

May 5, 2009

Mr. David Danner, Secretary and Executive Director  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

Re: *BNSF Railway Company v. Snohomish County*  
Docket No. TR-090121

2009 MAY -6 PM 1:06  
STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION  
COMMISSION

Dear Mr. Danner:

Enclosed for filing in the above referenced docket are the original and 12 copies of the Final Brief on behalf of Lynn F. Logen.

I request that this filing not be posted to the Commission's web site before noon on Friday, May 8, 2009.

I certify that copies have been sent by US Mail to the parties in this docket.

Please contact me at (425) 641-1692 for additional information or any questions.

Very truly yours,



Lynn F. Logen

Enclosures

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**BNSF RAILWAY COMPANY**

**Petitioner,**

**v.**

**Docket No. TR-090121**

**SNOHOMISH COUNTY**

**Respondent.**

STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION  
2009 MAY -6 PM 1:06

**FINAL BRIEF OF  
LYNN F. LOGEN**

**MAY 5, 2009**

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## **Introduction**

1. On January 22, 2009, BNSF Railway Company (“BNSF”) submitted a petition to the Washington State Utilities and Transportation Commission (“UTC”) to close the grade crossing with the BNSF rail road and Logen Road (the “Logen Road Crossing”) near Stanwood in Snohomish County, Washington. The UTC opened Docket No. TR-090121 (the “Docket”) and issued Order 01, Prehearing Conference Order, Notice of Status Conference, Notice of Hearing, Notice of Public Comment Hearing (the “Order”) . Lynn Logen petitioned to intervene in the Docket and was granted permission. Lynn Logen presented evidence and cross examined the BNSF witnesses and in the final brief will explain that BNSF failed their obligation to prove, by a preponderance of evidence that the Logen Road Crossing should be closed.

## **WAC / RCW / Case Law**

2. Chapter 81.53 RCW - BNSF’s Petition For The Closure Of A Highway-Rail Grad Crossing in Docket No. TR-090121 (“BNSF Petition”) appears to have been submitted to the UTC under the provisions of RCW 81.53.060 which provides that the UTC may grant the relief requested by BNSF, which is closure of the Logen Road, BNSF at-grade highway-railroad crossing. As evidence that the BNSF Petition was in fact submitted under the provisions of RCW 81.53.060 the UTC’s Order 01 in Docket TR-090121 states that the nature of the proceeding involved a petition by BNSF in accordance with RCW 81.53.060. However, the BNSF Petition does not address RCW 81.53.020 which also applies and perhaps should be the only section that applies in this instance. RCW 81.53.020 provides in part that:

“All railroads and extensions of railroads hereafter constructed shall

cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so.”

3. And this section goes on to provide that

“In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.”

4. BNSF admitted in the BNSF Petition the only reason for closing the crossing of Logen Road by the BNSF was due to a project to extend the siding tract at Stanwood, WA to the north, which will then cross Logen Road (as well as crossing Dettling Road or 300th Street NW and the crossing at the intersection of Old Pacific Highway and Pioneer Highway). The BNSF Petition is therefore improper because it did not request relief under the provisions of RCW 81.53.020. The BNSF Petition and subsequent exhibits and testimony are at least incomplete as information has not been provided regarding the grade and alignment of the highway, the grade of the railroad, the cost of separating grades, the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. Therefore the BNSF Petition should be rejected on the basis that it is improper and incomplete.
5. Under RCW 81.53.020 the commission (UTC) has the obligation to consider certain items when determining whether a separation of grades is practicable which are as follows:

“In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the

topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.” (RCW 81.53.020)

6. In the Commission’s Order 01 in paragraph 7 it was ordered that the hearing in Docket No.

TR-090121 shall generally be limited to:

- Requirements of Public Safety
- Convenience and Necessity of Use of Logen Road Crossing
- Alternatives to Closure (if any)

7. Due to the limited subject matter that could be presented at hearing the UTC has failed to gather information regarding the circumstances and conditions that the UTC is obligated to review by RCW 81.53.020. When a railroad is building a new track and cites that as the only reason in a petition to close a crossing is treating RCW 81.53.020 as if it does not exist. A fact that WAC 480-62-150 specifically acknowledges in section (1) which is as follows:

WAC 480-62-150, Grade crossing petitions. (1) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.020 and 81.53.060:

(a) Opening a railroad-highway crossing at-grade, or by constructing a overcrossing or undercrossing;

**(b) Closing a railroad-highway crossing;**

(c) Constructing supplemental safety measures under RCW 81.48.015(1), including, but not limited to, median barriers;

(d) Realigning highway or railroad tracks;

(e) Widening highways;

**(f) Constructing multiple tracks; or**

(g) Changes to crossing surfaces that alter:

- The dimensions of an existing surface;

- The angle at which the tracks intersect a highway; or

- The vertical alignment of a crossing (i.e., to accommodate track superelevation, or changes in railroad or roadway grade).

*(emphasis added)*

8. Because RCW 81.53.020 and WAC 480-62-150 were not followed the UTC should find

that this proceeding was incomplete and flawed as BNSF did not petition, nor did the UTC consider, RCW 81.53.020 in this proceeding.

9. RCW 46.61.050 provides that drivers of vehicles must obey official traffic control devices which would include stop signs and railroad gates. RCW 46.61.340 provides that a person driving a vehicle must stop between fifteen and fifty feet of a railroad when a crossing gate is lowered and no person shall drive any vehicle through, under or around and crossing gate or barrier while such gate or barrier is being opened or closed. The fine for violation of these laws is \$42 and is the same whether the driver fails to stop for a stop sign or for a railroad crossing sign. While the State of Washington may consider railroad grade crossings as dangerous, the State of Washington has not found a railroad grade crossing enough different from a highway crossing to have a different or higher penalty for failing to stop at a railroad grade crossing than for a highway crossing.
  
10. Department of Transportation of State et al. v. Snohomish County et.al. case number 30835 (“State v. Snohomish County”) was decided by the Supreme Court of the State of Washington on December 14, 1949. The facts in State v. Snohomish County were quite different than the point where Logen Road is crossed by the BNSF railroad. In State v. Snohomish County the petition was to close the Park Avenue crossing which had been the only crossing that allowed vehicular traffic from the north part of Mukilteo to the south part of Mukilteo (Mukilteo was an unincorporated community at the time), however in 1941 a new overpass has been completed providing for a completely safe (at least between vehicles and trains) crossing of the railroad tracks. This new overpass was 500 feet to the west of Park Avenue. In State v. Snohomish the court also considered the grade of the streets involved – something that was not allowed in this Docket – and found that Park

Avenue was unsafe because the grade was steep and with snow on the road vehicles may slide into the railroad crossing. The court, in *State v. Snohomish County* after considering the convenience and necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition, found that public safety required the closing of the Park Avenue crossing.

11. The Park Avenue crossing was no longer necessary because a new safe overpass had been constructed 500 feet away, the grade of Park Avenue made it a dangerous location for a crossing and the inconvenience of people having to travel 500 feet did not outweigh the safety considerations. When comparing these facts to the proposed closure of Logen Road, we have more dangerous crossings to the north and south therefore a less dangerous crossing is not available, the inconvenience is multiplied since there is no crossing within 500 feet but the alternative is to travel approximately 1 mile or 3 miles in additional distance.
  
12. In this Docket grades are not being considered and in fact the grade on Dettling Road, which is not being closed, could be found to cause an unsafe situation similar to Park Avenue in *State v. Snohomish County* where with snow on the road vehicles could slide into the path of an oncoming train. BNSF is offering the Dettling Road crossing as an alternative to using the Logen Road crossing, yet it is clearly less safe than the Logen Road Crossing. Several of the public comments spoke to the grade and curves on Dettling Road as reasons the Logen Road should not be closed since it does not have steep grades at any location, especially near the point where it is crossed by the railroad.



## **Burden of proof on BNSF**

13. As stated in paragraph 4 of the Order BNSF as petitioner carries the burden of proving, by a preponderance of evidence, that public safety requires closure of the Logen Road grade crossing. I shall discuss the evidence presented by each of the BNSF witnesses and explain why BNSF has not proved, by a preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

### **BNSF Witness: Richard W. Wagner**

14. Mr. Wagner, project manager for BNSF, presented 4 exhibits and stated that one reason to close the Logen Road crossing was because a train “could” occupy the crossing for hours (page 16, line 24). This fact is true with any crossing, a train “could” occupy the crossing for hours, yet no railroad company is proposing that all grade crossings be closed because a train “could” occupy the crossing. Mr. Wagner then testified that another reason to close the Logen Road crossing is “And the safety effects of that as well.” (page 17, line 1). Yet Mr. Wagner has not presented any exhibits or testimony to support this claim or to explain this further nor does he have any expertise in train/roadway safety.

15. One could argue that every grade crossing, whether it be between two roads or between a road and a railroad is inherently dangerous, but no one is proposing that every intersection be closed for safety reasons.

16. The balance of Mr. Wagner’s testimony included the speed limit of trains, yet he was unable to state the actual speed of trains at the Logen Road crossing that were going to stop at the Stanwood station or had just left the Stanwood station (page 40, lines 19-23).

17. When asked if how often trains would block the Logen Road Crossing, Mr. Wagner said:

“I wouldn’t know, I wouldn’t know.” (page 41, line 14). Mr. Wagner also testified that the existing siding is 6,800 feet long, but there is only 4,800 feet that’s usable to park a train (page 14, lines 14-15). That means that there must be 1,000 feet on each end of a train that is not used. Yet Mr. Wagner also testified that an 8,000 foot train can be parked on an 8,500 foot siding or 250 feet on each end of the train unused (page 15, line 5).

18. Finally, Mr. Wagner testified that a train on the siding could block either or both of the crossings (102nd Street and Dettling Road) north of the Logen Road crossing (page 46, lines 1-2), yet BNSF has not petitioned the UTC to close these two crossings and the fact that a train “could” occupy the Logen Road crossing is the primary reason that BNSF petitioned to close the Logen Road Crossing.

19. In summary, Mr. Wagner’s testimony and exhibits established that a train “could” occupy the Logen Road crossing and provided no information regarding requirements of public safety, convenience and necessity of the use of the Logen Road Crossing or Alternatives to Closure. Clearly this witness did not provide any material that could be considered as part of the preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

BNSF Witness: Kevin Jeffers

20. Mr. Jeffers, State of Washington Department of Transportation Rail Engineer, is the project manager that is responsible to see that the Amtrak station at Stanwood is constructed as well as the siding which is mitigation that the State of Washington is paying for the Amtrak stop. Mr. Jeffers did not present any exhibits but testified that a freight train on the siding and a passing Amtrak train could pass and if a motorist was impatient

and bypassed the gates, could be hit by the train. As with Mr. Wagner, Mr. Jeffers did not provide any exhibits or testimony to support this claim or to explain this further nor does he have any expertise in train/roadway safety. In addition Mr. Jeffers testified that he had visited Mr. Lund's property from the Pioneer Highway and specifically remembered that there was a locked gate (page 63, lines 3-4) yet on cross examination could not remember where a creek was nor that there was a second and un-locked gate to the north of the creek (page 67, lines 12-15).

21. In summary, Mr. Jeffers testimony established that the State of Washington was paying for the siding and Amtrak station and his job as project manager was to see that these projects were completed. Mr. Jeffers provided no information regarding requirements of public safety, convenience and necessity of the use of the Logen Road Crossing or Alternatives to Closure. Clearly this witness did not provide any material that could be considered as part of the preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

BNSF Witness: Gary A. Norris

22. Mr. Norris presented two exhibits, his curriculum vitae and a traffic study. Mr. Norris prepared the traffic study on behalf of DN Traffic Consultants. The traffic study that Mr. Norris presented was labeled as Exhibit No. 7 and is titled "Logen Road Railway Crossing Closure – Traffic Impact Analysis" ("Traffic Study"), it is dated March 30, 2009. Mr. Norris stated that the Traffic Study was his attempt to "...assess the issues that surround the potential closure of Logen Road..." (page 72, lines 8-9). Mr. Norris testified that he gathered the information that is contained within the Traffic Study (page 72, line 20) however Mr. Norris could not speak to whether or not the information that he gathered

from many sources and compiled into the Traffic Study was 100% accurate (page 97, line 9).

23. Mr. Norris stated that the Stanwood fire department would be the first responder to emergencies on Logen Road if the Logen Road crossing were closed (page 86, lines 7-11) however, written comments received by the UTC from Dale Fulfs, Fire Chief of the North County Regional Fire Authority stated that the Logen Road area would continue to be served by the North County Regional Fire Authority which contradicts Mr. Norris. Mr. Norris stated in the Traffic Study that the response time of the North County Regional Fire Authority would be 12 minutes (Exhibit 7, page 6) and that was also contradicted by Chief Fulfs in his comments and he says that the response time would be six to eight minutes. Mr. Norris testified that emergency services would be affected by the closing of the Logen Road crossing because the public crossing could be blocked unpredictably or for potentially extended lengths of time so the access would be unpredictable (pages 84-85, lines 21-25 and 1-10). Mr. Wagner testified that the reason for the siding was “To be able to meet or pass other trains, have a place to park a train so another train can proceed on through.” (page 11, lines 9-11). Mr. Wagner also testified that due to the higher speed of passenger trains they can overtake a freight “...and so you need to have areas that you can pull the freight trains off the main line to allow the passenger trains to pass, either on coming or overtaking.” (page 13, lines 12-15) and that “... passenger trains are scheduled.” (page 13, line 3). Since the siding is used to pull the freight train off the main line to allow the scheduled passenger trains to pass, the use of the siding and the times that the Logen Road crossing could be blocked will be known – they will be the times when passenger trains are scheduled. Therefore, emergency response from the North County Regional Fire

Authority will know, or at least have a good idea when the crossing is blocked. With the communications available today, the North County Regional Fire Authority could have real time information or video of the crossing in order to decide the best route to an emergency.

24. Mr. Norris testified that there had been no accidents at the Logen Road crossing (page 82, lines 10-12). The Traffic Study included information about the number of accidents at the 271st Street NW Crossing and at the Dettling Road Crossing. However the Traffic Study failed to take into account the accidents at the intersections at each end of Logen Road, Dettling Road and 102nd Street where they all intersect with the Old Pacific Highway and Pioneer Highway. Again Logen Road has no accidents while all the intersections of Dettling Road and 102nd Street with Old Pacific Highway and Pioneer Highway have numerous accidents. Closing the Logen Road crossing of the BNSF railroad will force those people who use Logen Road to use a street and a railroad crossing that are both more dangerous than Logen Road.

25. As can be seen Mr. Norris's Traffic Study was contradicted by Chief Fulfs and by Mr. Wagner and since the Traffic Study was simply a summary of unproven and untested information gathered by Mr. Norris, most likely off the Internet, therefore the entire report should be viewed as not reliable or credible and should not be considered in this proceeding.

26. Mr. Norris provided information regarding requirements of public safety but it has been contradicted by a Fire Chief. Mr. Norris provided no information regarding convenience and necessity of the use of the Logen Road Crossing except to point out that those using Logen Road would be inconvenienced by having to drive their children to a school bus

stop as a school bus would not travel Logen Road once it was closed (page 106, lines 17-23). Mr. Norris did not provide information regarding Alternatives to Closure. Clearly this witness did not provide any material that could be considered as part of the preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

BNSF Witness: James Bloodgood

27. Mr. Bloodgood presented two exhibits, his curriculum vitae and a Snohomish County Council motion as Exhibit 9. Mr. Bloodgood testified that it is the official position of Snohomish County that the Logen Road crossing should be closed (page 121, lines 4-7) as indicated in the Snohomish County Council motion. However that motion says that “1. The Snohomish County Council does not oppose the closure of the Highway-Rail Crossing at the Logen Road crossing. 2. The Snohomish County Council supports the creation of a passenger train station within the City of Stanwood. 3. The Snohomish County Council approves and authorizes the County Engineer to sign, on behalf of Snohomish County, the Waiver of Hearing by Respondent.” (Exhibit 9). I find Mr. Bloodgood’s testimony and Exhibit 9 to be in conflict. Mr. Bloodgood goes on to explain this by stating that “I understand for the train station to operate, Logen Road needs to be closed.” (page 123, lines 16-17).

28. In summary, there appears to be an understanding amongst Snohomish County, the City of Stanwood and perhaps others that somehow building an Amtrak station in Stanwood requires the closure of the Logen Road crossing. It does not, and the consideration of testimony, motions and letters from Snohomish County, the City of Stanwood and Senator Mary Margaret Haugen and others should take this misunderstanding into account.

29. Mr. Bloodgood provided no information regarding requirements of public safety, convenience and necessity of the use of the Logen Road Crossing or Alternatives to Closure. Clearly this witness did not provide any material that could be considered as part of the preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

BNSF Witness: David Agee

30. Mr. Agee, BNSF Manager of Field Safety (formerly a conductor and engineer), presented testimony that railroad crossings can be dangerous (page 143, line 18). I think that everyone can agree that all crossings, whether they be railroad/railroad, railroad/vehicular or vehicular/vehicular can be dangerous. If the Logen Road crossing was a vehicular/vehicular crossing it would not be proposed to be closed since there have been no accidents at the crossing. Even so, if there had been accidents it would not be proposed to be closed, instead additional signage or other safeguards would be installed. Mr. Agee testified that the addition of the siding at Logen Road was the major reason for the proposed closing of the Logen Road crossing (page 167, lines 15-25, page 168, lines 1-25, page 169, lines 1-5) and in support of his testimony Mr. Agee presented Exhibit 12, a series of graphics and pictures regarding train safety that were supposed to support the closing of the Logen Road crossing, yet Mr. Agee could not tell the court if there was one or two tracks or if an added siding contributed to any of the pictured accidents (page 178, lines 8-25, page 179, lines 1-3). Mr. Agee did not provide any exhibits supporting the closing of the Logen Road crossing and he has very limited experience with the Logen Road crossing.

31. In summary, Mr. Agee testified that crossings can be dangerous, but did not provide any evidence regarding the Logen Road crossing. Mr. Agee provided information regarding requirements of public safety though he did not provide any evidence regarding the safety of the Logen Road crossing. Mr. Agee did not provide information regarding the convenience and necessity of the use of the Logen Road Crossing or Alternatives to Closure. Clearly this witness did not provide any material that could be considered as part of the preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

BNSF Witness: Danniell MacDonald

32. Mr. MacDonald, BNSF Manager of Engineering testified that the Logen Road crossing should be closed but did not provide any evidence that such closure would result in an overall improvement in safety for the motoring public. Clearly this witness did not provide material that could be considered a preponderance of evidence that public safety requires closure of the Logen Road grade crossing.

Summary of BNSF Witnesses

33. None of the BNSF witnesses provided any exhibits that directly supported the closing of Logen Road and did not provide any studies of the safety of the Logen Road crossing or the three alternate crossings. History shows that the three alternate crossings are more dangerous than the Logen Road crossing. None of the BNSF witnesses provided any exhibits, data or studies that supported their contention that adding a siding will cause any



crossing, let alone the Logen Road crossing, to be less safe than the Logen Road crossing was with only one track.

34. Clearly BNSF has not met the requirement or burden of proving, by a preponderance of evidence, that public safety requires closure of the Logen Road Crossing.

### **Public Safety**

35. Lynn Logen provided testimony in regards to the Federal Railroad Administration Quite Zone Calculator showing that the Logen Road Crossing did not exceed the Nationwide Significant Risk Threshold of 17,030 (as mentioned in the May 30, 2007 letter from James Bloodgood of Snohomish County to Lori Halstead of the UTC). While Mr. Logen provided exhibits that showed that the Logen Road crossing did not exceed the Nationwide Significant Risk Threshold, even with the added crossing, anyone can use the Quite Zone Calculator to determine this fact and also that the Dettling Road crossing, without the addition of the siding, currently has a risk index of 14,505 and with the addition of the siding and changing the number of cars from 75 to the 800 reported by Mr. Norris, has a risk index of 26,164, clearly exceeding the Nationwide Significant Risk Threshold. The situation is somewhat similar at the 102nd Street crossing where the current risk index is 32,988 which exceeds the Nationwide Significant Risk Threshold and the risk index after adding the siding is 34,401, also exceeding the Nationwide Significant Risk Threshold.

36. Mr. Logen also provided testimony and exhibits (Exhibits 10 and 11) regarding the safety of the intersections at Pioneer Highway and Dettling Road, Old Pacific Highway and Dettling Road, Pioneer Highway and 102<sup>nd</sup> Street, and Old Pacific Highway and 102<sup>nd</sup>

Street. This testimony and the exhibits showed that these intersections were less safe than the Logen Road intersections with these two highways where there have been no accidents.

37. In response to Mr. Logen's data request Nos. 17, 18 and 19 to BNSF asking for the number of trains and other information at other crossings that have been closed in the last 20 years, BNSF objected and chose to provide no information on other crossing that have been closed, resulting in no information that could be used to compare the proposed closing of the Logen Road Crossing with other crossings that have been closed. This response could have supported BNSF's request for closure. BNSF's choice not to respond should be interpreted as this information would serve to further Mr. Logen's objection to the closure.

38. In response to Mr. Logen's data request No. 26 ("Please provide all studies regarding the safety or accidents on crossings similar to the Logen Road Crossing.") BNSF chose to object to the request as overly broad and unduly burdensome, stating that the requested information is "beyond the scope of this proceeding or not in the possession or control of BNSF;". However, BNSF did provide a very limited response in the form of one (1) report from the National Transportation Safety Board. I would argue that the information requested is precisely focused on the scope of this proceeding and would address the very subject in paragraph 4 of the Order, that BNSF as petitioner carries the burden of proving, by a preponderance of evidence, that public safety requires closure of the Logen Road grade crossing. By refusing to respond and providing a very limited response to this data request BNSF has refused to provide the very information that could have been a preponderance of evidence regarding the safety of the Logen Road crossing. Again,

BNSF's choice of response should be interpreted that this information would serve to further Mr. Logen's objection to the closure.

39. BNSF testified that collisions involving a passenger vehicle and a train have the same impact as a car crushing a can of soda. Mr. Agee testified for BNSF that in the collision of a semi-truck and a vehicle and a train with a vehicle that the damage would "Either way it's going to be significant I would expect." (page 178, lines 6-7) The conclusion is that a street/street intersection and a train/street intersection are virtually equally dangerous which is supported by the fact that the traffic citation for failing to stop at a stop sign and failing to stop at a railroad crossing gate is the same amount.
40. Dale Fulfs, Fire Chief of North County Regional Fire Authority in written comments submitted to the UTC stated that he has concerns regarding the closure of Logen Road as it will limit the routes used to respond to the area. Chief Fulfs also stated that "If the Logen Road is closed it could possibly affect response times to the Old Pacific Highway area and with increased response time's public safety could be put at risk." And "...I believe public safety could be affected...". Finally, Chief Fulfs stated: "Again in the interest of public safety please keep the Logen Road open for emergency responses."
41. If BNSF truly believes that railroad crossings are as dangerous as they characterize them, it would follow that they would propose legislation to increase fines, propose new signage, four quadrant gates, medians and all other methods to make crossings more safe, rather than just testifying that no alternatives will work and that the only alternative is to close the crossing.
42. It has been established in this docket that there have been no train/vehicle accidents at the Logen Road crossing. There must be a reason for this. It could be that due to the fact that there is a sharp turn on Logen Road just east of the crossing meaning that vehicles tend to

be traveling at slower speed. It could be that this will continue, especially since it was testified by Mr. Jeffers (page 51, lines 12-15) that the Amtrak trains will be traveling at a slower speed at the Logen Road crossing in the future because the trains take up to two minutes to slow and stop. If the slowing was linear their speed would be approximately one-half of the seventy-nine mile-per-hour (79 mph) maximum speed at the Logen Road crossing since Logen Road is approximately one mile from the proposed Amtrak station.

### **Convenience & Necessity**

43. The two people most likely to comment on the convenience and necessity of the Logen Road crossing are Mayor Diane White and Senator Mary Margaret Haugen who have offered their opinions that the Logen Road crossing should be closed. Yet their training is in pharmacy and high school/vocational school respectively so they have no basis or experience to offer an opinion that the Logen Road crossing should be closed unless it is due to the misunderstanding that the only way to get an Amtrak station is to support the closing of Logen Road.
44. Other member of the public have provided many comments, testimony and letters supporting the convenience and necessity (including Ms. Lanier that provided testimony on page 414 that the Logen Road crossing was used to take group home residents to medical facilities) of having Logen Road remain open. These same people have suggested a ways to make the possibility of a train blocking the crossing known and all seemed to have no issues with occasional blockages by trains.
45. Albert Burkland provided testimony in this docket (page 420, lines 2-4) that Logen Road

existed prior to the railroad. This fact in itself should speak to the convenience and necessity of keeping Logen Road open for vehicular traffic.

### **Alternatives to Closing the Logen Road Crossing**

46. BNSF has provided testimony (primarily Mr. MacDonald) that there are no alternatives to closing the Logen Road crossing, while not proving that there is any safety concern specifically with the Logen Road crossing. Some of the alternatives were dismissed by BNSF witness Mr. MacDonald due to the width of the road, which could be remedied at the crossing. Many alternatives have been suggested by parties and members of the public. Perhaps another alternative would be to install signs giving the speed of the trains and/or including that "Trains Do Not Stop At Crossings". This may be an opportunity, on a crossing with a small number of vehicles crossing per day to determine if such signs or four quadrant gates or other alternatives can be effective at the Logen Road crossing.
47. Research on the Internet reveals many situations where different types of barriers have been effective at preventing accidents at crossings. Most of the recent installations have been on the east coast of the United States. The cost of obtaining an expert witness from the east coast to support Mr. Logen's contention (page 263, lines 16-19) that alternatives to closure are available would have been unduly burdensome.
48. BNSF has failed to provide any alternatives to closing the Logen Road crossing. BNSF has provided information about alternate routes after the closing, but has not provided any alternatives to closing. This failure means that BNSF has not provided the UTC with adequate information on which to base an informed decision.
49. In Docket No. TR-070696 BNSF argued that four-quadrant gates nor medians are

sufficient to prevent drivers from ignoring warning devices and BNSF witnesses and experts testified that when a train is stopped or parked in close proximity to a crossing that drivers, bicyclists and pedestrians will ignore gates and cross. In the case of the Logen Road crossing, Logen Road will continue to exist up to the fifty foot (50') railroad right of way and pedestrians and bicyclists will no longer have the benefit of gates or warning lights and continue to cross the railroad tracks at the point of the Logen Road crossing. When Mr. Logen asked Snohomish County if Logen Road could be closed at or near Old Pacific Highway so that a private crossing could be established for use by the Logen family the response was that this was not planned and could only be done following Council action. Therefore, clearly only vehicular traffic will be prevented from utilizing the Logen Road crossing. Even though BNSF has argued that four-quadrant gates and medians are not 100% effective, this would be a better solution than having pedestrians and bicyclists crossing the railroad without benefit of any warning system.

50. BNSF (Mr. Zeinz) argued in Docket No. TR-070696 that median barriers are inadvisable where a large proportion of the vehicles using the crossing are semi-trucks, trailers and large farm equipment. In the Traffic Study there were no semi-trucks, trailers and large farm equipment mentioned as using Logen Road, therefore the conclusion must be that median barriers could be used. In addition, the low traffic volumes on Logen Road would allow a vehicle to back-up and turn around if the crossing was blocked by a train.

51. In Docket No. TR-070696 BNSF (Mr. MacDonald) testified that BNSF does not have open crossings in the middle of other siding tracks that are subject to frequent blockage and BNSF argued that a reason for closing the public crossing was that there was no evidence that even one at-grade public crossing exists in the middle of a siding track with the same factors. In this docket it was established that slow moving trains and perhaps stopped

trains would block the Dettling Road crossing. I also offer the 271<sup>st</sup> Street Crossing and the 102<sup>nd</sup> Street Crossing as crossings that are in the middle of siding tracks and would or could be blocked by trains. Thus it appears that BNSF testimony and arguments are devised to fit a particular situation, not to address the facts of the actual safety at a particular crossing proposed to be closed or of the alternate crossings.

52. In Docket No. TR-070696 it was cited that a four-quadrant gate system without vehicle presence detection has an effectiveness rate that is eighteen percent (18%) lower than closure of the crossing. Yet in this docket Mr. MacDonald testified that a four-quadrant gate would not improve safety over the present crossing with one track. One would wonder how a four-quadrant gate could have safety that is almost equal to closing a crossing not improve the safety on an existing crossing.

53. WAC 480-62-405 provides that the UTC will consider grants of funds from the grade crossing protective fund for items such as funds to “foster creative and effective ideas” such as roadway improvements at or approaching grade crossings and removal of sight obstructions for the traveling public. Clearly the UTC feels that creative alternatives should be considered. In regards to the Logen Road crossing the cutting of trees on the BNSF right of way would remove sight obstructions for the traveling public.

## **Recommendations**

54. I respectfully request and recommend that the petition of BNSF to close the Logen Road crossing be denied and that the alternatives to closing the crossing be considered to be ordered, including additional/new signage suggested.

55. I also respectfully suggest that the BNSF be ordered to cause the modifications to warning

devices offered to be installed in this docket, at the 102<sup>nd</sup> Street, Dettling Road and 271<sup>st</sup> Street crossings be included in the final order.

56. I suggest that BNSF be granted an exemption to WAC 480-62-220 as provided by WAC 480-62-140 conditioned on installation of signage informing the public. This could be seen as a creative idea eligible for funding by the grade crossing protective fund.

## **Conclusion**

57. The Logen Road crossing should not be closed for the following reasons:

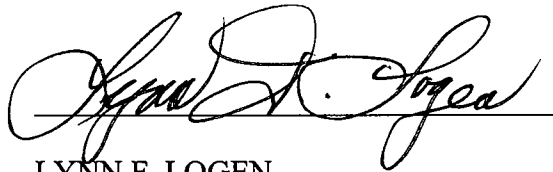
- Clearly public safety is not served by closing the Logen Road crossing as it will force the motoring public to use street intersections that are more dangerous than using Logen Road and will also force the motoring public to use railroad crossings that are also more dangerous than the Logen Road crossing.
- Fire Chief Fulfs has stated that public safety could be affected by closing the Logen Road crossing.
- BNSF has failed in their obligation to prove, by a preponderance of evidence, that public safety requires closure of the Logen Road Crossing.
- In the UTC's Order, testimony and exhibits were limited to requirements of public safety, convenience and necessity of use of Logen Road crossing, and alternatives to closure. Due to the limited subject matter that could be presented at hearing the UTC has failed to



gather information regarding the circumstances and conditions that the UTC is obligated to review by RCW 81.53.020.

- Witness of BNSF and UTC Staff only offered opinions (which may be the opinions of professionals) that the Logen Road crossing should be closed however, they did not offer any evidence showing or supporting their opinions such as data regarding accidents at crossings where a siding was added or any studies specific to the Logen Road crossing.

DATED this 5<sup>th</sup> day of May, 2009.

A handwritten signature in cursive script, appearing to read "Lynn F. Logen", written over a horizontal line.

LYNN F. LOGEN