

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,)	DOCKET NO. TR-070696
)	
Petitioner,)	
)	RESPONSE TO PETITIONER BNSF
v.)	MOTION TO LIMIT THE SCOPE OF
)	THE SUBJECT MATTER BEFORE
CITY OF MOUNT VERNON,)	COMMISSION
)	
Respondent.)	
<hr/>		

I.

BNSF has asked the Commission to limit the scope of the subject matter to public safety, citing RCW 81.53.060. In response, the Boon Intervenors, Western Valley Farms, L.L.C. ask the Commission to apply RCW 43.21C.030 which requires the policies, regulations and laws of the State of Washington to be interpreted and administered so that all branches of government of the state shall :

“(a) Utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s environment; ...

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;”

II. STATEMENT OF FACTS

The BNSF motion admits that the railroad crossing lies in a close proximity to urban growth and farmland. The crossing is within the Skagit River floodplain. Flooding risk imposes special considerations for maintaining the surface transportation grid and emergency response routes including railroad tracks.

III. ISSUE PRESENTED

Boon Intervenors pose the issue as whether the Utilities and Transportation Commission is exempt from the application of the guidelines expressed in Chapter 43.21C and particularly the mandatory requirements of RCW 43.21C.030 subsections (a) and (e).

IV. EVIDENCE RELIED UPON

The opposition to this motion is based on the pleadings and the materials on file in the administrative proceeding.

V. ARGUMENT

The “convenience and necessity” of the public’s use of the crossing and factors identified in the case law cited by the petitioner do not nullify the application of RCW 43.21C.030. The claim that Commission jurisdiction does not include determination as the adequacy of environmental review or coordination begs the question presented. Is the Commission violating the SEPA if it refuses to receive evidence and weigh that evidence in accordance with RCW 43.21C.030 (a) and (e) cited by the Boon Intervenors.

A circular argument is provided by the BNSF as to why the federal law should be applied to diminished environmental considerations. To exercise authority under RCW 81.53.060 the Commission comes within the laws of Washington. Therefore UTC has no choice but to follow the guidelines set by RCW 43.21C.030.

V. CONCLUSION

The Commission should receive evidence concerning the alternatives to the proposed action, the public convenience and necessity which may support or not support the outcome requested by the Petitioner. Public safety is not the sole issue.

RESPECTFULLY SUBMITTED this _____ day of September 2007.

JONES & SMITH

By: _____
GARY T. JONES, WSBA #5217
Attorney for Intervenor Boon

DECLARATION OF SERVICE

Llewella Faye Davis states and declares as follows:

I am over the age of 18; and not a party to this action. I am the assistant to Gary T. Jones of Jones & Smith whose address is PO Box 1245, Mount Vernon, Washington 98273.

I hereby declare that the original RESPONSE TO PETITIONER BNSF MOTION TO LIMIT THE SCOPE OF THE SUBJECT MATTER BEFORE COMMISSION has been sent by U.S. mail to Carole J. Washburn at Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., PO Box 47250, Olympia, WA 98504-7250. I also declare that true and complete copies have been sent via U.S. Mail to the following interested parties:

Stephen Fallquist
Deputy Prosecuting Attorney
Skagit County
605 South 3rd Street
Mount Vernon, WA 98273

L. Scott Lockwood
Assistant Attorney General
1400 S. Evergreen Park Dr., S.W.
PO Box 40128
Olympia, WA 98504

Tom Montgomery
Bradley Scarp
Montgomery, Scarp MacDougall, PLLC
1218 Third Avenue, Suite 2700
Seattle, WA 98101

Jonathan Thompson
Assistant Attorney General
1400 S. Evergreen Park Dr., S.W.
PO Box 40128
Olympia, WA 98504

Brian K. Snure
Snure Law Office
612 South 227th Street
Des Moines, WA 98198

Kevin Rogerson, City Attorney
City of Mount Vernon
PO Box 809
Mount Vernon, WA 98273

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

DATED this __ day of September 2007 at Mount Vernon, Washington.

Llewella Faye Davis, Legal Assistant