

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

| | | |
|-----------------------|---|-------------------------|
| BNSF RAILWAY COMPANY, |) | DOCKET TR-090121 |
| |) | |
| Petitioner, |) | |
| |) | ORDER 03 |
| v. |) | |
| |) | |
| SNOHOMISH COUNTY, |) | INITIAL ORDER GRANTING |
| |) | PETITION TO CLOSE LOGEN |
| Respondent. |) | ROAD GRADE CROSSING |
| |) | SUBJECT TO CONDITIONS |
| |) | |

***Synopsis:** This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order recommends granting a petition by Burlington Northern Santa Fe Railway Company to close the Logen Road at-grade railroad crossing in Snohomish County, subject to conditions. One condition requires road and safety upgrades at both alternate crossings: the 300th Street NW at-grade railroad crossing, located approximately one-half mile to the north of the existing Logen Road crossing, and the 271st Street NW at-grade railroad crossing located approximately one mile to the south, in downtown Stanwood. A second condition requires BNSF to fund necessary road alterations and improvements associated with closure of the Logen Road crossing.*

I. INTRODUCTION

- 1 **NATURE OF PROCEEDING.** Docket TR-090121 involves a petition by Burlington Northern Santa Fe Railway Company (BNSF or Burlington Northern) to close a railroad-highway grade crossing located at Logen Road, nearby to Stanwood, Snohomish County, Washington (US DOT #084713P) in accordance with Revised Code of Washington (RCW) 81.53.060.

- 2 **Appearances.** Bradley Scarp and Kelsey Endres, Montgomery Scarp MacDougall, PLLC, Seattle, Washington, represent Burlington Northern. Justin W. Kasting and Matthew A. Otten, Civil Division Prosecuting Attorneys, Everett, Washington,

represent Snohomish County (County). Lynn F. Logen, *pro se*, Bellevue, Washington, represents himself and the interests of his family (Logen). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).¹

- 3 **Procedural History.** BNSF initially filed its current petition to close the Logen Road at-grade railroad crossing in Snohomish County on January 22, 2009, and the Commission set the matter for hearing.² At a prehearing conference held on February 13, 2009, Administrative Law Judge (ALJ or Judge) Adam E. Torem ruled on petitions for intervention, confirmed the scope of issues to be presented at hearing, and set a procedural schedule for the docket.³
- 4 The Commission conducted an evidentiary hearing before Judge Torem upon due and proper notice to all interested parties on March 30, 2009, in Stanwood, Washington.⁴ The parties submitted 28 exhibits, 21 of which were admitted to the record during the course of the evidentiary hearing.⁵

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while an administrative law judge (ALJ) and/or the Commissioners make the decision. To assure fairness, the Commissioners, the presiding ALJ, and the Commissioners' accounting and policy advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

² BNSF previously petitioned to close this same crossing in September 1996. However, citing changed circumstances in May 2000, BNSF sought to withdraw its petition. The Commission granted the railway's request and dismissed the petition in June 2000. *See Docket TR-961212.*

³ *See Order 01 (February 19, 2009); see also Transcript (TR.) Vol. I.* Although Respondent Snohomish County filed a Waiver of Hearing on January 27, 2009 (*see Exh. No. 2*), RCW 81.53.060 required that the Commission hold a hearing on the petition because of objections timely received during the statutory public notice period.

⁴ On March 18, 2009, Mr. Logen sought a continuance of the hearing in order to allow additional time for hearing preparation and to explore the possibility of a settlement. Following a telephonic conference on March 20, 2009, where all parties were heard, Judge Torem denied the continuance request but required BNSF to expedite its discovery responses. *See Order 02 (March 20, 2009) and TR. Vol. II.*

⁵ In compliance with Judge Torem's requests at hearing, two additional exhibits were submitted after the close of the evidentiary hearing. On April 2, 2009, BNSF submitted copies of two separate local mutual aid agreements between local first responders; these were marked as

- 5 The Commission held a public comment hearing on the evening of March 30, 2009, immediately after the close of the evidentiary hearing. Judge Torem conducted the public hearing in Stanwood. In addition, the Commission accepted written and electronic public comment on the matter from the date of BNSF's initial filing, January 22, 2009, through April 3, 2009.⁶ In sum, the Commission received and considered comments from several dozen persons, the majority opposing closure of the Logen Road crossing unless failure to do so would prevent the City of Stanwood from obtaining its proposed new rail station.
- 6 On May 8, 2009, the parties submitted their post-hearing briefs. On May 12, 2009, BNSF filed a Request to File Supplemental Brief offering additional legal analysis on an issue raised in Mr. Logen's post-hearing brief. On May 13, 2009, Mr. Logen filed his Opposition to BNSF's Request. On May 14, 2009, the Commission issued a notice declining supplemental briefing, effectively closing the evidentiary record in this matter regarding public safety and related closure issues as of that date.
- 7 *Environmental Review.* At hearing, the parties agreed that the Commission should not fully close the evidentiary record in this docket until completion of the environmental review process required under the State Environmental Policy Act (SEPA).⁷ On July 21, 2009, the Washington State Department of Transportation (WSDOT) issued its final SEPA Determination of Non-Significance (DNS).⁸ On

Exhibit 29 and admitted to the record. On August 26, 2009, BNSF submitted the final environmental review documents regarding the project (*see* paragraph 7, *supra*); these were marked as Exhibit 30 and admitted to the record. All parties were afforded an opportunity to comment on the final environmental review documents (*see* paragraph 8, *supra*).

⁶ The Commission accepted and considered several other comments received in October and November 2008, prior to the filing of BNSF's petition. It appears that these comments were submitted in response to a community information meeting conducted on October 30, 2008, in Stanwood, by BNSF, the Washington State Department of Transportation (WSDOT), the City of Stanwood, Snohomish County, and staff from the Commission's public involvement division.

⁷ TR. Vol. IV, 302:22 - 305:16 (March 30, 2009); *see also* TR. Vol. III, 76:6 - 80:21 (March 24, 2009). In July 2009, BNSF confirmed that WSDOT would assume the SEPA lead agency role and submit the required documentation to the Department of Ecology on or about July 20, 2009. *See* BNSF Response to Bench Request.

⁸ *See* Exh. No. 30.

August 4, 2009, the 14 day comment period for the DNS expired. On August 26, 2009, WSDOT prepared and later published a Notice of Action identifying September 29, 2009, as the deadline to challenge the DNS. No challenge was filed.

- 8 On August 31, 2009, Judge Torem allowed the parties an opportunity to file comments on the relevance of the SEPA determination to this case. On September 11, 2009, Commission Staff and Mr. Logen both filed correspondence commenting on the DNS. On September 18, 2009, BNSF filed responsive comments on the SEPA process and resulting DNS.
- 9 On September 21, 2009, Judge Torem closed the evidentiary record in this docket.
- 10 **Initial Order:** The presiding Administrative Law Judge proposes that the Commission grant Burlington Northern's petition to close the Logen Road at-grade railroad crossing in Snohomish County to public use, but only subject to the conditions that (1a) BNSF upgrade the 300th Street NW at-grade crossing with road safety measures identified by Snohomish County and designed to address expected increases in traffic; (1b) BNSF install updated active warning devices and signage at the 271st Street NW at-grade crossing and also provide proportionate funding for pedestrian safety improvements (i.e., sidewalks) as directed by a diagnostic team; and (2) BNSF provide funding for necessary road alterations and improvements associated with the closure of the Logen Road crossing (*e.g.*, barrier on the west and cul-de-sac on the east). The presiding Administrative Law Judge does not condition this order closing the crossing on BNSF entering into a private crossing agreement with Lynn Logen or any other party or interested person.

II. BACKGROUND

- 11 Snohomish County is located in the northwest portion of Washington State, immediately north of King County. The City of Everett, with a population of over 100,000, is its largest municipality and serves as the county seat. The City of Stanwood, located about 25 miles northwest of Everett, has a population of approximately 5,000.

- 12 Burlington Northern runs a main line track, as well as various side tracks, north and south through Snohomish County and the City of Stanwood. There are several roads running east and west that cross the BNSF line as it runs northbound from Stanwood and into the county's unincorporated area. As pertinent to this matter, these roadways include 271st Street NW, Logen Road, and 300th Street NW (also known as Dettling Road).⁹
- 13 WSDOT's Amtrak division is constructing a new train station in Stanwood. As part of this project to expand existing passenger train service in this corridor, WSDOT is extending the existing BNSF siding above Stanwood from its present length of 6,800 feet to over 10,000 feet, enabling longer freight trains to meet and pass along BNSF's main line.¹⁰ The lengthened siding will add a second set of tracks to the existing grade crossing at Logen Road as well as the two grade crossings located immediately to the north.¹¹ Therefore, citing the interests of safety and improved operations for both freight and passenger trains, BNSF seeks permission to close only the Logen Road grade crossing.¹²
- 14 The Logen Road grade crossing is located along a curved portion of track in a rural area north of Stanwood characterized by trees, agricultural use and some rural homes.¹³ Quite nearby to the west (where the roadway is also known as 292nd Street NW), Logen Road connects with the Old Pacific Highway; to the southeast, Logen

⁹ See Exh. Nos. 1, 16, and 17 (the latter two exhibits consist of photographs that provide a generalized overview of the relevant area and individual depictions of each grade crossing). Also peripherally relevant is the at-grade crossing near the intersection of 102nd Street and Pacific Highway, located another half-mile north of the 300th Street NW at-grade crossing.

¹⁰ Wagner, TR. Vol. IV, 10:25 - 15:15; *see also* Exh. No. 4 and Exh. No. 5.

¹¹ *Id.*, at 16:5-7 (second set of tracks at Logen Road) and Hunter, TR. 244:19 – 245:8 (second set of tracks at 300th Street NW and 102nd Street).

¹² Exh. No. 1, Petition for the Closure of a Highway-Rail Grade Crossing (January 22, 2009), Section 5, ¶ 1.

¹³ Norris, TR. Vol. IV, 79:25 - 80:14 and 88:18 - 89:5.

Road connects with Pioneer Highway.¹⁴ Old Pacific Highway generally runs parallel alongside the portion of the BNSF main line north of Logen Road until it crosses the tracks (becoming 102nd Street) and intersects with Pioneer Highway. Pioneer Highway generally runs parallel to the BNSF main line on the east side of the tracks.¹⁵

- 15 The active safety features currently installed at the Logen Road grade crossing include flashing light signals, automatic gates, and warning bells; passive safety features include a yellow highway-rail grade crossing advance warning sign, a white “crossbuck” highway-rail grade crossing sign on each side of the tracks, as well as painted pavement markers in advance of the intersection.¹⁶
- 16 The closest alternate crossing to Logen Road is located at 300th Street NW, also known as Dettling Road, approximately one-half mile to the north.¹⁷ The 300th Street NW grade crossing is currently a single-track crossing in a rural area surrounded by open farm fields. In its present configuration, its active safety features consist of multiple flashing light signals (including mast arms extending over and above the roadway), automatic gates, and warning bells; its passive safety features include a yellow highway-rail grade crossing advance warning sign, a white “crossbuck” highway-rail grade crossing sign on each side of the tracks, as well as painted pavement markers in advance of the intersection¹⁸ In BNSF’s request to close the

¹⁴ Pioneer Highway was previously also known as State Highway 530 (Hwy 530); the traffic study relied upon in this case (Exh. No. 7) refers to both names. *See* Bloodgood, TR. 118:7-20.

¹⁵ Exh. No. 7, *Logen Road Railway Crossing Closure – Traffic Impact Analysis*, at Figure 1; *see also* Exh. No. 16 and Exh. Nos. 17-18 (the T-intersection of Logen Road and Old Pacific Highway is visible in the background of Exhibit No. 18).

¹⁶ Exh. No. 17, pages 1-2; *see also* Hunter, TR Vol. IV, at 247:12-14.

¹⁷ Norris, TR. Vol. IV, 76:20-24; *see also* Exh. No. 7, at page 3 and at Figure 1 (no scale on map). At hearing, the County Engineer noted another acceptable alternate crossing at 102nd Street and Pioneer Highway, located less than another half-mile to the north of Dettling Road. *See* Bloodgood, TR. Vol. IV, 136:23 – 137:4.

¹⁸ Exh. No. 17, pages 5-6.

Logen Road crossing, it pledged to work with Snohomish County to upgrade the 300th Street NW crossing to address any resulting increase in traffic.¹⁹

- 17 The closest alternate crossing south of Logen Road is located at 271st Street NW, approximately 1.5 miles to the south. The 271st Street grade crossing is within the City of Stanwood, has three sets of tracks, and experiences much greater traffic volume than either Logen Road or 300th Street NW.²⁰ Active safety features at the 271st Street NW crossing include flashing light signals, automatic gates, and warning bells; passive safety features include a yellow highway-rail grade crossing advance warning sign, a white “crossbuck” highway-rail grade crossing sign on each side of the tracks also indicating “3 tracks,” as well as painted pavement markers in advance of the intersection.²¹

III. EVIDENCE

A. Proponent – Burlington Northern.

- 18 BNSF presented testimony and exhibits that demonstrated the public safety concerns motivating the railway to seek closure of the Logen Road grade crossing.
- 19 BNSF witness Rick Wagner explained the primary purpose of the Stanwood Siding Extension Project is to allow freight trains of up to approximately 8,500 feet (in excess of 1.5 miles) in length to pull off the BNSF main line and park in order to meet and pass other trains.²² BNSF currently has between 8 and 10 freight trains that transit the Stanwood area each day, but historically there have been as many as 15 per

¹⁹ Exh. No. 1 (Petition), Section 5, ¶ 1. Although not expressed in the Petition, BNSF also apparently plans to upgrade the crossing at 102nd Street to accommodate the second set of tracks from the siding; it is unclear in the record if BNSF and/or Snohomish County plan any road improvements at the 102nd Street crossing. *See* Wagner, TR. Vol. IV, 29:18-22.

²⁰ *See* Exh. No. 7, at pages 4-5 and at Figure 2.

²¹ Exh. No. 17, pages 3-4.

²² Wagner, TR. Vol. IV, 11:1-14.

day.²³ These freight trains would typically pause on the siding for short periods of time to meet and pass a passenger train, but in some circumstances could remain parked, blocking the Logen Road crossing, for up to several hours to meet and pass another freight or passenger train.²⁴

- 20 BNSF witness Kevin Jeffers, WSDOT's Project Manager for the Stanwood Station, noted that Amtrak passenger trains transit through Stanwood 4 times each day.²⁵ He then explained WSDOT's plans to complete a new train station in Stanwood and implement a passenger stop at the new station. Mr. Jeffers testified that freight trains parked on the extended siding between the new station and the Logen Road crossing would either entirely block the crossing or create a visibility hazard for drivers at the Logen Road crossing, preventing a clear view of trains proceeding on the main line and perhaps tempting drivers to go around the lowered gates and across both sets of tracks.²⁶ BNSF witness David Agee, the railway's Manager of Field Safety, echoed these concerns.²⁷
- 21 BNSF witness Gary Norris, a Senior Engineer for Garry Struthers Associates, Inc., testified about the traffic impact analysis (traffic study) he completed in March 2009 to evaluate the potential traffic impacts of closing the Logen Road at-grade crossing.²⁸ The study was based on traffic data collected in July 2008, October 2008, and early March 2009.²⁹

²³ *Id.*, at 11:18 – 12:1.

²⁴ *Id.*, at 16:5-24 and 41:8-14.

²⁵ Jeffers, TR. Vol. IV, 49:22 – 50:19 and 52:11 – 53:8.

²⁶ *Id.*, at 50:20 – 52:5 and 53:9 – 54:7.

²⁷ Agee, TR. Vol. IV, 147:5 – 148:6 and 151:23 – 153:10; *see* Exh. No. 12, pages 6-7; *see also* Exh. No. 13, at pages 18-19.

²⁸ Norris, TR. Vol. IV, 72:1 – 73:1.

²⁹ *See* Exh. No. 7, at 4 and 5.

- 22 The traffic study found daily volume to be 142 vehicles on Logen Road,³⁰ with afternoon peak hour volume of approximately 14 vehicles.³¹ If the Logen Road crossing is closed, the study predicts that the majority of vehicles would be diverted to Pacific Highway to cross the tracks at 271st Street NW, causing only an insignificant increase in traffic at the alternate intersection in downtown Stanwood, where there are nearly 8,000 vehicles per day.³² Some vehicles might divert north to cross the tracks at 300th Street NW, where the daily traffic counts show approximately 800 vehicles per day.³³ Mr. Norris recommended closing the Logen Road crossing.³⁴
- 23 The traffic study did note that closure of Logen Road would limit emergency response to the Logen Road area to only the easterly access points off Pioneer Highway. Due to roadway geometrics potentially hindering access for larger trucks coming from the north, Mr. Norris predicted that the City of Stanwood / Camano Island Fire Department would become the *de facto* primary responders to this area. Given their closer geographic proximity and shorter response times (as compared to Snohomish County Fire District No. 14), the study concludes there will not be any significant adverse impact on emergency response.³⁵
- 24 BNSF witness James Bloodgood, Traffic Engineer for Snohomish County, is familiar with the Logen Road crossing, reviewed Mr. Norris' traffic study, and heard Mr. Norris testify at hearing. Mr. Bloodgood concurred with Mr. Norris' conclusions that closing the Logen Road crossing and diverting its traffic to either or both of the alternate crossings would not have any significant impacts on traffic congestion or

³⁰ *Id.*, at 4 (traffic data provided by Snohomish County, obtained Thursday, July 10, 2008). In its Petition, BNSF had estimated only 75 vehicles per day. *See* Exh. No. 1, at 3 (Section 4, ¶ 2).

³¹ *Id.* (traffic data collected by Norris on Tuesday, March 3, 2009); *see also* Norris, TR. Vol. IV, 74:3 – 75:4.

³² *Id.*, at 7; *see also* Norris, TR. Vol. IV, 77:18 – 79:24.

³³ *Id.*, at 5.

³⁴ *Id.*, at 8.

³⁵ *Id.*, at 6; *see also* Norris, TR. Vol. IV, 83:1 – 87:13, 106:23 – 109:16, and 110:17 – 111:7; *see also* Exhibit 29 (mutual aid agreements).

emergency response.³⁶ Mr. Bloodgood stated the County's position supporting closure of the Logen Road crossing.³⁷

25 BNSF witness David Agee, Manager of Field Safety and Operation Lifesaver trainer, testified regarding the routine failure of the general public to respect grade crossing warning signals and the common occurrence of attempts to "beat the train."³⁸

Mr. Agee also testified that grade crossings intersecting both a main line and siding track create particular safety hazards, including the potential that people, confused by trains stopped on a siding but not wholly blocking a crossing, might attempt to drive around the lowered gates only to be hit by an oncoming train on the main line.³⁹

26 BNSF witness Danniell MacDonald, Manager of Engineering, testified that when trains block the Logen Road crossing for extended periods, the active warning devices (flashing lights, bells, and gates) would remain active and effectively close the crossing for the full length of time needed for the trains to meet and pass.⁴⁰

Mr. MacDonald also explained his concerns with the relatively short sight distances associated with the curve in the railroad tracks at the Logen Road crossing (about 400 feet to the south and 800 feet to the north), making it nearly impossible to construct a safe crossing at that location when obstructed sightlines caused by freight trains parked on the siding are considered.⁴¹ Mr. MacDonald also expressed his opinion that 4-quadrant gates could not be installed safely or appropriately at Logen Road, particularly due to the narrowness of the roadway.⁴²

³⁶ Bloodgood, TR. Vol. IV, 118:25 – 119:21.

³⁷ *Id.*, at 120:5-25 and 121:4-7; *see also* Exh. No. 9.

³⁸ Agee, TR. Vol. IV, 146:10 – 148:6 and 160:13 – 164:6

³⁹ *Id.*, at 167:15 – 170:23 and 174:14 – 175:1.

⁴⁰ MacDonald, TR. Vol. IV, 182:3 – 186:8.

⁴¹ *Id.*, at 182:18 – 183:6, 188:1-24, 192:5-22, and 196:15 – 198:19.

⁴² *Id.*, at 186:9 – 187:3, 201:12 – 204:24, and 206:3 – 207:14.

B. Opponent – Lynn Logen.

27 Mr. Logen testified on his own behalf and explained that his family owns farm property on both sides of the railroad tracks. Members and employees of the Logen family use their namesake crossing to move farm equipment (tractors, etc.) between their parcels of land. If the Logen Road crossing were eliminated, Mr. Logen claims that he would occasionally be forced to drive slow-moving farm equipment on Old Pacific Highway and Pioneer Highway, both of which have posted speed limits of 50 miles per hour. Further, if he made use of the Dettling Road crossing, Mr. Logen expressed concerns about the appreciable downgrade leading to the crossing from the east and the ability of a tractor with a heavy load to stop its momentum before reaching the tracks.⁴³

28 In Mr. Logen's opinion, closing the Logen Road crossing would create a new hazard for himself as well as inconvenience the traveling public by forcing slow farm vehicles onto a major thoroughfare.⁴⁴ He conceded, however, that his family had not farmed the parcel that would require transporting the tractor for at least 15 years and that he was not aware of any accidents involving tractors on the local highways.⁴⁵

29 Mr. Logen suggested alternatives to closing, including grade separation and the installation of 4-quadrant gates accompanied by traffic-channeling medians.⁴⁶

C. Commission Staff.

30 Commission Staff presented testimony and exhibits supporting the railway's petition to close the Logen Road at-grade crossing due to the siding extension forcing drivers to cross a second set of tracks.

⁴³ Logen, TR. Vol. IV, 267:24 – 273:20.

⁴⁴ *Id.*, at 274:2-23.

⁴⁵ *Id.*, at 288:19 – 289:3 and 292:20 – 293:8.

⁴⁶ *Id.*, at 275:14 – 277:13 and 278:15-23.

- 31 Kathy Hunter, the Commission's Deputy Assistant Director of Transportation Safety, testified generally on Commission policies regarding rail safety. In her opinion, adding a second set of tracks to the Logen Road crossing creates an exceptionally hazardous condition; considering the limited sight distances associated with the track's curvature and parked freight trains using the siding, merits closure of the crossing upon construction of the siding extension.⁴⁷
- 32 Further, Ms. Hunter testified that diverting traffic from the Logen Road crossing to either the Dettling Road crossing or the 271st Street NW crossing would not result in a higher risk of accidents due to increased traffic volumes, particularly after BNSF upgraded the active warning devices at the 271st Street NW crossing in Stanwood.⁴⁸ In addition, Ms. Hunter related her discussion with local fire officials who generally worried about losing an optional route for emergency response but raised no specific concerns with regard to the elimination of the Logen Road crossing.⁴⁹
- 33 Finally, Ms. Hunter discussed Mr. Logen's desire to avoid driving his tractor on Old Pacific Highway and Pioneer Highway and weighed the safety risks of occasional slow-moving farm equipment on a highway against the risk of vehicle collisions with high-speed passenger trains at the Logen Road crossing. In her opinion, the risks of leaving the dual-track crossing open, particularly for slow-moving farm equipment, outweigh the potential hazards of operating the tractor on local highways.⁵⁰
- 34 Due to the exceptionally dangerous conditions presented after extending the siding to add a second set of tracks at the crossing, Commission Staff recommended closure of the Logen Road crossing. Ms. Hunter found the alternate routes reasonable and also concluded that neither public convenience nor necessity required the crossing to remain open.⁵¹

⁴⁷ Hunter, TR. Vol. IV, 232:7 – 233:11 and 244:19 – 245:7.

⁴⁸ *Id.*, at 234:3 – 236:13 and 243:3 – 244:17.

⁴⁹ *Id.*, at 236:14 – 237:10.

⁵⁰ *Id.*, at 239:9 – 241:4 and 245:9 – 247:8.

⁵¹ *Id.*, at 241:14-23.

D. Snohomish County

35 Snohomish County did not directly present testimony or evidence at the hearing.⁵² However, through BNSF's presentation of witness James Bloodgood, the County reiterated its position supporting BNSF's petition to close the Logen Road grade crossing.⁵³

E. Public Comment

36 Nine members of the public spoke about the proposed closure of the Logen Road at-grade crossing at the public comment hearings held on Monday evening, March 30, 2009.⁵⁴ Several supported the new train station in Stanwood, but nobody wanted to see the Logen Road grade crossing closed unless absolutely necessary. Opponents to the closing expressed concerns ranging from being forced to navigate the alternative route of 300th Street NW⁵⁵ to encountering greater difficulty accessing downtown Stanwood.⁵⁶

37 In addition, the Commission received several dozen written comment letters from individuals opposed to the closure of the Logen Road crossing.⁵⁷ In one of those letters, Fire Chief Dale Fulfs of the North County Regional Fire Authority expressed

⁵² James Bloodgood, the County's Traffic Engineer, testified at hearing. However, BNSF called Mr. Bloodgood as a witness, *not* Snohomish County.

⁵³ Bloodgood, TR. Vol. IV, 120:5-25; *see also* Exh. No. 2, Waiver of Hearing (26 Jan 09) and Exh. No. 9. *See also* Snohomish County's Post-Hearing Filing.

⁵⁴ *See* TR. Vol. V., 394:1 – 424:20.

⁵⁵ *See, e.g.,* Barbara Dadd Shaffer, TR. Vol. V., 409:5 – 410:25 (characterizing the approach to the railroad crossing as a "windy steep stretch") and Albert Burkland, TR. Vol. V., 419:19 – 421:12 (calling it "kind of a nasty road to take, it's got a big bend in it").

⁵⁶ *See, e.g.,* Tim Gray, TR. Vol. V., 411:5 – 413:15; Mary Lanier, TR. Vol. V., 413:20 – 417:2; and Marilyn Templeton, TR. Vol. V., 417:10 – 419:10.

⁵⁷ *See* Ex. No. 31 (combined public comment exhibit containing all written and electronic submissions in this docket).

general concerns about the possibility of increased response times if the option of using Logen Road were eliminated.

IV. DISCUSSION AND DECISION

A. Exhaustive Evaluation of Grade Separation Not Required for Additional Tracks where Demonstrably Impracticable

38 Mr. Logen argues for the first time on brief that BNSF's plan to extend an existing siding across Logen Road requires the railway to seek a Commission determination on the practicability of separation of grades.⁵⁸ In short, Mr. Logen contends that BNSF's petition to close the crossing must be denied because it is incomplete by failing to address the possibility that the siding extension project could undertake the separation of grades as required by RCW 81.53.020.⁵⁹ However, reading the provisions of RCW 81.53 together as a whole, it is clear that the Commission has jurisdiction to adjudicate BNSF's petition as presented.

39 As Mr. Logen points out, the Legislature has decreed that "whenever practicable," railway-highway crossings must be accomplished by means of grade separations, such as overpasses or underpasses.⁶⁰ The underlying principle for this law is the accepted theory that all grade crossings are inherently dangerous.⁶¹ The statute instructs that when determining whether a separation of grades is practicable, the Commission must consider the following factors:

⁵⁸ Final Brief of Lynn Logen, ¶¶ 2-8. Mr. Logen's argument in this regard ignores the reality of the existing at-grade crossing at Logen Road which he seeks to preserve.

⁵⁹ *Id.*, at ¶ 4.

⁶⁰ RCW 81.53.020 (emphasis added).

⁶¹ See *Reines v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104, 104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949).

the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.⁶²

Mr. Logen argues that because the record lacks all the listed information, BNSF's Petition must be rejected. This selective reading of the statute is inappropriate.

40 The first sentence of RCW 81.53.020 states grade separation as a requirement only "when practicable." Further, the majority of the information listed in the statute is contained within several exhibits admitted at hearing.⁶³ Notably, Mr. Logen himself concedes that the "present use of Logen Road crossing is insufficient to warrant the expense of grade separation."⁶⁴ The statute does not require the wasteful gathering of evidence for a course of action that is clearly implausible. Thus, the record assembled in this docket is indeed sufficient to determine that grade separation at Logen Road is impracticable.

41 Mr. Logen identifies no section within RCW 81.53 that prohibits BNSF from filing a single petition for altering or closing an existing crossing when public safety so requires, even if the reason is the proposed addition of a second set of tracks. Under RCW 81.53.060, the Commission may consider various options in evaluating and acting on the petition, including outright denial or the imposition of further modifications to the crossing (including grade separation) to ensure public safety upon the expansion of the crossing to include the siding tracks. In this case, the record demonstrates that grade separation is impracticable.

⁶² RCW 81.53.020.

⁶³ See Exh. No. 7 (traffic study); Exh. No. 16 (aerial photograph of Logen Road area); Exh. No. 17 (photographs of Logen Road and other local grade crossings); and Exhibit B (driving directions for ALJ's area tour).

⁶⁴ Logen, TR. Vol. IV, 275:20-22.

B. Closure

- 42 As referenced above, RCW 81.53.060 allows for railroad companies to file written petitions with the Commission seeking the “closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing” when the petitioner alleges “that the public safety requires” such action. BNSF filed its petition in this matter in accordance with this statute and therefore carries the burden of proving, by a preponderance of the evidence, that public safety requires closure of the Logen Road grade crossing.⁶⁵
- 43 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.”⁶⁶ Further, the Commission has previously explained that the absence of evidence of accidents at a given crossing neither demonstrates that it is more safe or less dangerous than other similar crossings nor provides any predictive value as to future accidents.⁶⁷
- 44 The Legislature has long recognized the need for clear fields of vision around grade crossings and prohibited structures or the spotting of trains, railcars, or railway equipment within one hundred feet of a grade crossing.⁶⁸ Here, the Logen Road crossing is as inherently dangerous as any other grade crossing and, due to its location along a curve in the tracks, perhaps even more hazardous. Adding the siding tracks will magnify the potential dangers by obstructing motorists’ vision as they approach the crossing and also cause confusion on the regular occasions where a train blocks the crossing for appreciable lengths of time.

⁶⁵ Order 01, ¶ 5.

⁶⁶ *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 254 (1949). See also Order 02, ¶ 6 and Order 03, ¶ 8.

⁶⁷ *Burlington Northern and Santa Fe Railway Company v. City of Sprague*, Docket TR-010684, Fourth Supplemental Order (January 10, 2003), ¶¶ 40-41.

⁶⁸ See RCW 81.53.080.

- 45 The addition of another set of tracks will pose the additional problem that a train waiting on the siding track nearest a driver may obstruct the view of oncoming train traffic on the main line.⁶⁹ Several BNSF witnesses expressed concerns that persons waiting at a gated crossing not fully blocked by an idle freight train might only observe the train stopped on the siding and become impatient with the apparently unnecessary delay. If they imprudently drive around the gates, they could be struck by an oncoming high-speed passenger train or another freight train. Although this reduced visibility situation might not be presented to motorists stopped on the main line side of the crossing, the potential for impatient drivers skirting safety features will be increased at a Logen Road crossing that includes multiple tracks.
- 46 Further, the BNSF witnesses explained that rail operations could regularly require freight trains to block the Logen Road crossing, occasionally for lengthy periods of time. This situation creates uncertainty whenever a train rolls into the crossing and stops, as there is no method for notifying the motoring public of how long the train will block the crossing.⁷⁰ Even if BNSF obtained an exemption from the Commission's "ten minute rule" regarding blockage of public grade crossings, the potential for public confusion and frustration would remain.⁷¹
- 47 The evidence presented in this matter demonstrates that Logen Road will become a more dangerous crossing after completion of the siding project. In the past, based on concerns regarding reduced visibility and multiple tracks, the Commission has

⁶⁹ See *BNSF v. City of Sprague*, Docket TR-010684, Fourth Supplemental Order, ¶ 53, citing to *BNSF v. Skagit County*, Docket TR-940282 (December 13, 1996); *BNSF v. City of Ferndale*, Docket TR-940330 (March 31, 1995); and *Spokane County v. Burlington Northern, Inc.*, Cause TR-1148 (September 1985).

⁷⁰ A creative member of the public suggested placing electronic message board signage at the intersection of Logen Road and Old Pacific Highway to display the projected delay times. See Barbara Dadd Schaffer, TR. Vol. V, 410:12-25. However, the record contains no further details on the technical feasibility of such a display or what party might provide the data for display.

⁷¹ WAC 480-62-140 provides a method for BNSF to seek an exemption to the WAC 480-62-220 rule prohibiting blockage of a grade crossing for more than 10 minutes, if reasonably possible. Although the language of WAC 480-62-220 arguably allows for crossings to be blocked for longer periods when "splitting" the train is not reasonably possible, the railroad could be assured that it would not be penalized for violating a Commission rule by obtaining such an exemption. See also Post-Hearing Brief on Behalf of Commission Staff, ¶¶ 8-10 and 20-21.

characterized such crossings as “especially hazardous,”⁷² “particularly dangerous,”⁷³ or “exceptionally hazardous.”⁷⁴ There is no evidence in the record to support any other conclusion in this matter: after completion of the siding project, Logen Road will become a much more dangerous at-grade crossing.

48 Logen Road is already an at-grade crossing and, until Mr. Logen’s post-hearing brief, no party suggested it practicable to retain the crossing by its conversion to a below- or above-grade crossing. Aside from upgrading the existing active safety features from two quadrant gates to four quadrant gates, no party offered options for realistic mitigation measures if the Logen Road crossing were to remain open.⁷⁵ Other than Mr. Logen, all other witnesses testifying on the issue agreed that the limited breadth of Logen Road prevented installation of four quadrant gates for safe and proper use according to their intended purpose.

49 Here, after completion of the siding project, Logen Road will become so unsafe and dangerous that it must be closed to further public travel. Therefore, by law, it can only remain open if “the need for the crossing is so great that it must be kept open notwithstanding its dangerous condition.”⁷⁶ In making this determination, the Commission evaluates (a) the amount and character of travel on the railroad and on the highway, (b) the number of people affected by the closure, (c) whether there are readily available alternate crossings in close proximity that can handle any additional

⁷² See *BNSF v. City of Sprague*, Docket TR-010684, ¶ 53.

⁷³ See *BNSF v. Skagit County*, Docket TR-940282, pg. 4.

⁷⁴ See *BNSF v. City of Mount Vernon*, Docket TR-070696, Order 06, ¶ 60 and ¶ 71.

⁷⁵ Mr. Logen’s Final Brief does suggest tree cutting and clearing to remove sight obstructions for the traveling public, but there is no evidence in the record indicating the ownership of the forested land or the end result on visibility if Mr. Logen’s clear-cutting suggestion is implemented. See Final Brief of Lynn Logen at ¶ 53.

⁷⁶ See *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 254, 212 P.2d 829 (1949).

traffic resulting from the closure, and (d) whether the alternative crossings are safer than the crossing proposed for closure.⁷⁷

- 50 The record contains testimony from Mr. Logen and members of the public about the perceived need for the Logen Road crossing and the inconveniences that would be imposed by its closure. However, BNSF presented a traffic study showing that fewer than 150 cars crossed the tracks at Logen Road each day. No witness questioned the accuracy of the traffic study. The evidence in this case demonstrates that traffic on Logen Road is very light and that rail traffic, now consisting of approximately a dozen total trains per day, will be increasing in the near future.
- 51 The number of people affected by the closure of the Logen Road crossing is not insignificant, but the rural area most directly affected by BNSF's proposed closure is relatively sparsely populated when compared to its Stanwood neighbors to the south. Even so, under normal conditions, the nearby 300th Street NW and 271st Street NW crossings are readily available (as is the crossing further north at 102nd Street). Mr. Norris' traffic analysis demonstrates that these alternate crossings can absorb additional traffic diverted from Logen Road for all normal transportation needs, including emergency response vehicles.
- 52 Finally, after the road upgrades pledged by BNSF for the 300th Street NW (Dettling Road) crossing and the warning signal updates for the 271st Street NW crossing suggested by the diagnostic team cited by Commission Staff witness Kathy Hunter are in place, the alternate crossings will be safer than they are today. A full and complete analysis regarding the Logen Road at-grade crossing demonstrates that public safety requires its closure and that public need and convenience are not so great as to require its retention despite its dangerous condition.
- 53 BNSF may close the Logen Road crossing to the public, but only after upgrading and updating the safety features at 271st Street NW as per the direction of a diagnostic team.⁷⁸ Further, BNSF must also work with Snohomish County to make street

⁷⁷ See *BNSF v. City of Ferndale*, TR-940330 (March 31, 1995); *BNSF v. Skagit County*, TR-940282 (December 13, 1996); and *Union Pacific Railroad v. Spokane County*, TR-950177 (July 3, 1996).

⁷⁸ See Post-Hearing Brief on Behalf of Commission Staff, ¶ 32.

improvements at 300th Street NW and install a cul-de-sac to facilitate turnaround traffic on the east side of the railroad tracks on Logen Road, too.⁷⁹ Costs for these road improvements shall be apportioned among BNSF, the City of Stanwood, and Snohomish County as appropriate under RCW 81.53.

C. Private Crossing Not Required for Closure of Logen Road

- 54 Mr. Logen has indicated his desire to have a private crossing agreement with BNSF if the Commission decides to grant the railway's petition and close Logen Road.⁸⁰ According to the FRA, private crossings typically exist on roadways not open to use by the public nor maintained by any public authority and are governed by an agreement between a land owner and the railroad. Normal uses include farm crossings that provide access between tracts of land lying on both sides of the railroad. Some private crossings have sufficient train and roadway traffic volume that they require active traffic control devices.⁸¹
- 55 In this case, the only rationale for converting the current at-grade crossing at Logen Road to a private crossing is for the Logen family to retain the option of moving a tractor or other farm equipment across the tracks. Mr. Logen admits that this has not been necessary in recent memory, perhaps for as long as a decade and half.
- 56 As noted above, the FRA specifically includes farm crossings within its listing of appropriate uses for private crossings. However, the evidence presented in this case does not demonstrate the need for special accommodation of any existing farming businesses or hobbies that would be adversely impacted by the closure of Logen Road. Therefore, the Commission does not consider creation of a private crossing.

⁷⁹ Upon closure of the Logen Road crossing, Snohomish County will apparently retain authority to determine where to place the barricade creating a dead-end on the west side of the tracks.

⁸⁰ Logen, TR. 274:12-16 and 281:15 – 282:13.

⁸¹ Exh. No. 101, pp. 191-193.

FINDINGS OF FACT

- 57 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:
- 58 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the placement and conditions of operation of crossings at grade of railroad tracks with public roadways within the State of Washington.
- 59 (2) The Burlington Northern and Santa Fe Railway Company (BNSF) petitioned on January 22, 2009, for authority to close the highway-railway crossing at Logen Road in Snohomish County, Washington.
- 60 (3) The Logen Road at-grade crossing is located to the north of the city limits of Stanwood. On an average day, four Amtrak passenger trains, eight to ten freight trains, and approximately 140 vehicles make use of the crossing.
- 61 (4) The Logen Road crossing is within one-and-one-half miles of a crossing to the south (271st Street NW) and approximately one-half mile of a crossing to the north (300th Street NW / Dettling Road). One or both of those crossings provide the general public with suitable alternative access across the tracks with a minimum of inconvenience during normal conditions.
- 62 (5) Closure of the Logen Road crossing will divert a majority of its current traffic southward to 271st Street NW in Stanwood with the remainder diverted northward to 300th Street NW / Dettling Road.
- 63 (6) At-grade crossings with more than one set of tracks are more dangerous than at-grade crossings with only a single set of tracks. When a siding track creates the potential to obstruct a motorist's view of the main line track, the crossing becomes exceptionally hazardous.

- 64 (7) Closure of the Logen Road crossing will not detrimentally impact emergency response times in the local area.

CONCLUSIONS OF LAW

65 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 66 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this proceeding.
- 67 (2) The Logen Road crossing in Snohomish County, Washington, is dangerous. WSDOT's addition of a second set of tracks to this crossing magnifies the danger presented to vehicle traffic, creating an exceptionally hazardous crossing upon completion of WSDOT's siding extension project.
- 68 (3) Under normal conditions, traffic can conveniently use the 271st Street NW crossing to the south (in Stanwood) or the 300th Street NW / Dettling Road crossing to the north.
- 69 (4) Closure of the Logen Road crossing will result in inconvenience to some persons who now use the crossing. Mitigating measures, such as upgrading and updating the safety features at the 271st Street NW at-grade crossing, creation of a turnaround cul-de-sac on the easterly approach to the railroad tracks on Logen Road, and certain road improvements to the 300th Street NW crossing, can ameliorate concerns about closure of the Logen Road crossing.
- 70 (5) The public convenience and necessity do not require that the Logen Road crossing remain open. The Commission should grant BNSF's petition and should order that the Logen Road crossing in Snohomish County be closed to the public, upon conditions that will mitigate the inconvenience of closure.

- 71 (6) The concerns raised by the North County Regional Fire Authority do not indicate that the continued opportunity to make use of the Logen Road crossing is necessary to protect the health, safety and welfare of citizens working or residing in the vicinity of the Logen Road at-grade crossing.
- 72 (7) Grade separation at the existing Logen Road crossing for the purposes of extending an additional siding track through the crossing is not practicable.

REMAINDER OF THIS PAGE INTENTIONALLY BLANK

ORDER

THE COMMISSION ORDERS:

- 73 (1) The Commission grants, subject to conditions, Burlington Northern's petition to close the Logen Road at-grade crossing to public use.
- 74 (2) Authority to close the Logen Road crossing is granted upon the following conditions, which must be met prior to closure:
- (a) First, BNSF shall upgrade and update the safety features at the 271st Street NW at-grade crossing in Stanwood and, as directed by a diagnostic team, provide proportionate funding for pedestrian safety improvements (i.e., sidewalks).
- (b) Second, BNSF shall work with Snohomish County to improve road conditions at the 300th Street NW / Dettling Road grade crossing.
- (c) Third, BNSF shall work with Snohomish County to construct a turnaround cul-de-sac on the approach to the railroad tracks on Logen Road.
- 75 (3) The Commission retains jurisdiction over the subject matter and the parties to the proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October 21, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and twelve (12) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250