sup> RCW 81.53.060.

24          <sup>12</sup> See Petition for Alteration and Relocation of a Highway-Rail Under-Crossing, TR -061442,  
25          filed 09-11-2006.

26          <sup>13</sup> *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction*, TR-061442, August 20,  
27          2007, Finding of Fact 4 at p.11.

28          <sup>14</sup> Record of Proceedings, Vol. IV, May 16, 2008 at p. 78, ll. 12-15.

1           2.     Rather, the County's public safety concerns arise because of the  
2 combination of factors at the undercrossing. Except for the vicinity of the Under-  
3 crossing, the Chumstick Highway has been improved for some distance to the north and  
4 south of the Under-crossing.<sup>15</sup> The roadway and shoulder beneath trestle is a substandard  
5 twenty-four feet wide between the trestle piers.<sup>16</sup> The Chumstick Highway is a major  
6 rural collector.<sup>17</sup> WDOT and AASHTO design standards call for a minimum of thirty-  
7 two feet of roadway and shoulder width.<sup>18</sup> The speed limit on the Chumstick Highway to  
8 the north and south of the BNSF trestle is fifty miles per hour.<sup>19</sup> The road curves sharply  
9 at the north end of the trestle.<sup>20</sup> The speed limit on the curve beneath the trestle is  
10 lowered to 25 miles per hour.<sup>21</sup>

11  
12           As an indication of how sharp and abrupt the curve is at the trestle, the traffic  
13 engineer testifying on behalf of BNSF set out a litany of measures that the county has  
14 undertaken to mitigate the safety hazard drivers are confronted with at the under-crossing  
15 site. These measures include:

- 16  
17           a.     appropriate curve warning sign;  
18           b.     flashing beacon on top of the light;

19  
20 <sup>15</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 10-13.

21 <sup>16</sup> Prefiled Testimony of Gregory Pezoldt at ll. 14-15; Petition for Alteration and Relocation of a Highway-  
22 Rail Under-Crossing, TR -061442, filed 09-11-2006, Exhibit 11.

23 <sup>17</sup> Prefiled Testimony of Gregory Pezoldt, p. 2, ll. 18-22.

24 <sup>18</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 16-18.

25 <sup>19</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 20-21.

26 <sup>20</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 19-20; Prefiled Testimony of Gary Norris, p. 5, ll. 15-20; .  
27 Petition for Alteration and Relocation of a Highway-Rail Under-Crossing, TR -061442, filed 09-11-2006,  
28 Exhibit 10.

<sup>21</sup> Prefiled Testimony of Gary Norris, p. 5, l. 17.



- c. posting the curve with a 25 m.p.h. advisory speed; and
- d. posting chevrons through the curve to inform the driver of the sharpness of the curve; and
- e. providing jersey barriers to protect the railroad bridge from errant vehicles.<sup>22</sup>

Mr. Norris, the BNSF traffic engineer, maintains that “[I]f sufficient information in regard to how a driver is to maneuver through a roadway section is not properly conveyed and the motorist is led into an unexpected situation, I would consider such a condition to be ‘unsafe’ and ‘hazardous.’”<sup>23</sup> However and despite the signage, beacons, chevrons, and lowered advisory speed, and the BNSF traffic engineer’s conclusion is that the “the collisions are the result of driver error rather than a roadway deficiency.”<sup>24</sup>

Rather than alter the highway-railway under-crossing configuration to create a road meeting current highway standards, BNSF recommends reliance on the addition of “buttons” on the highway at each warning sign to catch the drivers’ attention and flashing beacons on the chevrons through the curve “to draw attention to the angle of the curve.”<sup>25</sup>

BNSF does not share the County’s public safety concern about limited sight distances for motorists, but instead, is concerned about the structural safety of the bridge and relies on jersey barriers on the highway to protect the bridge structure from vehicle

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<sup>22</sup> Prefiled Testimony of Gary Norris, p. 5, ll. 15-20.

<sup>23</sup> Prefiled Testimony of Gary Norris, p. 5, ll. 11-14.

<sup>24</sup> Prefiled Testimony of Gary Norris, p. 7, ll. 26-27.

<sup>25</sup> Prefiled Testimony of Gary Norris, p. 9, ll. 19-26.

1 collisions.<sup>26</sup> The bridge piers are exposed and are several inches from the shoulder of the  
2 highway.<sup>27</sup> BNSF recognizes that a safety problem exists, but its position is clear, “The  
3 bridge structure is safe for railroad operations. It appears that there is a highway safety  
4 issue that must be addressed by the responsible road authority – Chelan County.”<sup>28</sup>

5  
6 The genesis of this highway-railway under-crossing public safety problem began  
7 in 1928 when BNSF’s predecessor in interest, the Great Northern Railway, relocated its  
8 rail line from of the Tumwater Canyon to the Chumstick.<sup>29</sup> The Great Northern Railway  
9 constructed the Chumstick Highway railway trestle over the county road at milepost 1.83  
10 in 1928.<sup>30</sup> The under-crossing design has been characterized as being built in the “the  
11 low-traffic-volume, post-horse-and-buggy, early automotive era.”<sup>31</sup> The Chumstick  
12 Highway now carries an average traffic volume of approximately 2,800 vehicles per  
13 day.<sup>32</sup>

14  
15 Now the County is incrementally improving the Chumstick Highway and has  
16 made improvements to the highway to the north and south of the trestle vicinity to current  
17 standards, but has not improved the section of road near and under the trestle.<sup>33</sup> State law  
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19 <sup>26</sup> Prefiled Testimony of Bruce Roper, p.5, ll. 9-17.

20 <sup>27</sup> Prefiled Testimony of Gregory Pezoldt, p. 4, ll. 14-15; Transcript of Hearing, Vol. IV, May 16, 2008,  
21 p. 92, ll. 17-18; Petition for Alteration and Relocation of a Highway-Rail Under-Crossing, TR -061442,  
filed 09-11-2006, Exhibits 8 and 9.

22 <sup>28</sup> Prefiled Testimony of Gary Norris, p. 4, ll. 4-6.

23 <sup>29</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 4-6.

24 <sup>30</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 19; Prefiled Testimony of Bruce Roper, p. 2, l. 18.

25 <sup>31</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 2-4.

26 <sup>32</sup> Prefiled Testimony of Gary Norris, p. 6, ll. 11-16.

27 <sup>33</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 10-123.

1 requires reconstruction of old county roads to meet current design standards.<sup>34</sup> The  
2 bridge piers limit the available road and shoulder to 24 feet.<sup>35</sup> Current design standards  
3 applicable to the Chumstick Highway require a minimum of thirty-two feet of roadway  
4 and shoulder width.<sup>36</sup> The railroad trestle over the Chumstick Highway built in 1928 was  
5 a result of cooperation between the County and the Great Northern Railway to allow the  
6 railroad to reroute its line from the Tumwater Canyon through the Chumstick drainage.<sup>37</sup>  
7 The layout and dimensions of the 1928 undercrossing can no longer meet minimum  
8 highway standards.<sup>38</sup> The County is upgrading its highway to modern standards. The  
9 railroad has a duty to do it part meet the modern conditions.<sup>39</sup>  
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19 <sup>34</sup> RCW 36.86.080.

20 <sup>35</sup> Prefiled Testimony of Gregory Pezoldt at ll. 14-15; Petition for Alteration and Relocation of a Highway-  
21 Rail Under-Crossing, TR -061442, filed 09-11-2006, Exhibit 11.

22 <sup>36</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 16-18.

23 <sup>37</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 1-9.

24 <sup>38</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 16-18.

25 <sup>39</sup> "The duty of maintaining and keeping in repair and restoring highway crossings so as not to impair their  
26 usefulness is a *continuing duty*, requiring the railroad to put the street in such condition as changes in  
27 circumstances require; and, when a crossing or mode of restoration originally sufficient becomes  
28 insufficient by reason of subsequent conditions, increased travel, character of vehicles used, and the like, it  
is the duty of the railroad company to do whatever the public convenience and necessity may require in  
order to meet such conditions, rather than what may be required by convenience of the railroad." *Kittitas  
County v. Chicago, M., S.P. & P.R. Co.*, 4 Wn.App. 768, 771, 483 P.2d 1279 (1971).

1 **C. Washington Law Provides That The WUTC May Apportion The Cost of**  
2 **Construction Work Between The Parties**

3 **1. The Chumstick Highway improvement project is not a federal-aid**  
4 **project.**

5 The Chumstick Highway improvement project is not a federal-aid project and  
6 state law determines the apportionment of construction cost between BNSF and the  
7 County.

8 The Chumstick Highway improvement project for the under-crossing is funded  
9 with a \$1,440,000 state gasoline tax grant, the state Rural Arterial Trust Account, which  
10 will expire in 2011.<sup>40</sup> No federal funding is involved and the project is not a federal-aid  
11 highway project to which federal law will apply.<sup>41</sup> The Commission has already ruled  
12 that it has jurisdiction over the subject matter and the parties in this action, and will  
13 determine appropriate cost allocation associated with the project under RCW 81.53.110.  
14

15 **2. RCW 81.53.110 provides for the Commission to apportion the**  
16 **expense of construction between the parties**

17 RCW 81.53.110 provides that the expense of construction of the undercrossing  
18 should be apportioned by the Commission between the railroad and the county. The  
19 Commission has ordered it will “determine the appropriate cost allocation associated with  
20 the Chumstick Highway improvement project under RCW 81.53.110.”<sup>42</sup>  
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24 <sup>40</sup> Prefiled Testimony of Gregory Pezoldt, p. 5, ll. 24-25.

25 <sup>41</sup> See 23 U.S.C. Sec. 101, 120, 130; 23 CFR 130; 23 CFR 646

26 <sup>42</sup> *Initial Order Denying Petition To Dismiss For Lack Of Jurisdiction*, TR-061442, August 20, 2007, No. 2  
27 at p. 12.

1 RCW 81.53.110 states that apportionment of costs should be made by the  
2 Commission "as justice may require, regard being had to all facts relating to . . . the  
3 reason for, and construction of said improvement." The standard for apportionment is  
4 not the benefit to the railroad, but that all costs apportioned to the railroad must be "fair  
5 and reasonable."<sup>43</sup>

6  
7 BNSF's position on apportionment of costs is clear: "Reconfiguring the bridge  
8 has no immediately ascertainable benefit to BNSF. . . .The WUTC, if it grants Chelan's  
9 petition, should not apportion any of the cost to BNSF."<sup>44</sup>

10 Contrary to the railroad's position, it is possible that all expenses might fairly and  
11 reasonably allocated to the railroad.<sup>45</sup>

12  
13 One factor to consider in apportionment is that BNSF's predecessor in interest  
14 instigated and created the under-crossing configuration that the county is seeking to fix.  
15 As stated above, the public safety problem at this under-crossing has its roots in 1928,  
16 when BNSF's predecessor, Great Northern Railway, relocated its rail line from the  
17 Tumwater Canyon to the Chumstick.<sup>46</sup> The County accommodated the Great Northern  
18 Railway by vacating County right-of-way in the Chumstick drainage to allow the railroad  
19 to relocate its rail line to that County right-of-way and by relocating the County road to  
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23 <sup>43</sup> *Atchison, Topeka & Santa Fe Railway Co., v. Public Utilities Commission*, 346 U.S. 346, 352, 74 S.Ct.  
92, 98 L.Ed. 51 (1953)

24 <sup>44</sup> Prefiled Testimony of John Li, p. 4, ll. 5-6.

25 <sup>45</sup> *Atchison, Topeka & Santa Fe Railway Co., v. Public Utilities Commission*, 346 U.S. 346, 352, 74 S.Ct.  
92, 98 L.Ed. 51 (1953)

26 <sup>46</sup> Prefiled Testimony of Gregory J. Pezoldt, p. 3 ll. 1-4 and Exhibit 1.

1 right-of-way purchased by the railroad.<sup>47</sup> Apparently the under-crossing configuration  
2 was satisfactory for the “the low-traffic-volume, post-horse-and-buggy, early automotive  
3 era.”<sup>48</sup> However, the 1928-vintage under-crossing cannot accommodate a county  
4 highway built to minimum highway standards.<sup>49</sup>

5  
6 BNSF recognizes that a public safety problem exists, but holds the position that  
7 BNSF shares no responsibility for remedying the safety concerns. As the BNSF traffic  
8 engineer stated, “The bridge structure is safe for railroad operations. It appears that there  
9 is a highway safety issue that must be addressed by the responsible road authority –  
10 Chelan County.”<sup>50</sup>

11 The County maintains that railroad convenience in 1928 resulted in the under-  
12 crossing configuration with public safety concerns that the responsible highway  
13 authority, Chelan County, is seeking to remedy in 2008. The highway cannot be  
14 improved at the Under-crossing to meet minimum highway standards without altering  
15 and reconstructing the trestle.<sup>51</sup> The County asserts that the Under-crossing has become  
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18 <sup>47</sup> Prefiled Testimony of Gregory Pezoldt, Exhibit 1. August 16, 1932 letter from B.B. Carter, County  
19 Engineer to Mr. C.E. Finley, Right of Way Agent, G.N. Ry. Co. which reads impertinent part as follows:  
20 “At the time the Railway Company abandoned the Tumwater Canyon route, relocated and constructed its  
21 mainline through Chumstick Canyon, Chelan County owned the right of way of the abandoned Wenatchee  
22 Valley and Northern Railroad in the Chumstick, the title to which was acquired by purchase. Parts of this  
23 property was (sic) required by the Great Northern for relocation of its line and I believe it was agreed that,  
24 the Railway Company would provide road right of way in exchange for that of the county’s which it  
25 required, although to my knowledge no conveyances of title has (sic) ever been made either way, and as the  
26 situation now stands the Railway Company occupies County property and the County occupies property  
27 purchased by the Railway Company.”

28 <sup>48</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 2-4.

<sup>49</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 14-18.

<sup>50</sup> Prefiled Testimony of Gary Norris, p. 4, ll. 4-6.

<sup>51</sup> Prefiled Testimony of Gregory Pezoldt, p. 3, ll. 16-18.

1 insufficient, contributes to public safety concerns, and is an impediment to rectifying  
2 those public safety concerns. The County further asserts that "it is the duty of the  
3 railroad company to do whatever the public convenience and necessity may require in  
4 order to meet such conditions, rather than what may be required by convenience of the  
5 railroad."<sup>52</sup> In other words, railroads take on "the burden of sharing on a fair and  
6 reasonable basis the costs of any changes for the reason of public safety and convenience  
7 made necessary by the growth of communities."<sup>53</sup>

9 Chelan County used a 2002 BNSF estimate of \$1,750,000 for the project costs for  
10 a shoo-fly and altered and relocated railroad bridge over the Chumstick Highway.<sup>54</sup>

11 Chelan County put forward and provided BNSF with seven drawings depicting  
12 potential resolutions of the public safety concerns at the Under-crossing.<sup>55</sup> "The county is  
13 not promoting one plan, but is seeking BNSF's participation in developing a workable,  
14 mutually-agreed design. Unlike BNSF, Chelan County has no railroad bridge design  
15 experience. Chelan County needs BNSF's expert assistance and input in designing a  
16 highway and railroad underpass that allows a modern, safe highway design."<sup>56</sup> The  
17 record is devoid of any BNSF-suggested design but there is now a critique of the  
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22 <sup>52</sup> *Kittitas County v. Chicago, M., S.P. & P.R. Co.*, 4 Wn.App. 768, 771, 483 P.2d 1279 (1971).

23 <sup>53</sup> *Atchison, Topeka & Santa Fe Railway Co., v. Public Utilities Commission*, 346 U.S. 346, 355, 74 S.Ct.  
24 92, 98 L.Ed. 51 (1953).

25 <sup>54</sup> Prefiled Testimony of Gregory Pezoldt, p. 4, ll. 21-23.

26 <sup>55</sup> Prefiled Testimony of Gary Norris, Exhibit 3, Options A-G.

27 <sup>56</sup> Prefiled Testimony of Gregory Pezoldt, p. 4, ll. 16-19.

1 County's proposals and a suggestion that the County should approach the railroad with a  
2 refined design.<sup>57</sup>

3 BNSF estimates that the railroad bridge has a minimum one hundred plus year  
4 useful life, with a minimum of twenty years left.<sup>58</sup> BNSF provides a rough estimate of  
5 \$5,000,000 to \$8,000,000 project costs if a shoo-fly is required.<sup>59</sup>  
6

7 The county proposes to the Commission as follows:

8 (1) that, as offered, the County be required to contribute \$1,000,000 of its  
9 \$1,440,000 state gasoline tax grant for BNSF expenses related to the under-crossing,

10 (2) that the County be 100% responsible for roadway design and roadway construction,  
11 and

12 (3) that BNSF be responsible for all of the alteration and relocation costs for the trestle,  
13 including design, construction, and shoo-fly, except for the County \$,1000,000  
14 contribution.<sup>60</sup>  
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16 The County further requests that the matter be resolved and project activity be  
17 timely and sufficiently commenced to avoid expiration of the state gas tax grant in 2011.  
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24 <sup>57</sup> Prefiled Testimony of Gary Norris, pp. 10-11.

25 <sup>58</sup> Prefiled Testimony of Danniel MacDonald, p. 3, ll. 5-7.

26 <sup>59</sup> Prefiled Testimony of Danniel MacDonald, p. 8, ll. 9-10.

27 <sup>60</sup> Prefiled Testimony of Gregory Pezoldt, p. 5, ll.15-25; See also RCW 81.53.090.



1 **IV. CONCLUSION**

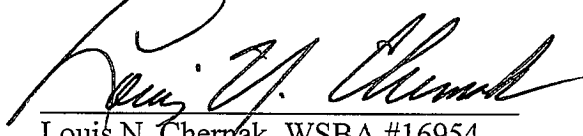
2 The highway-railroad Under-crossing at milepost 1.83 presents public safety  
3 concerns due to the narrow roadway, abrupt curve at the railroad, bridge and other  
4 factors. The railroad bridge is not structurally unsound, but the configuration of the  
5 Under-crossing is insufficient and is hazardous to public safety.  
6

7 In 1928, BNSF's predecessor in interest relocated its rail line to County right-of-  
8 way in the Chumstick. The railroad built its line and bridge on county right-of-way and  
9 the county moved its road onto railroad-purchased right-of-way. The railroad has a  
10 continuing duty to maintain a safe and sufficient under-crossing. Because of the out-of-  
11 date configuration , the highway cannot be improved at the Under-crossing to meet  
12 current minimum highway standards unless the Under-crossing is altered, relocated and  
13 reconstructed to allow for a wider, safer roadway.  
14

15 The County requests that the Commission grant the relief requested in its petition  
16 and apportion the costs of the project between the parties as justice may require. Finally,  
17 the County requests that the project be timely commenced to avoid expiration of the state  
18 gas tax grant in 2011.  
19

20 Dated this 2<sup>nd</sup> day of July 2008.

21 GARY A. RIESEN  
22 CHELAN COUNTY PROSECUTING ATTORNEY

23 

24 Louis N. Chernak WSBA #16954  
25 Deputy Prosecuting Attorney  
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