

SERVICE DATE  
DEC 13 1996

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Burlington Northern Railroad Co.,	)	DOCKET NO. TR-940282
	)	
Petitioner,	)	FINDINGS OF FACT;
v.	)	CONCLUSIONS OF LAW;
	)	AND ORDER CLOSING GREEN
Skagit County, Washington,	)	ROAD CROSSING AND
	)	GRANTING LEAVE TO WITH-
Respondent.	)	DRAW PETITION AS TO
	)	FOUR CROSSINGS
.....	)	

NATURE OF PROCEEDING: This is a petition to close six railway-highway crossings at grade.

PROCEDURAL STATUS: Hearings were held on two crossings, Boe Street and Green Road, on February 23 and 24, 1995, in Mt. Vernon, before Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings.<sup>1</sup> At hearing, Skagit County expressed concerns about closure of the Green Road crossing, and several members of the public testified in opposition to closure of that crossing. The County withdrew its opposition to closure of the Boe Street Crossing. The Commission entered an order closing the Boe Street crossing on May 26, 1995. The hearing on the Green Road crossing was continued pending completion of a Commission Staff determination of whether there is an environmental impact of closing the crossing; that determination since has been made. Subsequent to the hearing, Skagit County and the petitioner entered into an agreement to close the Green Road crossing, and Skagit County has withdrawn its opposition to closure. The petitioner, the respondent, and counsel for Commission Staff have waived an initial order so that the record may proceed directly to consideration by the Commission. Petitioner has requested leave to withdraw its petition as to the four crossings that did not go to hearing.

COMMISSION: The Commission grants leave to withdraw the petition as to the four crossings that did not go to hearing. The Commission grants the petition to close the Green Road crossing, conditioned on the construction of a cul-de-sac on Green Road at the point of closure. All crossings at grade are inherently dangerous, and this one is especially hazardous. The crossing is a convenience to residents and business people in the vicinity, but a safer alternate crossing is available. The need for the crossing is not so great that it must be kept open despite its dangerous condition.

<sup>1</sup> The petitioner withdrew West Johnson Road and West Stackpole Road from consideration prior to hearing. The parties stipulated to an indefinite continuance for hearing on the Spruce Street and Milltown Road crossings.

[1]\* A highway-railway crossing at grade which is poorly configured, poorly protected, has a small holding capacity for vehicles, and is on a railroad main line, should be closed when a safer crossing is readily available, although somewhat less convenient for some persons. RCW 81.53.060.

[2] That a dangerous crossing at grade allows faster response in the event of fire and other emergency than another route does not require leaving the crossing open when the alternate access is safer and is readily available. RCW 81.53.060.

APPEARANCES: Rexanne Gibson, attorney, Bellevue, represents petitioner Burlington Northern Railroad Co. John R. Moffat, prosecuting attorney, represents Skagit County. Ann Rendahl, assistant attorney general, Olympia, represents the staff of the Washington Utilities and Transportation Commission. Bradford E. Furlong, attorney, Mt. Vernon, appeared at hearing as an intervenor.<sup>2</sup>

#### MEMORANDUM

This is a petition by Burlington Northern Railroad Company (BNRR) to close six highway-railway crossings at grade in Skagit County. The six crossings are: Milltown Road; Spruce Street; Green Road; Boe Street; West Johnson Road; and West Stackpole Road. BNRR cites public safety concerns in its petition for closure of the crossings. Skagit County opposed closure of the Milltown Road, Spruce Street, Green Road, and Boe Street crossings, and requested a hearing.

BNRR withdrew West Johnson Road and West Stackpole Road from consideration prior to hearing. The parties stipulated to an indefinite continuance for hearing on the Spruce Street and Milltown Road crossings. BNRR now has requested leave to withdraw its petition as to those four crossings.

Hearing was held on the other two crossings, Boe Street and Green Road. BNRR requested that separate orders be entered for each of the crossings. Skagit County withdrew its opposition to closure of the Bow Street crossing at hearing. The Commission entered an order closing the Boe Street crossing in May 1995.

At the commencement of the hearing in this matter, Commission Staff stated that, through an oversight, it had not complied with the state Environmental Protection Act (SEPA) by doing a threshold determination of whether there is an environmental impact of

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\* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

<sup>2</sup> Mr. Furlong intervened only with respect to the Spruce Street and Milltown Road crossings. He did not participate in the hearing on the Boe Street and Green Road crossings.

closing the Green Road crossing. Evidence was taken on crossing issues. The administrative law judge continued the proceeding as to Green Road until it could be determined whether an additional hearing would be necessary on environmental issues.

In September 1996, the Commission issued a mitigated determination of non-significance with respect to BNRR's proposal to close the Green Road crossing. The determination states that the proposal does not have a probable significant impact on the environment, but lists the following required mitigation: construction of a cul-de-sac on Green Road within the existing railroad/county right-of-way to county standards as approved by the county engineer; necessary grading and filling; and compliance of the project with Skagit County critical area Ordinance 14.36.

On December 2, 1996, Skagit County filed with the Commission an agreement between the county and BNRR providing for the closure of the Green Road crossing and construction of a cul-de-sac at the closure point, and the granting of an easement for the cul-de-sac to the county. In a letter accompanying the agreement, Skagit County waived further hearing on the petition and withdrew its opposition to closure of the Green Road crossing. Skagit County, BNRR, and Commission Staff have waived an initial order.

**A. Request for Leave to Withdraw Petition as to Four Crossings**

On January 17, 1996, BNRR filed a request for leave to withdraw its petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road crossings. No party responded in opposition. It is consistent with the public interest to grant withdrawal of the petition. The request will be granted.

**B. Green Road Crossing**

Applicable Standards

Chapter 81.53 grants the Commission the authority to regulate the safety of railroad grade crossings. RCW 81.53.020 states a legislative preference for overcrossings and undercrossings where practicable, prohibits the construction of a new highway crossing at grade without prior Commission approval,<sup>3</sup> and sets out factors that the Commission is to take into account in determining whether a grade-separated crossing is practicable.

81.53.060 authorizes a railroad company whose road is crossed by a street or highway to petition the Commission that the public safety requires the establishment of an under-crossing or over-crossing, an alteration in the existing grade crossing, or the closure of the existing crossing.

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<sup>3</sup> When used in Chapter 81.53, the term "highway" includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public roadways. RCW 81.53.010.

The statutes are based on the theory that all railway/highway crossings at grade are dangerous, and public policy strongly disfavors them. Reines v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 195 Wash. 148, 80 P.2d 408 (1983); Department of Transportation v. Snohomish County, 35 Wn.2d 247, 257, 212 P.2d 829 (1949); State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County, 5 Wn.2d 95, 104 P.2d 764 (1940).

In addition to the dangers inherent in any crossing at grade, there are factors that may make a particular crossing especially hazardous. These factors include vegetation or other obstacles that limit the motorist's view of the tracks as the motorist approaches the crossing,<sup>4</sup> an alignment in which the roadway approaches the crossing at an oblique angle,<sup>5</sup> limited holding capacity on the approaches between the railroad right of way and streets that intersect with the approaches,<sup>6</sup> more than one mainline track at the crossing,<sup>7</sup> and the presence of a siding track in addition to a mainline track at the crossing.<sup>8</sup>

In some cases the public convenience or need for a crossing outweighs the danger, and in that case the Commission may allow a crossing at grade to remain open. The balancing test was stated by the court in Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254 (1949) as follows:

Having found that the grade crossing herein is dangerous and unsafe, we must also consider 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.

Factors the Commission considers in determining whether the public convenience and need outweigh the danger of the crossing include the amount and character of travel on the railroad and on the highway, the availability of alternate crossings, whether the alternate crossings are less hazardous, the ability of alternate crossings to handle any additional traffic that would result from the closure, and the effect of closing the crossing on

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<sup>4</sup> See, Whatcom County v. Burlington Northern Railroad Company, Docket Nos. TR-1725 and TR-1726 (January 1985).

<sup>5</sup> See, Thurston County v. Burlington Northern Railroad, Docket No. TR-1930 (April 1988).

<sup>6</sup> See, Whatcom County, *supra* note 4.

<sup>7</sup> See, Department of Transportation v. Snohomish County, 35 Wn.2d 247 (1949).

<sup>8</sup> See, Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985); Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

public safety factors such fire and police control. See, Burlington Northern Railroad Company v. City of Ferndale, Docket No. TR-940330 (March 1995).

The Evidence

Witnesses for BNRR, the Washington State Department of Transportation, the National Railroad Passenger Corporation, and the Federal Railroad Administration testified in support of the petition to close the Green Road crossing. Five members of the public and a fire department official testified in opposition to the proposal to close the Green Road crossing. A witness for Skagit County and a Commission Staff witness also testified concerning the crossing.

The Green Road crossing lies on a BNRR main line which is being upgraded so that high-speed rail passenger service can be initiated between Seattle and Vancouver, B.C. The Washington state legislature, in chapter 47.79 RCW, has established as a goal the implementation of such high-speed service. Among the priorities set out in RCW 47.79.030 are improved grade crossing protection or grade crossing elimination.

Federal railroad safety policies, set out in the Federal Railroad Administration's Rail-Highway Safety/Action Plan Support Proposals, favor consolidation of crossings when practical and improvement of the remaining crossings. The FRA, which regulates railroad safety, has the policy and goal of reducing grade crossings by 25% by the year 2000, to reduce the number of collisions that are occurring at grade crossings.

In the vicinity of the crossing, Green Road and old Highway 99 run parallel to one another on opposite sides of the tracks, in an approximately north-south direction, until Green Road crosses the tracks and intersects with old Highway 99. Green Road has low traffic volumes. The Green Road crossing consists of one track protected by stop signs and crossbucks. The crossing is 50 to 65 feet north of the intersection of Green Road with old Highway 99. Approaching the crossing from the north, Green Road curves sharply just before the crossing in order to make a right angle intersection with old Highway 99. Green Road crosses the tracks at an angle of about 60 degrees.

The crossing does not allow good advance sight of approaching trains. The crossing cannot be seen until a person is very close to it. Approaching trains cannot be seen in both directions until a person is stopped in front of the tracks. The skewed angle of the crossing results in drivers stopping at the crossing having a good line of sight of trains coming from one direction, but not from the other.

The proximity of the crossing to the intersection with old Highway 99 creates three hazards. It presents the driver approaching from the north with two stop signs in view at the same time. Some drivers may not see the first sign, which is the one before the tracks. The second hazard is that the intersection is so close to the crossing that a long truck coming from the north that stops at the second (highway intersection) stop sign will cover the

rail. There is moderate, high-speed traffic on the highway, which might prevent a stopped truck from getting out of the way of a train. The third hazard is that vehicles come off the highway at 50 to 60 miles per hour. They may misjudge their speed and slide over the crossing before they can stop.

The lack of controls other than stop signs and crossbucks also makes the crossing hazardous. Stop signs are not a very effective method of controlling traffic at railroad grade crossings. More people violate stop signs at railroad grade crossings than they do at regular highway intersections.

There is an alternate crossing nearby, at Cook Road, which is safer. Approximately 1500 feet to the north of the Green Road crossing, Green Road intersects at right angles with Cook Road. The intersection is a four-way stop intersection. Cook Road crosses the BNRR tracks at a signalized crossing before it intersects with old Highway 99. The signaling devices consist of overhead dual-mounted flashing lights and drop arm gates. People who live or do business on Green Road can use Cook Road.

Six persons testified in opposition to closure. A farmer who lives south of the crossing opposes closure because he uses old Highway 99 and Green Road to access his fields, reaching Green Road via the Green Road crossing. The Cook Road crossing is a more difficult road to cross with farm equipment. A truck operator who has his shop on Green Road opposes closure because it is difficult for him to turn his trucks around at the shop, and therefore convenient to enter Green Road at one end and exit at the other. He acknowledges the danger at the Green Road crossing, and has seen other truck drivers make the mistake of getting stuck at the intersection with their back end still on the track.

An owner of business property along Green Road opposes closure because business and traffic in the area is growing, the intersection of old Highway 99 and Cook Road has become congested, and closing the Green Road crossing would add to the congestion and adversely affect the area's growth. A Green Road resident and business operator opposes closure because there already is too much traffic at the intersection of Green Road and Cook Road, and because the intersection has flooded in the past whereas the south end of Green Road remained open.

A resident of Green Road opposes closure because the crossing provides alternative access in case of emergencies. The witness acknowledges that some cars coming from old Highway 99 do not stop at the crossing. The fire chief of the Burlington Fire Department and Skagit County Fire District 6 also opposes closure, because closure would increase emergency response time by about two minutes.

A witness who is both the county engineer and the public works director for Skagit County expressed concerns about closure of the crossing which the county wished to have addressed as part of the SEPA review. The county subsequently withdrew its opposition to closure of the crossing.

Discussion and Decision

[1] Our analysis starts with the fact that all crossings at grade are dangerous. There are factors peculiar to the Green Road crossing that make it particularly dangerous. The crossing is on a railroad main line which will be used by high-speed passenger trains. The configuration of the crossing results in poor sight distances. The crossing cannot be seen until a driver is almost upon it. The skewed angle of the crossing prevents a driver from having a good line of sight of trains coming from one direction. The proximity of the crossing to the intersection with old Highway 99 creates three hazards, described above: drivers may be confused by the presence of two stop signs; the crossing has a limited holding capacity for vehicles; and vehicles exiting old Highway 99 may misjudge their speed and slide over the crossing before they can stop. The crossing is not protected by electronic signals or gates.

The crossing is a convenience to residents and business people in the vicinity, but is not shown to be a necessity. The crossing is not heavily used. Closure of the crossing would not cut off any residences or businesses. There is another crossing nearby which is equipped with electronic signal devices. Electronic signals make a crossing much safer than do crossbucks and stop signs.<sup>9</sup> Consolidation of crossings necessarily inconveniences those whose crossing is eliminated in favor of adjacent crossings.

The argument that the Cook Road crossing is busy does not justify leaving the Green Road crossing open. See, Whatcom County, supra; Spokane County v. Burlington Northern, Inc., Cause No. TR-1148 (September 1985), at page 7. Consolidating crossings when practical and improving the remaining crossings promotes the public safety.

[2] The argument that the Green Road crossing should remain open because it allows faster response in the event of fire and other emergency does not justify leaving the crossing open. Access via a safer route is readily available, and the need for additional access does not outweigh the dangers posed by the crossing. See, Union Pacific Railroad Company v. Spokane County, Docket No. TR-950177 (July 1996), at pages 7-8.

After considering the convenience of the crossing, hazards inherent in all crossings at grade, the hazards that are particular to this crossing, the fact that it is lightly used, and the accessibility of a safer alternate crossing, the Commission concludes that the need for the crossing is not so great that it must be kept open despite its dangerous condition.

The mitigated determination of non-significance requires as mitigation the construction of a cul-de-sac at the point of closure of Green Road. Consistent with that determination, the Commission will condition closure of the crossing on construction of a cul-

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<sup>9</sup> See, Whatcom County v. Burlington Northern Railroad Company, Cause Nos. TR-1725 and TR-1726 (January 1985), at page 5.

de-sac, such as that described in the agreement between BNRR and Skagit County dated October 27, 1996.

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

### FINDINGS OF FACT

1. On January 24, 1995, the Burlington Northern Railroad Company ("BNRR") petitioned the Commission for closure of four highway-railway crossings at grade in Skagit County: Milltown Road near Conway, at railroad milepost 60.28; Spruce Street in Conway, at railroad milepost 62.50; Green Road near Burlington, at railroad milepost 73.88, located in the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , Sec. 19, Twp. 35N, Range 4 E.W.M., Burlington, Skagit County; and Boe Street near Bow, located at railroad milepost 79.20.

2. With respect to the Green Road crossing, the petition states that the crossing is .45 mile to the south of the Cook Road grade crossing; that the Cook Road crossing is signalized with cantilevers and gates while the Green Road crossing has passive warning devices (cross bucks); that Cook Road can serve the homeowners and businesses that reside on Green Road; and that closing the Green Road crossing will improve the safety of the motoring public.

3. In March 1994, Skagit County filed an objection to the petition and requested a hearing.

4. In October 1994, BNRR and Skagit County jointly submitted two additional grade crossings as part of the petition: West Johnson Road near Conway, at railroad milepost 64.58; and West Stackpole Road near Conway, at railroad milepost 65.58.

5. On February 21, 1995, BNRR and Skagit County requested that the request for closure of the West Johnson Road and West Stackpole Road crossings be withdrawn from the petition and that no evidence be taken with respect to those crossings at the hearing.

6. Bradford M. Furlong was granted leave to intervene with respect to two crossings, Spruce Street and Milltown Road.

7. A hearing was held on February 23, 1995, in Mount Vernon, before Administrative Law Judge Lisa A. Anderl. At the commencement of the hearing, BNRR requested and was granted an indefinite continuance of the hearing with respect to the Milltown Road and Spruce Street crossings. Mr. Furlong expressed no interest in the Bow Street and Green Road crossings, and was excused from the remainder of the hearing.



8. Kenneth E. Cottingham testified for BNRR in support of the petition. Mr. Cottingham is a consulting transportation engineer, licensed in Washington as a mechanical engineer. He has worked on rail grade crossing design, operations, and safety since 1956. He performed an on-site inspection of the Green Road crossing in January 1995.

9. Green Road is the original paved north-south highway in the area. It is 15½ feet wide, and has no pavement markings. The Green Road crossing is 50 to 65 feet north of an intersection of Green Road with old Highway 99. Green Road and old Highway 99 both run in a north-south direction on opposite sides of the tracks. Approaching the crossing from the north, Green Road curves sharply just before the crossing in order to make a right angle intersection with old Highway 99. Green Road crosses the tracks at an angle of about 60 degrees. The crossing consists of one track protected by stop signs and crossbucks. The track is a main line of BNRR, and the high-speed rail corridor of Amtrak.

10. The crossing is hazardous in several respects. It does not meet accepted standards of sight distance. The crossing cannot be seen until a person is very close to it. Approaching trains cannot be seen in both directions until a person is stopped in front of the tracks. The angle of the crossing makes it hazardous. Vehicles stopping at the crossing have a good line of sight of trains coming from one direction, but not from the other.

The proximity of the crossing to the intersection with old Highway 99 creates three hazards. First, it presents the driver approaching from the north with two stop signs in view at the same time. Some drivers may not see the first sign, which is the one before the tracks. The second hazard is that the intersection is so close to the crossing that a long truck coming from the north that stops at the second (highway intersection) stop sign will cover the rail. Eighty-two foot truck-trailer rigs are common. There is moderate, high-speed traffic on the highway, which might prevent a stopped truck from getting out of the way of a train. The third hazard is that vehicles come off the highway at 50 to 60 miles per hour and the drivers may misjudge their speed and slide over the crossing before they can stop.

The lack of controls other than stop signs and crossbucks makes the crossing hazardous. Stop signs are not an effective method of controlling traffic at railroad grade crossings. More people violate stop signs at grade crossings than at highway intersections.

11. There is an alternate crossing nearby, at Cook Road, which is safer. Approximately 1500 feet to the north of the Green Road crossing, Green Road intersects at right angles with Cook Road. The intersection is a four-way stop. Cook Road crosses the BNRR tracks at a signalized crossing before it intersects with old Highway 99. The signaling devices consist of overhead dual-mounted flashing lights and drop arm gates. Cook Road also is the interchange of I-5, which lies to the west of old Highway 99.

12. The nature of the area along Green Road between the Green Road crossing and Cook Road is primarily residential. People who live or do business on Green Road can use Cook Road. Green Road has light traffic.

13. Edward Leon Quicksall testified for the National Railroad Passenger Corporation in support of the petition to close the Green Road crossing. Mr. Quicksall is transportation manager in charge of field operations. He is responsible for anything to do with Amtrak trains in and out of Seattle. New Amtrak service is planned between Seattle and Vancouver, B.C. Amtrak plans to operate its equipment initially at 79 miles per hour.

14. Jeff Schultz testified for the Washington State Department of Transportation in support of the petition to close the Green Road crossing. He is a rail passenger analyst. He is involved in the passenger rail project going from Seattle to Vancouver, B.C. The Washington state legislature directed the department to reestablish service between the two cities several years ago as part of the high speed ground transportation legislation, chapter 47.79 RCW. RCW 47.79.030 states that the department shall work on improved grade crossing protection or grade crossing elimination as part of this project. The department's goal for service is 3 hours and 30 minutes, with an interim goal of 3 hours and 55 minutes. There was passenger service on the corridor prior to 1981, and it took 4 hours and 30 minutes. In order to perform the new goal, it will be necessary for Amtrak to operate over the Green Road crossing at 79 miles per hour. The legislature has set a future goal of 150 miles per hour. Grade crossing consolidation will be necessary to accomplish the faster speeds. Consolidation enhances safety by eliminating the potential for conflicts between automobiles and trains.

15. Ronald Ries testified for the Federal Railroad Administration in support of the petition to close the Green Road crossing. He is Crossing and Trespasser Regional Manager for the FRA, which regulates railroad safety in interstate commerce. His duties are to help coordinate grade crossing safety initiatives and trespasser prevention programs. It is the policy and goal of the FRA to see a 25 percent reduction in public highway rail grade crossings by the year 2000. In 1994, the FRA, together with the Federal Highway Administration, Federal Transit Administration, and National Highway Traffic Safety Administration published the Rail-Highway Crossing Safety Action Plan Support Proposals which address 55 specific proposals to reduce the number of collisions that are occurring at grade crossings and prevent trespassing. Criteria the FRA has determined to be useful in selecting appropriate crossings for closure or consolidation are: to consolidate crossings where there are more than four per mile in urban areas and more than one per mile in rural areas when an alternate route is available; to consolidate crossings which have fewer than 2000 vehicles per day and more than two trains per day and an alternate route is available; and to eliminate crossings where the road crosses the tracks at a skewed angle.

16. The following residents and business owners in the area of the crossing testified in opposition to the petition to close the Green Road crossing.

a. Douwe Dykstra resides on Gear Road, which is just south of the Green Road crossing. He operates a dairy farm there, and also has land on Green Road, north of the crossing. He travels with farm equipment back and forth between the two fields, using old Highway 99 and the Green Road crossing. If the Green Road crossing is closed, he will have to use the Cook Road crossing, which is a difficult road to cross with farm equipment.

b. Harry Smit is a trucker whose shop is on Green between the crossing and Cook Road. It is difficult and dangerous to turn trucks around at his shop, so he enters Green Road at one end and exits at the other. He is aware of two accidents at the crossing. Approaches at the crossing are not long enough for an 80-foot truck. He recommends that the Green Road crossing be kept open and improved with flashing lights and drop arm gates.

c. Robert Farrell, Sedro Woolley, owns business and residential property on Green Road which he leases. The area is part of the I-5 corridor. Traffic flow in the corridor is tremendous, and business has recognized this and is developing the area. The intersection of Cook Road and old 99 is congested already, and the Green Road-Cook Road intersection is becoming more difficult to use. Keeping the Green Road crossing open would relieve congestion on Cook Road. Closing it might choke off further growth in the area.

d. Randy Rockafellow has a farm equipment maintenance business at his residence on Green Road. The Green Road-Cook Road intersection has flooded in the past, while the Green Road crossing remained above water, providing safe access. There is a lot of traffic on Cook Road, making it difficult to enter from Green Road.

e. Kenneth Thomas resides on Green Road. Cars sometimes do not stop at the crossing when exiting old highway 99, and rip through his yard. Nonetheless, he favors keeping the crossing open because if it were closed, it would take additional time for emergency vehicles to reach his home. He also is concerned about access in the event trains block Cook Road.

17. John A. Pauls testified in opposition to the petition. Mr. Pauls is the chief of the Burlington Fire Department and the chief of the Skagit County Fire District 6. The fire department opposes closure of the Green Road crossing because emergency response to the southern end of Green Road would be increased. The additional response time at emergency speed would be two minutes. Two minutes makes a significant amount of difference, increasing response time to that area by one-third.

18. Janette Keiser testified for Skagit County. She is the public works director, Skagit County Public Works Department, and is the county engineer. The county's preliminary investigation identified concerns that it wanted addressed as part of the SEPA documentation. Although Green Road is a low-volume road, closure of the crossing might have an adverse impact on the businesses and property owners on Green Road. Several large agricultural enterprises rely on Green Road for ingress and egress. If closure would deny adequate ingress and egress, it would deny the policies of the county's Growth Management Act. The county was concerned that the impact on congestion, emergency response, and business viability be considered as part of the SEPA process. As stated in Finding No. 24, the county withdrew its opposition to closure subsequent to the hearing.

19. Gary Harder testified for the staff of the Washington Utilities and Transportation Commission. He has provided technical assistance to the rail section for the

last 21 years. The Commission's records do not show any accidents at the Green Road crossing in the last ten years.

20. At the conclusion of testimony, the administrative law judge continued the hearing on the petition to close the Green Street crossing pending completion by Commission Staff of a determination of whether there is an environmental impact of closing the crossing.

21. The Commission entered an order closing the Boe Street crossing on May 26, 1995.

22. On January 17, 1996, BNRR requested leave to withdraw its petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings. No party has responded in opposition to the request.

23. Commission Staff has made a determination of non-significance for closure of the Green Road crossing under the State Environmental Protection Act. The determination states the following required mitigation: a proposed cul-de-sac on Green Road will be constructed within the existing railroad/county right-of-way to county standards as approved by the county engineer; grading and filling will be performed as determined during the design stage; and the project will comply with the county's critical area Ordinance 14.36.

24. On October 27, 1996, BNRR and Skagit County entered into an agreement: to waive the hearing currently pending; to eliminate the Green Road crossing by the county abandoning the roadway right-of-way across the railroad right-of-way and constructing a cul-de-sac upon the railroad's right-of-way; for BNRR to pay the county \$6,190 for eliminating the crossing and closing the road; and for BNRR to grant the county an easement for the construction of the cul-de-sac. The county withdraws its objection to the closure of the Green Road crossing on condition as described in the agreement.

25. BNRR, Skagit County, and Commission Staff have waived entry of an initial order in this proceeding.

**CONCLUSIONS OF LAW**

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this petition.

2. Granting the unopposed request to withdraw the petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings is consistent with the public interest.

3. The grade crossing at Green Road and mile post 73.88 of the BNRR tracks in Skagit County is dangerous and is not required by the public convenience and safety. The petition to close the crossing should be granted subject to construction of a cul-de-sac on

Green Road at the point of closure, such as that described in the agreement between BNRR and Skagit County dated October 27, 1996.

4. The petition of BNRR to close the Green Road crossing should be granted, conditioned upon construction of the cul-de-sac referred to above.

5. An initial order may properly be omitted in this matter.

**ORDER**

THE COMMISSION ORDERS That the request of Burlington Northern Railroad Company for leave to withdraw the petition to close the Milltown Road, Spruce Street, West Johnson Road, and West Stackpole Road grade crossings is granted.

THE COMMISSION FURTHER ORDERS That the petition of Burlington Northern Railroad Company for closure of the Green Road crossing at mile post 73.88 in Skagit County is granted, conditioned upon construction of a cul-de-sac on Green Road at the point of closure, such as that described in the agreement between Burlington Northern Railroad Company and Skagit County dated October 27, 1996.

DATED at Olympia, Washington, and effective this <sup>13<sup>th</sup></sup> day of December 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
RICHARD HEMSTAD, Commissioner

  
WILLIAM R. GILLIS, Commissioner

**NOTICE TO PARTIES:**

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).