



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

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Dec. 6, 2022

Amanda Maxwell, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. BNSF Railway Co.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TR-220802

Dear Ms. Maxwell:

On Nov. 9, 2022, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against BNSF Railway Co. (BNSF or Company) in the amount of \$3,000 for violations of Washington Administrative Code (WAC) 480-62-225, Crossing Surfaces.

This penalty assessment resulted from BNSF's failure to correct defects issued by Commission Staff (Staff) to BNSF on June 21, 2021, and June 2, 2022, related to deteriorated asphalt creating an uneven surface for roadway users and the 24th Street Southeast crossing near Sumner, identified as USDOT 085675L.

On Dec. 2, 2022, BNSF filed with the Commission its application for mitigation of penalties. In the request for mitigation, Alex Funderberg, BNSF Manager of Public Projects, admits the violation, and asks that the \$3,000 penalty be reduced simply because BNSF corrected the defect.

Commission staff (Staff) recommends no mitigation of the penalty. For nearly 18 months BNSF failed to correct the defect despite receiving two defect notices, two compliance letters, and extensive correspondence from Staff on how to comply with the rule.

Amanda Maxwell

Dec. 6, 2022

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If you have any questions, please contact Mike Turcott, Transportation Planning Specialist, Transportation Safety, at (360) 664-1119, or by email at mike.turcott@utc.wa.gov.

Sincerely,

Kathy Hunter

Director, Transportation Safety