

[Service Date August 31, 2009]

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August 31, 2009

**NOTICE OF OPPORTUNITY TO COMMENT ON COMPLETION OF
ENVIRONMENTAL REVIEW PROCESS UNDER STATE ENVIRONMENTAL
POLICY ACT (SEPA)**

(Comments Due Friday, September 11, 2009)

NOTICE OF OPPORTUNITY TO FILE RESPONSES TO COMMENTS

(Responses Due Friday, September 18, 2009)

RE: *BNSF Railway Company v. Snohomish County*, Docket TR-090121

TO ALL PARTIES:

On March 30, 2009, the Commission held an evidentiary hearing regarding BNSF's proposed closure of the Logen Road grade crossing. The parties presented witnesses and exhibits regarding the public safety and other substantive aspects of the BNSF petition. However, the parties noted that the environmental review process required under the State Environmental Policy Act (SEPA) was still in progress and would have to be completed before the record in this matter could be closed.

On July 8, 2009, the undersigned issued a Bench Request to ascertain the status of the SEPA process. On July 13, 2009, BNSF filed a chronology explaining that the Washington State Department of Transportation (WSDOT) had recently assumed lead agency status for the project. According to the BNSF update, WSDOT was expected to file an appropriate SEPA determination with the Department of Ecology on or about July 20, 2009. The SEPA determination would trigger a 14 day comment period.

On August 26, 2009, BNSF notified the Commission that WSDOT had completed the SEPA process. BNSF filed the following documents as a proposed exhibit:

- WSDOT Determination of NonSignificance (DNS) dated July 21, 2009
- SEPA Environmental Checklist

- Project Location Map

WSDOT's DNS set August 4, 2009, as the deadline for comments. However, BNSF's letter and attachments did not include copies of comments filed with WSDOT regarding the environmental review process, if any. Further, BNSF's letter did not explain if the DNS had been appealed, reference any WSDOT "notice of action" or contain any other indication of finality of the SEPA process.

BNSF's letter and attached documents have now been collectively marked as Exhibit No. 30 for inclusion in the record in this docket. Parties wishing to comment on the SEPA process and how WSDOT's DNS should be considered in the resolution of this proceeding must submit comments to the Commission electronically by **5:00 p.m. on Friday, September 11, 2009**, through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov, and file an original and **eight (8)** paper copies with the Commission on the next business day, which is **Monday, September 14, 2009**. Filing is to be accomplished by mailing or delivering the comments to the Commission's Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

Responses to comments must be submitted to the Commission electronically by **5:00 p.m. on Friday, September 18, 2009**, and an original and **eight (8)** paper copies must be filed with the Commission on the next business day, which is **Monday, September 21, 2009**.

The filing of these comments and responses will mark the closure of the evidentiary record in this matter. After reviewing all comments and responses, the Commission will enter its Initial Order ruling on BNSF's petition.

Thank you for your attention to these matters,

Sincerely,

ADAM E. TOREM
Administrative Law Judge