

BENCH REQUEST NO. 1:

Provide a copy of BNSF's application to the Army Corps of Engineers.

BNSF ANSWER:

BNSF respectfully makes an objection for the record to the extent this request seeks information outside of the scope of review. In evaluating petitions for closure of a grade crossing found to be dangerous and unsafe, the Commission is authorized to "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." *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 254 (1949). The WUTC has previously recognized that there is no apparent "jurisdictional basis for the presiding officer or the Commissioners themselves to act in an appellate authority of another agency's SEPA determinations." *BNSF Railway Company v. City of Mount Vernon*, Docket TR-070696, Order 03 Denying MNSF Motion to Limit Issues and Denying City of Mount Vernon Motions for Summary Judgment and In Limine ¶ 19 (Oct. 2, 2007). The WUTC's Staff counsel agreed: "Staff counsel is unaware of any legal authority that would allow Judge Pearson to issue a new or modified SEPA determination within the confines of the present adjudication. As a general rule, an agency acting on a proposal covered by an existing DNS must use that document 'unchanged.' WAC 197-11-600(3)." Commission Staff's Response to Bench Request No. 4 (Dec. 4, 2015). As is reflected in the record in this proceeding, the Department of Ecology has issued a Determination of Nonsignificance relating to BNSF's Intalco Yard project (the siding expansion at issue in this case). Without waiving this objection, BNSF responds as follows.

The submission requested is attached hereto (BR-1).

BENCH REQUEST NO. 2:

Provide a more detailed explanation of BNSF's train priority system.

BNSF ANSWER:

The attached documentation (BR-2) contains the method of train identification utilized across the BNSF system. The first letter in a symbol is a train identifier and helps to identify the type of cargo the train carries and other general classification used, such as: Amtrak/passenger service, LTL Intermodal, premium intermodal, guaranteed intermodal, high priority merchandise, and regular merchandise. Train section numbers are attached to the end of the three-letter destination portion of a train and also help to identify priority of a symbol.

While the train identifiers and section numbers are good resources to identify train priority across the network, there are many other factors taken into account on a daily basis, such as: customer need, trains ahead with same destination, spacing required at foreign interchange, facility/terminal ability to accept the train on arrival, train service plan connection at destination, and

many others daily planning considerations. BNSF strives each day to provide transportation services that consistently meet its customers' expectations. In order to do this, flexibility is required.

By building the siding across Valley View, BNSF seeks to achieve numerous efficiencies on the Cherry Point subdivision as well as neighboring subdivisions in order to expedite freight service for multiple customers. A few local opportunities include:

- Flexibility to clear manifest trains carrying local industry traffic into the siding on arrival, rather than breaking down in the two current tracks or on the main.
- Ability to build an outbound manifest train from customer releases on the siding track, rather than on the main track. This will allow other traffic to pass until the outbound departs.
- Opportunities for meet/pass events between empty and loaded unit trains on the Cherry Point subdivision. This eliminates customer delays occurring as a result of train meets further away on the Bellingham subdivision.
- Greater flexibility allowing trains destined for the Cherry Point subdivision to clear the Bellingham subdivision ahead of Amtrak in order to meet other Cherry Point trains, rather than having to hold back further away on an alternate siding on the Bellingham subdivision.
- Trains traversing Seattle enroute to the Cherry Point subdivision can advance to the Valley View siding in order to wait for customer facility entry, rather than holding in the Seattle area where these trains might cause congestion for Amtrak, Sounders, and higher priority intermodal traffic.

BENCH REQUEST NO. 3:

Were trains delayed or backlogged in Whatcom County in 2014, and if so, what commodities were those backlogged trains carrying?

BNSF ANSWER:

BNSF respectfully makes an objection for the record to the extent this request seeks information outside of the scope of review in this case. In evaluating petitions for closure of a grade crossing found to be dangerous and unsafe, the Commission is authorized to "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." *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 254 (1949). Without waiving this objection, BNSF responds as follows.

In 2014, BNSF experienced a backlog of trains in multiple locations across the system. The Pacific Northwest likewise experienced backlogs of multiple trains carrying multiple commodities. In order to accommodate increasing volumes of traffic, BNSF has begun constructing additional siding tracks to allow for additional meet/pass opportunities which decrease delay times and drive efficiencies on the network.

Whatcom County was affected in multiple ways during this backlog of traffic. For example, unit trains destined for the Cherry Point subdivision were delayed due to the absence of meet/pass tracks on the subdivision. This resulted in backups on the Bellingham subdivision as trains waited to meet trains exiting Cherry Point. It also caused longer meet/pass locations for additional trains running through Whatcom County.

With the congestion on the Bellingham subdivision from through traffic as well as Cherry Point traffic described above, BNSF saw longer holding times for trains in sidings (including Whatcom county sidings) as longer meet/pass locations were necessary to accommodate trains occupying sidings. This impact was seen on manifest trains carrying multiple commodities as well as a variety of single commodity unit trains.

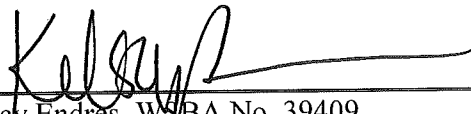
From a non-unit train, Cherry Point-specific customer perspective, BNSF experienced delays with manifest train service between Everett and Custer. This was due to the delays described on the Bellingham subdivision as well as long waits for unit trains onto and off of the Cherry Point subdivision. Again, this was due to the absence of a location on the Cherry Point subdivision that allows for meet/pass opportunities without breaking a train down into multiple tracks.

The congestion noted above that hindered BNSF freight train movement also had a negative impact on our high priority Amtrak trains traversing the Bellingham subdivision, creating delays to passengers reaching their destination.

BNSF is a network of rail, so delays in one location have a "domino effect" on neighboring subdivisions and along the system. Everything is interconnected and impacts the fluidity of the rail system. The delays described above did not only impact Whatcom County, the Cherry Point subdivision, and the Bellingham subdivision, but also extend to the Seattle subdivision, the New Westminster subdivision, and to points further along the railroad system.

DATED this 11th day of December, 2015.

MONTGOMERY SCARP, PLLC



Kelsey Endres, WSBA No. 39409

1218 Third Avenue, Suite 2500

Seattle, WA 98101

Kelsey@montgomeryscarp.com

Attorney for BNSF RAILWAY COMPANY

CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp PLLC, whose address is 1218 Third Avenue, Suite 2500, Seattle, Washington, 98101.

I hereby certify that the original and 1 copy of BNSF's RESPONSES TO BENCH REQUESTS NOS. 1-3 have been sent VIA FED EX to Steven King at WUTC and a PDF version filed with the UTC. I also certify that true and complete copies have been sent to the following interested parties via electronic mail:


Daniel L. Gibson
Chief Civil Deputy
Prosecuting Attorney
Whatcom County
311 Grand Ave., Suite 201
Bellingham, WA 98225

Joseph P. Rutan
County Engineer/Interim PW Director
Whatcom County Public Works Dept.
322 N. Commercial St., Suite 210
Bellingham, WA 98225

Julian Beattie
Assistant Attorney General
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

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

DATED this 11th day of December, 2015, at Seattle, Washington.


Pamela Ruggles, Paralegal