

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY, a Delaware Corporation,

Petitioner

 vs.

 CITY OF MOUNT VERNON

Respondents,

 SKAGIT COUNTY, WSDOT, and WEST VALLEY FARMS, LLC,

Intervenors.

DOCKET NO: TR-070696

 BNSF RAILWAY COMPANY'S
 MOTION FOR CONTINUANCE

COMES NOW plaintiff, BNSF Railway Company, formerly known as The Burlington Northern and Santa Fe Railway Company, by and through its attorneys of record, Tom Montgomery, and Bradley Scarp of Montgomery Scarp MacDougall, PLLC, and hereby petitions for a one-week continuance to serve the prefiled testimony of Dan MacDonald, pursuant to WAC 480-07-385.

BNSF's Engineering Manager, Mr. MacDonald, is expected to testify in this case as part of BNSF's direct or rebuttal testimony. Mr. MacDonald will testify about the necessity of closing the Hickox Road crossing from detailed engineering and railroad operations standpoints. See BNSF's Preliminary Witness List. Mr. MacDonald contacted BNSF several times prior to October

1 8th, expressing his expectation to be able finish his prefiled testimony. *See* Declaration of Kelsey
2 Endres, ¶ 2 (filed herewith). Although BNSF anticipated receiving Mr. MacDonald's testimony
3 before Monday afternoon, October 8th, Mr. MacDonald went out of town on business and was
4 unable to get it to BNSF in time to file. *Id.* at ¶ 3. Mr. MacDonald's testimony is important to
5 BNSF's case, for which this short continuance is requested. BNSF will serve Mr. MacDonald's
6 testimony on all parties as soon as BNSF receives it (which may well be less than one week). *See*
7 *id.* at ¶ 4. BNSF will agree to an extension for Respondents and Interveners to provide rebuttal for
8 Mr. MacDonald's testimony, equal to the actual length of continuance used by BNSF.

9 Although parties are directed to file motions for continuance at least five (written motion)
10 or two (oral request) days prior to the deadline as to which the continuance is requested, WAC
11 480-07-385 allows the commissioner to "consider requests for continuance that are made after the
12 deadlines stated in this rule if the requester demonstrates good cause that prevented a timely
13 request." *See* WAC 480-07-385(3)(c). Because it was not apparent that Mr. MacDonald's prefiled
14 testimony would be late in time to make a timely written or oral request, BNSF respectfully
15 requests the commission grant a short continuance until October 15th, 2007, per WAC 480-07-
16 385(3)(c).

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19 DATED this 8th day of October, 2007.

20 Montgomery Scarp MacDougall, PLLC

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23 Tom Montgomery, WA. Bar No. 19998
24 Bradley P. Scarp, WA. Bar No. 21453
25 Of Attorneys for BNSF Railway Company
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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 MacDougall, PLLC, whose address is 1218 Third Avenue, Suite 2700, Seattle, Washington, 98101.

I hereby certify that the original and 12 copies of *BNSF's MOTION FOR CONTINUANCE* has been sent by FedEx to Carole J. Washburn at WUTC and a PDF version sent by electronic mail. I also certify that true and complete copies have been sent via electronic mail and U.S. Mail to the following interested parties:

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

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

Gary T. Jones
Jones & Smith
PO Box 1245
Mount Vernon, WA 98273

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

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

Kevin Rogerson
City Attorney
P.O Box 809
Mount Vernon, WA 98273

Adam E. Torem
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

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

DATED this 8th day of October, 2007 at Seattle, Washington.



Lisa Miller, Paralegal

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7 UTILITIES AND TRANSPORTATION COMMISSION
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13 vs.

14 CITY OF MOUNT VERNON

15 Respondents,

16 SKAGIT COUNTY, WSDOT, and WEST
17 VALLEY FARMS, LLC,

18 Intervenors.
19

)
)
) DOCKET NO: TR-070696

)
) DECLARATION OF KELSEY
) ENDRES

20 I, Kelsey Endres, under penalty of perjury of the laws of the State of Washington, hereby
21 declare as follows:

22 I am over the age of 18, and am competent to testify as to all matters herein. I am a law
23 clerk for the law firm Montgomery Scarp MacDougall, which represents Petitioner BNSF in the
24 above-entitled action, and have personal knowledge of the facts set forth in this Declaration.

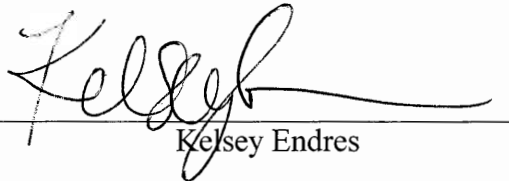
- 25 1. I have been working to compile the prefiled testimony in this case.
26 2. Mr. MacDonald contacted BNSF several times prior to October 8th, expressing
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1 his expectation to be able finish his prefiled testimony.

2 3. Although BNSF anticipated receiving Mr. MacDonald's testimony before
3 Monday afternoon, October 8th, Mr. MacDonald went out of town and was unable to get it to
4 BNSF in time to file.

5 4. It is anticipated that Mr. MacDonald's prefiled testimony will be filed no later
6 than one week from today, on October 15th, 2007.

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8
9 DATED this 8th day of October, 2007 at Seattle, Washington.

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11 
12 Kelsey Endres