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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY, a Delaware Corporation,
Petitioner
vs.
CITY OF MOUNT VERNON
Respondents.

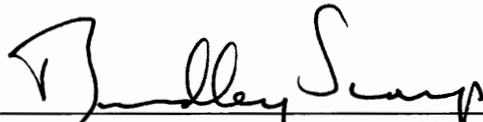
DOCKET NO: TR-070696
BNSF RAILWAY COMPANY'S
NOTICE OF OBJECTION TO WUTC'S
ORDER ON PRE-HEARING
CONFERENCE

1. **NAME AND ADDRESS OF PLEADING PARTY.** BNSF Railway Company, Petitioner, represented by counsel Bradley P. Scarp of Montgomery Scarp MacDougall, PLLC, located at 1218 Third Avenue, Suite 2700, Seattle, Washington 98101.
2. **INTRODUCTION / AUTHORITY.** This matter is before the Washington State Utilities and Transportation Commission (WUTC) to consider Petitioner BNSF's request to close the railroad-highway at-grade crossing at Hickox Road, Mount Vernon, Washington. The Petition was brought under RCW 81.53.060. A Pre-Hearing Conference was scheduled and took place on July 13, 2007 at the WUTC in Olympia before Administrative Law Judge (ALJ) Adam Torem. An Order was issued on July 20, 2007 (*Prehearing Conference Order; Notice of Second Prehearing Conference No. 01*) which set forth the issues to be considered at future hearings. The Order provided for objections to any provision of the Order if filed within 10 days after service of the Order so that such issues could be discussed at the Second Pre-Hearing Conference scheduled for Wednesday, August 1, 2007.

- 1 3. BNSF submits the following objection to the Order based on the summary of authority
2 and reasons set forth herein, and respectfully requests that the matter be included on for
3 hearing and argument.
- 4 4. **BNSF Objects to Order 01 to the extent the Order allows consideration of the**
5 ***Impact of Closure on Regional transportation Planning.*** Neither the statutory basis
6 for the closure of grade crossings or previous administrative hearings include such a
7 broad, conjectural standard for evaluating grade crossing closures. The statutory
8 standard for evaluating whether a crossing should be closed is whether "public safety
9 requires ... the closing or discontinuance of an existing highway crossing." RCW
10 81.53.060.
- 11 5. Order 01 itself cites a number of sources that also outline the proper scope of a
12 crossing closure hearing in footnotes 2-4. Noticeably absent from any of those criteria
13 is the impact of closure on regional transportation planning. In fact, the UTC has
14 expressly denied future planning as a criteria in the past. See *Burlington Northern*
15 *Railroad Co. v. City of Ferndale*, Docket No. TR-940330, Commission Decision and
16 Order Denying Review (March 1995) ("Only the present public need should be
17 considered in determining whether to close a crossing.").

18 DATED this 30th day of July, 2007.

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Montgomery Scarp MacDougall, PLLC



Tom Montgomery, WA. Bar No. 19998
Bradley P. Scarp, WA. Bar No. 21453
Of Attorneys for BNSF Railway Company
1218 Third Ave., Ste. 2700
Seattle, WA 08101
Tel. (206) 625-1801
Fax (206) 625-1807
tom@montgomeryscarp.com
brad@montgomeryscarp.com

1 **CERTIFICATE OF SERVICE**

2 I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp
3 MacDougall, PLLC, whose address is 1218 Third Avenue, Suite 2400, Seattle, Washington, 98101. I hereby certify
4 that a true and complete copy of BNSF'S NOTICE OF OBJECTION TO WUTC ORDER was filed with the
Washington State Utilities and Transportation Commission. and served upon the following parties:

5 JONATHAN THOMPSON
6 ASSISTANT ATTORNEY GENERAL
7 OFFICE OF THE ATTORNEY GENERAL
P. O. BOX 40128
OLYMPIA WA 98504-0128

8 SCOTT LOCKWOOD
9 OFFICE OF THE ATTORNEY GENERAL
10 TRANSPORTATION & PUBLIC CONSTRUCTION DIVISION
7141 CLEANWATER DR. SW
TUMWATER, WA 98501-06503

11 KEVIN ROGERSON
12 CITY ATTORNEY
13 P.O. BOX 809
14 910 CLEVELAND AVENUE
MOUNT VERNON, WA 98273

15 STEPHEN FALLQUIST
16 DEPUTY PROSECUTING ATTORNEY, CIVIL DIVISION
17 SKAGIT COUNTY
605 S. 3rd STREET
MOUNT VERNON, WA 98273

18 GARY T. JONES
19 JONES & SMITH
20 P. O. BOX 1245
MOUNT VERNON WA 98273

21 BRIAN K. SNURE
22 SNURE LAW OFFICE
612 SOUTH 227th STREET
DES MOINES WA 98198

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

25 DATED this 30th day of July, 2007 at Seattle, Washington.

26 
27 Abigail Pratt, Legal Assistant