

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

THE BURLINGTON NORTHERN	)	DOCKET NO. TR-010194
SANTA FE RAILWAY,	)	
	)	
Petitioner	)	
	)	
v.	)	
	)	
SNOHOMISH COUNTY,	)	ORDER GRANTING PETITION
	)	
Respondent.	)	
	)	
.....	)	

1     ***Synopsis:** In this order, the Commission grants a petition by the Burlington Northern & Santa Fe Railway Company to close a grade crossing located at 156<sup>th</sup> Street N.E. at railroad milepost 44.78 in Snohomish County, north of Marysville, Washington. In doing so, the Commission accepts and adopts a settlement agreement among the parties that provides for conditions on the crossing closure.*

**I. PROCEDURAL HISTORY**

2     **Notice and Hearing.** This matter was heard in Everett, Washington on October 11 and 12, 2001, before Administrative Law Judge Marjorie Schaer, pursuant to due and proper notice to all interested parties. A prehearing conference was heard on October 10, 2001, in Olympia, Washington. Public testimony was heard on the evening of October 11, 2001, in Silvana, Washington. A post-hearing hearing was heard in Olympia on December 10, 2001. A hearing for the presentation of a proposed settlement and questioning of witnesses was heard in Olympia on January 15, 2002.

3     **Parties:** Robert E. Walkley, Attorney at Law, Sammamish, Washington, and Rexanne Gibson, Kroschel Gibson Kinerk Reeve, LLP, Bellevue, Washington, represent the Burlington Northern and Santa Fe Railway Company (BNSF). Jason Cummings, Deputy Prosecuting Attorney, Civil Division, represents Snohomish County (the County). Jonathan C. Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Staff). Jeffrey D. Stier, Assistant Attorney General, Transportation & Public Construction Division, Olympia, Washington, represents the Washington State Department of Transportation (WSDOT).

4       **Procedure:** This matter arose upon a petition filed by the BNSF on February 8, 2001, of closure of a railway-highway at-grade crossing of BNSF tracks at railroad milepost 44.78 in Snohomish County, north of Marysville, Washington. The County opposed the closure, and the matter was set for hearing. The Washington State Department of Transportation intervened. The matter was heard before Administrative Law Judge Marjorie Schaer on October 11 and 12, 2001, in Snohomish County. Following the hearing, the parties engaged in negotiations regarding the proposed crossing closure and conditions proper for effecting the closure. On January 15, 2002, the parties filed with the Commission a proposed settlement agreement that they contend resolves all issues in the proceeding, consistent with pertinent law and with the public interest. A hearing for the presentation of the proposed settlement and questioning of witnesses was held in Olympia, Washington on January 15th, 2002. The parties waived an initial order, asking that the proposal for settlement and the record be forwarded directly to the Commission for action.

5       **Commission:** The Commission finds that the proposed settlement agreement is consistent with law and with the public interest. The Commission adopts the proposed agreement as its own resolution of the issues in the proceeding. The Commission incorporates the Parties' Settlement Agreement by reference and makes it a part of this order. *Appendix A, infra.*

## II. DISCUSSION AND DECISION

6       BNSF owns and maintains a mainline track in the vicinity of the 156<sup>th</sup> Street Crossing and operates freight trains on it. This Railway line is a federally designated High Speed Rail Corridor and passenger trains are also operated by the National Passenger Railroad Corporation (Amtrak) on BNSF tracks in the vicinity of the 156<sup>th</sup> St. Crossing.

7       The Petitioner proposes to construct a siding in the vicinity of the crossing that will permit trains to pass. The crossing would interfere with operation of the siding and, if the siding were constructed without closure of the crossing, the results would include frequent delays to vehicle traffic at the crossing and an increased risk of accident because trains standing on the siding would interfere with crossing users' view of oncoming train traffic.

8       The nearest crossing to 156<sup>th</sup> Street is at 172<sup>nd</sup> Street, more than a mile away. Public and County witnesses cited not only the inconvenience in the proposed closure, but also the danger in requiring a longer route in some instances for emergency response.

9       Mr. Ahmer Nizam, a rail engineer with Commission Staff, recommended a conditional closure. The conditions proposed by Staff included the construction of

cul-de-sacs on 156<sup>th</sup> Street in order to allow vehicles entering the street to turn around and exit. The second condition recommended by Staff was that some access should be retained that could be opened up as a temporary public route in the event that the 172<sup>nd</sup> Street crossing is unavailable due to a cataclysmic event.

- 10 The parties to this proceeding, but for Staff, have submitted a proposed settlement agreement that was included in the record as Exhibit 65, which is attached to this order and included in this order by this reference. Staff is not a party to this settlement agreement, but Mr. Nizam testified at the January 15, 2002, hearing that he had reviewed Exhibit 65, and that the Settlement Agreement not only meets the conditions he recommended at the October 12, 2001, hearing, but in some ways exceeds them.
- 11 The proposal addresses the need to close the crossing to accommodate construction of the siding. The Commission has no jurisdiction to affect construction of the siding, and it sees no reason to conclude that the siding will not be built. The change in circumstances at the crossing, with construction of the siding, renders the crossing substantially less convenient and substantially less safe. Under those circumstances, the crossing should be closed.
- 12 The proposed settlement agreement addresses several aspects of the closure to provide mitigation for certain costs and inconveniences. It provides for temporary measures in the event of emergency closure of the 172<sup>nd</sup> St. crossing; it provides for financial assistance to the County for closure; and it anticipates the possibility of a grade-separated crossing in the future near the present 156<sup>th</sup> St. crossing.
- 13 On balance, we conclude that the existing crossing would become unacceptably unsafe upon construction of the proposed siding, and we accept and adopt the proposed settlement as a proper means to resolve the issues in the proceeding. The parties are commended for finding an appropriate resolution of the matter.

### III. FINDINGS OF FACT

- 14 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over railway-highway crossings at grade.
- 15 (2) The nearest crossing to 156<sup>th</sup> St. is at 172<sup>nd</sup> street. Closing 156<sup>th</sup> St. and diverting traffic to 172<sup>nd</sup> St. would increase driving distances and times for some traffic, including emergency vehicles.

- 16 (3) The BNSF plans to construct a rail siding that would cross 156<sup>th</sup> St. at the site of the existing 156<sup>th</sup> St. crossing. A siding would increase the incidence of delay at the location of the crossing and would increase danger to persons using the crossing.
- 17 (4) Six members of the public testified at the public hearing regarding closure of the crossing. All opposed it because of increased time and distance for some travelers and for emergency vehicles in some instances. Twelve members of the public submitted letters regarding the crossing to the Commission or to the County. All of the letters opposed closure of the crossing.
- 18 (5) The proposed settlement offered by the parties on January 15, 2002, provides for closure of the crossing and for funding of roadway modifications necessary to render the location of the former crossing safe.

#### IV. CONCLUSIONS OF LAW

- 19 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of these Applications.
- 20 (2) The construction of a siding at the location of the 156<sup>th</sup> St. crossing would render the crossing substantially less convenient and substantially less safe than its present configuration.
- 21 (3) The closure of the 156<sup>th</sup> St. crossing is consistent with the public interest and is required by the public safety, consistent with under Chapter 47.79 RCW.
- 22 (4) The Commission has the authority to approve settlement agreements pursuant to WAC 480-09-466.
- 23 (5) The proposed settlement agreement is consistent with the public interest and results in resolution of all significant issues relating to the crossing closure. Adoption of the terms of the proposed agreement in this Order is consistent with the public interest. The Commission should adopt the proposed settlement agreement.

#### V. ORDER

- 24 (1) The Commission approves and adopts as its own for purposes of this proceeding the parties' proposed settlement of the issues set out in Appendix A.

- 25 (2) The Petition of the Burlington Northern and Santa Fe Railway to close the  
crossing of its tracks and 156<sup>th</sup> St. in Snohomish County, Washington, is  
granted.
- 26 (3) The Commission retains jurisdiction to effectuate the terms of this order.

DATED at Olympia, Washington, and effective this \_\_\_\_\_ day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner

**NOTICE TO ALL PARTIES:**

**This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within ten (10) days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09820(1).**