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MONTGOMERY SCARP, PLLC

BEFORE THE WASHINGTON STATE UTILITIES
AND TRANSPORTATION COMMISSION

8	BNSF Railway,)	Docket No: TR -150189
)	
9	Petitioner,)	
)	PREFILED TESTIMONY OF ROLAND
10	vs.)	MIDDLETON
)	
11	WHATCOM COUNTY,)	
)	
12	Respondent.)	
)	

13
14 **Q: Please state your full name and job title.**

15 A: My name is Roland Middleton. I am currently the Special Programs Manager for
16 Whatcom County Public Works Department.

17
18 **Q: Please describe your position with Whatcom County and your previous positions
19 with Whatcom County.**

20 A: I have been employed by Whatcom County for over 26 years. Duties for my current
21 position include managing the project development group. This interdisciplinary team
22 analyzes requested projects and actions. These duties include reporting on the land use
23 and environmental controls and permits required for projects. Previous to my current
24 position I was the SEPA Official for Whatcom County. The SEPA Official is

1 responsible for the administration and determinations of actions that fall under the State
2 Environmental Policy Act (SEPA).

3
4 **Q: Are you familiar with the proposed closure of Valley View Road by BNSF?**

5 A: I have reviewed the submittal by BNSF for the closure of Valley View Road for the
6 project titled Intalco Yard Expansion. In addition, I have reviewed information
7 supplied by Pacific International Terminals Inc. for the Gateway Pacific Terminal
8 project and project submittals for BP and Phillips 66 rail unloading facilities.

9
10 **Q: Please describe the Intalco Yard Expansion as you understand it.**

11 A: The Intalco Yard Expansion will add rail storage and capacity on Custer Spur off the
12 railroad's mainline for improved function and safety.

13
14 **Q: Specific to your consideration of this matter in light of the State Environmental
15 Policy Act (SEPA), what is Whatcom County's concern with the Intalco Yard
16 Expansion project?**

17 A: The Intalco Yard Expansion project appears to be a significant part of the proposed
18 Custer Spur Improvements as submitted for the Gateway Pacific Terminal (Permit
19 application, Exhibit C, pages 4-1, 4-33, 4-34 and figure 4-11). As described in the
20 letter from Whatcom County to Department of Ecology (February 20, 2015) and in the
21 letter from Department of Ecology to BNSF (March 17, 2015), the SEPA review is not
22 complete for the Gateway Pacific Terminal.

23 In addition, for the recent expansions by BP and Phillips 66, they stated in their permit
24 submittal that no additional rail capacity or improvements were needed (AECOM
25 transmittal for BP; July 19, 2012) (MainLine Management, Inc. letter for Phillips 66;

1 January 25, 2013). To move forward with elements of the Gateway Pacific Terminal
2 project prior to completion of the SEPA review would not be allowed under the
3 Washington Administrative Code.

4 **Q: What sections of the Washington Administrative Code are you referring to?**

5 A: WAC 197-11-060 (3) (b) states:

6 *Proposals or parts of proposals that are related to each other closely enough to be, in*
7 *effect, a single course of action shall be evaluated in the same environmental document.*
8 *(Phased review is allowed under subsection (5).) Proposals or parts of proposals are*
9 *closely related, and they shall be discussed in the same environmental document, if*
10 *they:*

11 *(i) Cannot or will not proceed unless the other proposals (or parts of proposals) are*
12 *implemented simultaneously with them; or*

13 *(ii) Are interdependent parts of a larger proposal and depend on the larger proposal as*
14 *their justification or for their implementation.*

15 The permit applications and SEPA documents for both BP and Phillips 66 stated the
16 rail improvements were not needed, yet it is described as an interdependent part of the
17 Gateway Pacific Terminal project.

18 **Q: The Washington Administrative Code states phased review is allowed. If the**
19 **Intalco Yard Expansion is a part of the Gateway Pacific Terminal, would phased**
20 **review be appropriate?**

21 A: WAC 197-11-060 (5) (d) states:

22 *Phased review is not appropriate when:*

23 *(i) The sequence is from a narrow project document to a broad policy document;*

24 *(ii) It would merely divide a larger system into exempted fragments or avoid discussion*
25 *of cumulative impacts; or*

(iii) It would segment and avoid present consideration of proposals and their impacts
that are required to be evaluated in a single environmental document under WAC 197-
11-060 (3)(b) or 197-11-305(1); however, the level of detail and type of environmental
review may vary with the nature and timing of proposals and their component parts.

1
2 If the Intalco Yard Expansion is part of the Gateway Pacific Terminal project then its
3 approval would inappropriately allow the avoidance of the discussion of cumulative
4 impacts of the Gateway Pacific Terminal project and would segment and avoid the full
5 consideration for the decision maker's action.

6 **Q: If the Intalco Yard Expansion is demonstrated not to be a part of the Gateway**
7 **Pacific Terminal, then what is the process for review under the State**
8 **Environmental Policy Act?**

9 **A:** The Intalco Yard Expansion proposal would have its own separate SEPA review and
10 would not be tied to the review for the Gateway Pacific Terminal.

11 DECLARATION

12 I, Roland Middleton, declare under penalty of perjury under the laws of the
13 State of Washington that the foregoing PREFILED TESTIMONY OF ROLAND
14 MIDDLETON is true and correct to the best of my knowledge and belief.

15 Dated this 18th day of September, 2015 in Bellingham, Washington.

16
17 
18 Roland Middleton