

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

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BNSF RAILWAY COMPANY,

Petitioner,

vs.

SNOHOMISH COUNTY,

Respondent.

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)  
) DOCKET NO. TR-090121

)  
) **PETITIONER BNSF'S**  
) **REQUEST TO FILE**  
) **SUPPLEMENTAL BRIEF**

**I. RELIEF REQUESTED**

1 In the event that the Commission believes additional analysis will be helpful to assess the new issue raised in Intervener Lynn Logen's post-hearing brief, whether BNSF's petition to close the Logen Road public crossing needed to address RCW 81.53.020, then BNSF would respectfully request permission to file a concise supplemental brief to address that argument.

## II. STATEMENT OF FACTS

2 The post-hearing brief filed by Lynn Logen dedicates part of its analysis to an  
unforeseen argument: that “The BNSF petition is . . . improper because it did not request  
relief under the provisions of RCW 81.53.020.”<sup>1</sup>

## III. STATEMENT OF ISSUE

3 Would it help the Commission for BNSF to respond to Intervener’s claim that  
BNSF’s petition needed to address RCW 81.53.020?

## IV. EVIDENCE RELIED UPON

4 BNSF relies upon the pleadings and other documents that make up the record in  
Docket No. TR-090121.

## V. AUTHORITY

5 Here, it was unforeseen that Mr. Logen would argue, in a petition brought under  
RCW 81.53.060 to *close* the Logen Road crossing, that the post-closure extension of a  
siding track through that former crossing somehow triggers the provisions of RCW  
81.53.020. BNSF is unaware of that argument having been made prior to Mr. Logen’s  
post-hearing brief.

6 BNSF clearly does not believe that Mr. Logen’s position is valid. There is no  
case law or statutory support for the argument. Again, the siding track will be extended  
*after* closure—it would obviously not “cross existing . . . highways” as the road would  
no longer be open to public travel at the railroad tracks. Intervener’s brief, however,

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<sup>1</sup> See *Final Brief of Lynn F. Logen* at pp 3-6.

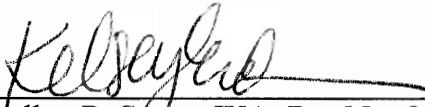
dedicated several pages of its analysis to the issue. Accordingly, should the Commission believe that the issue has any credence or that additional information would be helpful, BNSF would request to supplement its post-hearing brief to address the argument for the record and the tribunal.

## VI. CONCLUSION

7 BNSF believes its petition to close the Logen Road crossing was proper, and reiterates that closure is the only solution due to the exceptionally hazardous safety concerns. BNSF respectfully requests its motion to file supplemental briefing be granted, but only if the Commission desires additional argument to show why RCW 81.53.020 does not apply.

DATED this 12<sup>th</sup> day of May, 2009.

Montgomery Scarp MacDougall, PLLC

  
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**CERTIFICATE OF SERVICE**

I am over the age of 18; and not a party to this action. I am the paralegal to an attorney with Montgomery Scarp MacDougall, PLLC, whose address is 1218 Third Avenue, Suite 2700, Seattle, Washington, 98101.

I hereby certify that the original and 12 copies of *PETITIONER BNSF'S REQUEST TO FILE SUPPLEMENTAL BRIEF* has been sent via FedEx to David W. Danner at WUTC and Word Perfect and PDF versions sent by electronic mail to [records@wutc.wa.gov](mailto:records@wutc.wa.gov). I also certify that true and complete copies have been sent via Electronic mail and U.S. Mail to the following interested parties:

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

DATED this 12<sup>th</sup> day of May, 2009 at Seattle, Washington.



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Lisa Miller, Paralegal