BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

DOCKET TR-150284

9 ||

Complainant,

RESPONDENT BNSF RAILWAY COMPANY'S ACCEPTANCE OF FINAL ORDER APPROVING SETTLEMENT AGREEMENT

BNSF RAILWAY COMPANY,

Respondent.

RESPONDENT BNSF RAILWAY COMPANY ("BNSF"), by its attorneys of record herein, respectfully responds as follows to the Commission's Final Order Approving Settlement Agreement With Conditions, dated December 7, 2015 ("Order 02"):

1. As noted in Order 02, on August 27, 2015, the Commission Staff and BNSF filed a Settlement Agreement and Narrative Supporting Settlement Agreement to resolve all issues in this docket. On October 5, 2015, additional information supporting the Settlement was jointly provided by the Commission Staff and BNSF in response to bench requests. A hearing on the settlement was held before the Commission and the Administrative Law Judge on October 19, 2015. In response to a bench request, the Washington Emergency Management Division submitted information about its hazardous material incident procedures on October 20, 2015. In response to a bench request, BNSF submitted information regarding the Federal Railroad Administration's directive on McKenzie valves on October 21, 2015. On

RESPONDENT BNSF RAILWAY COMPANY'S ACCEPTANCE OF FINAL ORDER APPROVING SETTLEMENT AGREEMENT – 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

BNSF and the Commission Staff, as requested.

October 26, 2015, supplemental information supporting the Settlement was jointly provided by

- 2. In Order 02, dated December 7, 2015, the Commission approved the Settlement with conditions, and required the parties to notify the Commission within five business days whether they accept or reject the conditions.
- 3. BNSF accepts the Commission's conditions (set forth on pages 12-13 of Order 02) as follows:
- 3.1. As described in paragraph 47 of Order 02, the Commission "assesses a penalty of \$71,700, which is due and payable in its entirety within 10 business days from the date of this Order." BNSF accepts this condition, subject to the understanding that this payment would be refunded to BNSF if the Commission subsequently determines that BNSF has not met the conditions applicable to BNSF as described in Order 02 and the matter proceeded to an adjudication.
- 3.2. As described in paragraph 48 of Order 02, by February 1, 2016, BNSF and the Commission Staff must file a stipulation with the Commission describing certain information set forth in paragraph 48. BNSF accepts this condition to work in good faith with the Commission Staff to prepare and submit the requested potential stipulation by February 1, 2016, subject to applicable state and federal law and the parties reserving all rights and defenses available in any subsequent action. BNSF's acceptance of this condition is further subject to the understanding that if a mutually agreeable stipulation cannot be achieved or is not accepted by the Commission, then the Settlement and any stipulation prepared pursuant to the Settlement "shall be null and void, with no binding effect on the parties and with no precedential or preclusive effect on the Company or Staff regarding the resumption of the litigation in Docket TR-150284" or in any other proceeding, as stated in paragraph 11 of the parties' Settlement Agreement.

	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	
	9	
1	0	
	1	
1	2	
	3	
	4	
1	5	
	6	
	7	
	8	
	9	
	0.	
	1	
2	_	
2	_	
2	4	
2	5	

3.3. As described in paragraph 49 of Order 02, by April 1, 2016, "Commission Staff must file with the Commission a memorandum of understanding or comparable agreement with the Washington state emergency operations center that establishes the expectations, procedures, and responsibilities of each agency arising from the reporting that WAC 480-62-310 requires." To the extent BNSF needs to respond to this condition, BNSF accepts this condition, subject to the understanding that BNSF would not be a party to such an agreement and that failure of this condition (as between Staff and the Washington state emergency operations center) would not impact or otherwise affect BNSF's compliance with the settlement terms set by the Commission.

RESPECTFULLY SUBMITTED this 14th day of December, 2015.

FOSTER PEPPER PLLC

Child Coll

P. Stephen DiJulio, WSBA #7139 Christopher G. Emch, WSBA #26457 1111 Third Avenue, Suite 3400 Seattle, Washington 98101-3299

Telephone: (206) 447-4400 Facsimile: (206) 447-9700 Email: dijup@foster.com Email: emchc@foster.com

Attorneys for **BNSF** Railway Company

26

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below via electronic mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

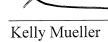
For Washington Utilities and Transportation Commission:

Julian Beattie
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128

Email: jbeattie@utc.wa.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: December 14, 2015, at Seattle, Washington.



RESPONDENT BNSF RAILWAY COMPANY'S ACCEPTANCE OF FINAL ORDER APPROVING SETTLEMENT AGREEMENT – 4

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700