

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,  Petitioner,  v.  WHATCOM COUNTY,  Respondent.	DOCKET TR-150189  ORDER 02  INITIAL ORDER GRANTING PETITION TO CLOSE VALLEY VIEW ROAD GRADE CROSSING SUBJECT TO CONDITIONS
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**INTRODUCTION**

- 1 **Procedural History.** On February 4, 2015, BNSF Railway Company (BNSF or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition seeking closure of the Valley View Road highway-rail grade crossing near Ferndale in Whatcom County (Petition). Whatcom County objected to the proposed closure.
- 2 On June 8, 2015, the Commission convened a prehearing conference before Administrative Law Judge Rayne Pearson to determine the scope of the issues to be presented in this docket and to adopt a procedural schedule.
- 3 Judge Pearson performed a site visit and toured the area on November 30, 2015. The Commission conducted an evidentiary hearing before Judge Pearson upon due and proper notice to all interested parties on December 1, 2015, in Bellingham, Washington. The parties stipulated to the admission of all 48 exhibits.<sup>1</sup>
- 4 Judge Pearson conducted a public comment hearing for the Commission on the evening of December 1 in Bellingham. In addition, the Commission accepted written and

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<sup>1</sup> In compliance with Judge Pearson's requests at hearing, two additional exhibits were submitted after the close of the evidentiary hearing. December 4, 2015, BNSF staff filed its response to Bench Request No. 4, which was marked as exhibit PC-11. On December 11, 2015, BNSF filed its response to Bench Requests Nos. 1 through 3. The first, which was marked as Exhibit PB-7, is BNSF's Joint Aquatic Resources Permit Application (JARPA) to the US Army Corps of Engineers. The second, which was marked GH-2, is a chart of BNSF's train priority System. The third, which was marked GH-3, is a description of backlogged trains in Whatcom County in 2014.

electronic public comments on this matter from the date of BNSF's initial filing until December 4. In sum, the Commission received and considered comments from 171 individuals and organizations, 168 of whom oppose the closure of the Valley View Road crossing, two of whom are in favor, and one of whom is undecided.

5 On January 8, 2016, the parties filed simultaneous post-hearing briefs.

6 Kelsey Endres, Montgomery Scarp MacDougall, PLLC, Seattle, Washington, represents Petitioner BNSF. Daniel Gibson, Whatcom County Prosecutor's Office, Bellingham, Washington, represents Respondent Whatcom County. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff).<sup>2</sup>

7 **Background.** BNSF runs a mainline track east and west near the City of Ferndale in Whatcom County. Numerous roads running north and south cross the BNSF line as it runs eastbound/westbound, including Valley View Road. BNSF proposes to extend both sides of the existing siding track that currently terminates to the west of Valley View Road. Once extended, the siding will intersect Valley View Road parallel to the main line, creating a double-tracked crossing. Trains parked on the siding will block the crossing for extended periods of time. Citing its interest in improving public safety and avoiding traffic hazards, BNSF seeks permission to close the crossing.

8 The Valley View Road crossing is located in a primarily rural area, and provides access to farm fields and a few single family residences. Valley View Road is a two-lane country road with no curbs or sidewalks and a posted speed limit of 50 miles per hour. The Valley View Road crossing is currently equipped with shoulder-mounted flashing lights and gates. No accidents have been reported at the crossing in the past ten years. Presently, four freight trains serving six customers come through the crossing twice each day, for a total of eight trips, at a speed of 10 miles per hour. No passenger trains presently use the crossing. The average annual daily vehicle traffic over the crossing is approximately 365 vehicles, about eight percent of which are commercial vehicles.

9 The area near the crossing is served by two fire protection districts, Whatcom County Fire District 7 and North Whatcom Fire and Rescue.

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<sup>2</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' 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.

- 10 The closest alternate crossings to Valley View Road are Main Street, approximately 1.2 miles to the west, and Ham Road, approximately 1.3 miles to the east. The Main Street crossing is presently controlled by active warning devices and signals. BNSF pledges to install active warning devices and signals at the Ham Road crossing, which is currently controlled by stop signs, crossbucks, pavement markings, and advance warning signs.
- 11 In its Petition, BNSF also pledges to install signage at the intersections of Arnie Road and Valley View Road, and Creasey Road and Valley View Road, to indicate no public thoroughfare; construct a cul-de-sac north of Arnie Road prior to the bridge on Valley View Road; and install a private gate south of Creasey Road for the property owner's exclusive use, if needed. BNSF pledges to fund the construction and installation of all but the revised traffic signs, which Whatcom County would fund.

## EVIDENCE

### A. Proponents – BNSF and Staff

- 12 **BNSF.** BNSF presented testimony and exhibits to illustrate the safety concerns motivating the Company to seek closure of the crossing in connection with the installation of the siding extension. The following witnesses testified on behalf of the Company: Grant Haag, terminal superintendent of greater Seattle terminal complex for BNSF; Richard Wagner, manager public projects NW division for BNSF; Steve Neubauer, director field safety and support for BNSF; Kurt Bialobreski, traffic engineer for Hanson Professional Services, Inc. in Peoria, Illinois; and Pierre Bordenave, vice president environmental services at JL Patterson and Associates, Inc. in Sandpoint, Idaho.
- 13 The witnesses testified generally about BNSF's Intalco Yard Expansion Project, which includes the extension of existing siding near the Valley View Road crossing to an overall length of 7,230 feet. Mr. Haag testified that the project is required to serve existing customer needs and reduce the impact on BNSF's other mainline tracks. The extended siding will accommodate unit trains carrying crude oil, which will allow BNSF to move full-length trains on and off the mainline without blocking the mainline, switches, or roads. Presently, a train must undergo multiple switching operations to break it up and store portions of it on the shorter existing siding track. Once the siding is extended, the unit oil trains that exit the mainline will block the crossing, sometimes for

hours at a time. According to Mr. Haag, the unit oil trains will be left on the siding locked, but otherwise unattended, for appreciable lengths of time.<sup>3</sup>

- 14 The witnesses also testified about the new safety issues the extended siding will create. Mr. Wagner expressed concerns that driver behavior will change once the crossing becomes blocked for extended periods of time. Drivers may attempt to “beat the train,” and may overestimate their distance from the train or how long it takes a train to stop. Mr. Haag expressed concern that drivers may mistakenly believe that parked trains, rather than an approaching train, activated the warning devices and decide to ignore them. Mr. Neubauer explained that multiple sets of tracks pose an increased risk because a parked train can obscure the view of an oncoming train.
- 15 Mr. Bialobreski, who performed a traffic impact study near the crossing, testified that closing the Valley View Road crossing is likely to reduce the overall exposure in the study area with minor impacts, which can be mitigated. Mr. Bialobreski recommends installing gates at the Ham Road crossing, constructing a right bound turn lane at the intersection of Portal Way and Main Street, installing signage to signal the change in access north of the closure, and constructing a cul-de-sac at Valley View and Creasey Road to allow vehicles to turn around. Mr. Bialobreski noted that although closing the Valley View Road crossing will increase emergency vehicle response time from 8 to 10 minutes to 10 to 12 minutes, the increase still falls within the maximum acceptable response time of 15 minutes for that area.
- 16 In response to Roland Middleton’s testimony, Mr. Bordenave testified that the Intalco Yard Expansion Project is unrelated to the projected improvements for the Gateway Pacific Terminal (GPT) because it addresses different needs. The Intalco Project will serve existing customers at Cherry Point whether or not the GPT is built. The Army Corps of Engineers issued a memorandum on September 5, 2014, that determined the projects have independent utility and function for environmental review and permitting purposes. On November 10, 2015, the Washington Department of Ecology (Ecology) issued a State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) for the Intalco Yard Expansion Project.
- 17 In its post-hearing brief, BNSF argues that the siding extension will create an exceptional hazard to motorists and pedestrians. If the crossing remains open after the siding is extended, the trains blocking the crossing for lengthy periods of time may confuse

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<sup>3</sup> Haag, TR 128:12-19.

motorists, impede visibility, and invite dangerous and illegal behavior. The Company also argues that Commission review does not concern whether the railroad could or should construct siding at a different location, or alter its operations to avoid blocking the existing crossing. Moreover, the Commission does not have authority to perform appellate review of another agency's SEPA DNS. The Company concludes that public convenience and necessity do not require that the crossing remain open in spite of its hazardous conditions once the siding extension is complete.

18 **Staff.** Staff presented testimony and exhibits from Paul Curl, Commission policy analyst for Safety and Consumer Protection. Mr. Curl testified that the Commission cannot prevent BNSF from constructing new siding near the Valley View Road crossing. Rather, the Commission's only role in this case is to determine the appropriate highway-rail crossing design, including determining whether the Valley View Road crossing should be closed and traffic should be diverted to other crossings. The crossing will become exceptionally dangerous once the second track is added because the crossing will be blocked for extended periods of time, which Mr. Curl agrees could lead to unsafe behaviors.

19 Staff supports installing gates, flashing lights, new pavement markings, and increased signage at the Ham Road grade crossing. Staff also recommends widening Ham Road, preferably beginning 50 feet from each side of the crossing, and gradually expanding from a width of 18 feet to a width of 22 feet at the crossing. Staff also supports the proposed Main Street and Portal Way intersection mitigation, but believes Whatcom County should first determine whether interconnected traffic signals are warranted. If traffic signals are not warranted, Staff believes the proposed turn lane is an acceptable alternative.

20 Staff defers to Whatcom County with respect to the proposed mitigations at the Main Street grade crossing and the south approach to the Valley View Crossing from Arnie Road. Staff urges Whatcom County to consider constructing a cul-de-sac at the north approach to Valley View Crossing from Creasey Road, which it believes will better serve property owners with access north of the crossing.

21 In its post-hearing brief, Staff argues that the Valley View Road crossing should be closed because the evidence in this docket shows that the crossing, once modified, will pose an unjustified safety risk. Although Whatcom County opposes BNSF's petition, Staff argues that the County presented very little evidence to justify its opposition. The County's primary concern appears to be the propriety of the SEPA threshold

determination issued for the Intalco Yard expansion project, which is outside the scope of this proceeding. The Commission has no authority over the Intalco Yard Project and cannot prohibit the transport of crude oil.

**B. Opponent – Whatcom County**

- 22 Whatcom County presented testimony from the following witnesses: Joe Rutan, Whatcom County road engineer; Roland Middleton, special projects manager, Whatcom County Public Works Department; and Henry Hollander, division chief and fire marshal, Whatcom County Fire District #21.
- 23 Mr. Rutan and Mr. Hollander expressed concerns that the closure of the Valley View Road crossing will increase emergency response times from the nearest station houses in North Whatcom Fire and Rescue’s service area by two to four minutes. On cross examination, Mr. Hollander acknowledged that the increased response time still falls within the Fire and Rescue response objectives, and stated that he neither supported nor opposed closure of the crossing.
- 24 Mr. Rutan testified that he supports installing flashing lights, gates, new pavement markings, and increased signage at the Ham Road crossing; a hammer head rather than a cul-de-sac north of Arnie Road prior to the bridge on Valley View Road; a redesign of the Creasey Road intersection to allow for design vehicles to turn around; and adding a southbound right turn lane at the intersection of Portal Way and Main Street. Mr. Rutan testified that, in his opinion, roads in the surrounding area should be upgraded per the Manual on Uniform Traffic Control Devices (MUTCD) while they remain open to the public regardless of whether they are converted to private access roads shortly thereafter.
- 25 Mr. Middleton initially testified that he believed the Intalco Yard Expansion was a significant part of the proposed Custer Spur improvements as submitted for the GPT, and that approving the crossing closure would inappropriately circumvent the discussion of the cumulative impacts of the GPT. At hearing, however, Mr. Middleton testified that in light of Ecology’s issuance of its SEPA DNS, he no longer has those concerns.
- 26 In its post-hearing brief, Whatcom County argues that there is a lack of good information demonstrating the necessity for the siding itself, and thus demonstrating the need to close the crossing to accommodate the siding. In the absence of a clear need for the construction of the siding expansion, there is no sound basis upon which to determine that the good to be served by closure outweighs the burden to the public resulting from delays in delivery of critical emergency services.

27 The County also notes that its main disagreement with BNSF is whether a turnaround should be constructed at the southern approach to the crossing on Valley View Road from Arnie Road. Mr. Rutan testified that this feature is required by the MUTCD, and the County argues that BNSF should be required to install it as a condition of closing the crossing.

### C. Public Comment

28 Nineteen members of the public spoke against closure of the Valley View Road crossing at the public comment hearing on December 1, 2015.

29 Paula Rotondi expressed concerns about whether critical SEPA information was provided to the Commission, and noted that BNSF's SEPA checklist fails to address emissions, endangered species in the area of the crossing, the risk of fire and explosions posed by crude oil, and what kind of special emergency services would be required if an oil train exploded while parked on the siding. Ms. Rotondi also noted her concern about the close proximity of the siding to Custer Elementary School, which is approximately 1,200 feet from the Valley View Road crossing.

30 Sandy Robson testified that she believes closing the Valley View Road crossing would increase rail capacity for the BP and ConocoPhillips 66 refineries. She noted that transporting crude oil is very dangerous, and that one train has already derailed in the Cherry Point area, while another leaked oil onto the land.

31 Ravyn Whitewolf testified that she believes the petition for closure contains factual errors, including the extent of the detour required to use an alternate crossing. Ms. Whitewolf explained that the Main Street crossing is often blocked by trains, and signalizing Ham Road is an inadequate solution. The Valley View Road crossing is used by a large area of Ferndale homes to access Interstate 5, and she believes its closure would greatly impact emergency response times.

32 Brenda Rye testified that the Valley View Road crossing provides direct access to the grocery store, and she would not mind waiting for trains if the crossing remains open.

33 Matt Petryni with Resources for Sustainable Communities testified that he believes the siding extension project should not move forward unless an environmental impact study (EIS) is conducted that examines the traffic, economic, and environmental risks related to

transporting oil by rail. He believes the project is inherently connected to both oil refineries.

34 Reed Gillig testified that the Valley View Road crossing is very useful, and that there are many more people impacted than just those who attended the public comment hearing. Mr. Gillig believes that notice about the proposed crossing closure was poor, and that many more residents would have attended the public comment hearing had they known about it.

35 Alex Ramel, field director for Forest Ethics, testified that ConocoPhillips 66 is currently allowed one train per day, and BP is allowed only one train every other day. BNSF now reports four trains per day between these two customers, and many people in the community suspect that the refineries are exceeding their permits.

36 Mary Tully testified that she believes the Valley View Road crossing closure is part of the larger GPT project, and that BNSF is piecemealing its project to avoid in-depth environmental review. Ms. Tully believes that an EIS should be performed, and expressed concerns about oil unit trains idled or parked for long periods of time at the crossing, which may result in runoff from trains into the nearby waterways. Peter Holcomb noted that the nearby waterway is an official state marine sanctuary.

37 Gary Bannerman testified that Valley View Road is the main crossing used in the area to access Interstate 5, and it is used by a large number of agricultural vehicles that have not been accounted for. Charles Storrs also testified that the approximately 30 semi-trucks per day that use the crossing were also not counted. Mr. Storrs does not believe that the Main Street crossing is a good alternative for semi-trucks.

38 Karen Weill testified that she believes oil trains are not safe, and that a study of the effect of diesel particulates on air quality should be conducted.

39 The Commission also received 168 written comments from individuals opposed to the closure, two written comments from individuals who support the closure, and one comment from an individual who is undecided.

## DISCUSSION AND DECISION

40 **Applicable Law.** RCW 81.53.060 allows 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. As the petitioner in this matter, BNSF



carries the burden of proving, by a preponderance of the evidence, that public safety requires closure of the Valley View Road crossing.<sup>4</sup>

41 In evaluating petitions for closure of an at-grade crossing, our analysis begins with a two-part inquiry. First, we examine whether a crossing is or will become “especially hazardous”<sup>5</sup> such that public safety requires it to be closed.<sup>6</sup> If the answer is affirmative, we next determine whether the public need for the crossing is “so great that the crossing should be kept open notwithstanding its dangerous condition.”<sup>7</sup>

42 In *Burlington Northern RR Co. v. Skagit County*, the Commission held that any number of the following factors may make a crossing especially hazardous: 1) the presence of vegetation or other obstacles that limit visibility on the approach; 2) the roadway crosses the crossing at an oblique angle (other than 90 degrees); 3) limited holding capacity on approaches between the railroad right of way and the streets that intersect; 4) more than one mainline track at the crossing; and 5) the presence of siding track in addition to mainline track.<sup>8</sup>

43 **Proposed Siding and its Consequences.** In light of the concerns expressed by members of the public at the December 1, 2015, Public Comment Hearing, we first briefly address the Commission’s role as it relates to the construction of the siding extension at the Valley View Road crossing.

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<sup>4</sup> *BNSF Railway Company v. Snohomish County*, Docket TR-090121, Order 03 ¶ 42 (October 21, 2009).

<sup>5</sup> The terms “especially hazardous” (see *BNSF v. City of Sprague*, Docket TR-010684, ¶ 53), “particularly dangerous” (see *BNSF v. Skagit County*, Docket TR-940282, at 4), and “exceptionally hazardous” (see *BNSF v. City of Mount Vernon*, Docket TR-070696, Order 06 ¶ 60 and ¶ 71) have been used by the Commission interchangeably. For ease of reference, we use “especially hazardous” in our analysis here.

<sup>6</sup> *Department of Transportation v. Snohomish County*, 35 Wn. 2d 247, 254 (1949) (hereinafter, *Snohomish*).

<sup>7</sup> *Id.*

<sup>8</sup> *Burlington Northern RR Co. v. Skagit County*, Docket TR-940282, Order 01 at 4 (December 13, 1996).

44 As we noted in *The Burlington Northern Santa Fe Railway v. Snohomish County*, the Commission has no jurisdiction to affect construction of siding.<sup>9</sup> In *Burlington Northern Railroad Company v. City of Ferndale, Washington*, we held that the issue in cases such as these “concern whether there are alternative means of public access if the crossing is closed, not whether the railroad has alternatives to constructing the siding track in a particular location.”<sup>10</sup>

45 As unsettling as we find the prospect of BNSF parking unit trains full of crude oil on the siding, unmanned, for hours at a time, we have no jurisdiction or authority to prevent the siding extension project from going forward. The Commission’s only role in this proceeding is to determine the appropriate highway-rail crossing design, which is limited to the questions of whether the Valley View Road crossing should be closed in light of the consequences created by the siding extension, and whether changes should be made to nearby alternate crossings in the event the crossing is closed.

46 BNSF proposes to construct a siding in the vicinity of the crossing that will permit trains to exit the main line and wait for another train to pass. The crossing would interfere with operation of the siding and, if the siding were constructed without closure of the crossing, the results would include frequent delays to vehicle traffic.

47 We find that the Valley View Road crossing will become especially hazardous upon completion of the siding extension project. 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 when a train blocks the crossing for appreciable lengths of time.

48 In addition, several witnesses expressed concerns that persons waiting at a gated crossing might only observe the train stopped on the siding and become impatient with their apparently unnecessary delay. If they then decided to drive around the gates, they could be struck by an oncoming train. Finally, as Staff notes in its Post Hearing Brief, pedestrians and bicyclists may attempt to move around parked train cars, which could begin moving at any time. As Mr. Wagner noted in his testimony, “the conductor may be

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<sup>9</sup> *The Burlington Northern Santa Fe Railway v. Snohomish County*, Docket TR-010194, Order Granting Petition ¶ 11 (March 29, 2002).

<sup>10</sup> *Burlington Northern Railroad Company v. City of Ferndale, Washington*, Docket TR-940330, Final Order at 3 (March 31, 1995).

more than a mile away from the pedestrian(s) because of the length of the train and unable to see the person on the tracks.”<sup>11</sup>

49 **Public Convenience and Necessity.** Because we find that the Valley View Road crossing will become especially hazardous once the siding extension project is complete, the crossing can only remain open if the need for the crossing is so great that it must be retained despite its dangerous condition.

50 To make this determination, the Commission evaluates: 1) the amount and character of travel on the railroad and on the highway, 2) the number of people affected by the closure, 3) whether there are readily available alternate crossings in close proximity that can handle any additional traffic resulting from the closure, 4) whether the alternative crossings are safer than the crossing proposed for closure, and 5) the effect on public safety factors such as fire and police control.<sup>12</sup>

51 BNSF presented a traffic study showing that approximately 365 vehicles cross the tracks at Valley View Road each day. No other party disputed this number. Overall, the evidence demonstrates both that traffic on Valley View Road is relatively light and that rail traffic is likely to increase in the future.

52 Although several members of the public testified about the perceived need for the Valley View Road crossing, the overwhelming majority of the public comments received by the Commission relate to the dangers of transporting oil by rail, an issue over which the Commission has no jurisdiction. According to the Company’s Petition, there is only one adjacent land owner within 500 feet of the crossing, Shiraz Balolia. Mr. Balolia filed a comment with the Commission stating that he is not opposed to closing the crossing. The number of people affected by the closure of the Valley View Road is not insignificant, but the rural area most directly affected is relatively sparse.

53 Even so, the Ham Road and Main Street crossings are readily available and in reasonably close proximity. Mr. Bialobreski’s Traffic Impact Study demonstrates that the alternate

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<sup>11</sup> Exh. No. RW-1T at 7:3-5.

<sup>12</sup> See *BNSF Railway Company v. Snohomish County*, Docket TR-090121, Order 03 (October 21, 2009); *Burlington Northern Railroad Company v. City of Ferndale, Washington*, Docket TR-940330, Final Order (March 31, 1995); *BNSF v. Skagit County*, Docket TR-940282, Final Order (December 13, 1996); and *Union Pacific Railroad v. Spokane County*, Docket TR-950177, Final Order (July 3, 1996).

crossings can absorb traffic diverted from Valley View Road, and that closing the crossing will actually decrease exposure in the surrounding area.

54 In addition, following the safety upgrades that BNSF pledges for the Ham Road crossing, Ham Road will be as safe as the Valley View Road crossing in its present configuration, and certainly safer than the Valley View Road crossing once the siding extension is constructed. The crossing at Main Street is presently as safe as the Valley View Road crossing, and will also remain safer once the siding extension project is complete.

55 Finally, the impact on emergency response times will be, as Staff notes, negligible. As Mr. Hollander acknowledged, “the area affected by the proposed closure of Valley View is relatively lightly populated.”<sup>13</sup> Polly Linville of Fire District 7 informed BNSF that the closure will not affect emergency response times.<sup>14</sup> Mr. Hollander testified that response times for North Whatcom Fire and Rescue’s fire suppression and basic life support will increase between one and four minutes, which falls within the existing acceptable range.<sup>15</sup> Unlike the surrounding area at issue in *BNSF Railway Company v. City of Mount Vernon*, the surrounding area here is not subject to flood conditions, or, for that matter, any unique circumstances near the crossing. In any event, as BNSF noted in its Post Hearing Brief, the unscheduled blockages at the crossing, should it remain open, would likely discourage emergency responders from using the crossing altogether.

56 **Decision.** The fullest possible analysis regarding the Valley View Road at-grade crossing demonstrates that public safety requires its closure and that the public need and convenience are not so great as to require its retention despite its dangerous condition. Accordingly, we grant BNSF’s Petition to close the crossing, subject to the conditions addressed below.

### 1. South Approach to Valley View Road from Arnie Road

57 BNSF proposes to install signage at the Valley View Road and Arnie Road intersection, specifically one sign at the south approach, one at the east approach, and one at the west approach to indicate no public thoroughfare. The County supports this mitigation, and Staff defers this decision to the County. BNSF originally proposed to assist the County

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<sup>13</sup> Exh. No. HH-1T at 3.

<sup>14</sup> Exh. No. KB-3 at 5.

<sup>15</sup> Exh. No. KB-4T at 8:6-10.

with constructing a cul-de-sac north of Arnie Road and south of the crossing, but now prefers that the County convert the southern approach from a public to a private road.

58 The County, however, proposes construction of a hammerhead turnaround at that location. We agree with the County and condition approval of BNSF's Petition on the Company funding the construction of a hammerhead turnaround north of Arnie Road and south of the crossing. As Mr. Rutan testified at the hearing and Whatcom County notes in its Post Hearing Brief, this feature is required by the MUTCD. Accordingly, we conclude that constructing a hammerhead turnaround is the most appropriate solution. BNSF shall bear the cost of these mitigations.

## **2. North Approach to Valley View Road from Creasey Road**

59 BNSF proposes to install signage at the Valley View Road crossing's north approach to indicate no public thoroughfare, and redesign the intersection of Valley View Road and Creasey Road to allow vehicles to turn around. BNSF would submit a specific design to the County for the County's review and approval. BNSF originally proposed installing a locked gate at Valley View Road south of Creasey Road. Staff supports construction of a cul-de-sac north of the crossing in lieu of the turnaround, and Whatcom County supports the turnaround, but does not support installing a locked gate for private use.

60 We agree with the County and require BNSF to fund both the installation of signage and the redesign of the intersection at Valley View Road and Creasey Road to allow vehicles to turn around. We defer to Whatcom County regarding its preference for a turnaround in lieu of a cul-de-sac, but encourage the County to consider Staff's arguments for constructing a cul-de-sac before it makes its final decision.

## **3. Ham Road Crossing**

61 BNSF proposes to install gates, flashing lights, increased signage, and new pavement markings at the Ham Road crossing. While Staff initially supported the construction of stop refuges on either side of the crossing, it now defers to Whatcom County on that issue. Staff does, however, continue to support widening the crossing beginning at 50 feet on either side of the crossing and gradually expanding from a width of 18 feet to a width of 22 feet at the crossing itself. Whatcom County disagrees that either constructing stop refuges or widening the crossing is necessary.

62 While we understand Staff's concerns with respect to the width of the crossing at Ham Road, we find that Whatcom County is in a better position to determine the appropriate modifications to the Ham Road Crossing. Accordingly, we require BNSF to install gates,

flashing lights, increased signage, and new pavement markings at the Ham Road crossing. If requested by the County, however, BNSF is also required to work with the County to widen the crossing, and shall bear all related costs. In accordance with its Petition, BNSF shall bear the entire cost of installing and maintaining the new warning devices at Ham Road.

#### **4. Main Street Crossing**

63 BNSF does not propose to make any modifications to the Main Street crossing, which is already equipped with active warning devices. All parties concur that those devices should remain in place. Staff proposes widening the road at the crossing and installing stop refuges on either side of the crossing, but defers to Whatcom County on those issues. Whatcom County does not believe either modification Staff proposes is necessary. Accordingly, we do not require any modifications to be made at the Main Street crossing.

#### **5. Main Street and Portal Way Intersection**

64 BNSF proposes to construct a right-bound turn lane at the intersection of Main Street and Portal Way, which the County finds acceptable. Staff urges the County to consider whether interconnected signals between the intersection and the Main Street crossing are warranted. If interconnected signals are not warranted, Staff supports the construction of a right-bound turn lane.

65 Again, we defer to Whatcom County's judgment on this issue. BNSF and the County agree that a right-bound turn lane is an appropriate solution. Accordingly, we require BNSF to construct a right-bound turn lane at the intersection of Main Street and Portal Way. In accordance with its Petition, BNSF shall bear the cost of constructing the turn lane.

### **FINDINGS AND CONCLUSIONS**

- 66 (1) The 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.
- 67 (2) The Commission has jurisdiction over the subject matter of and the parties to this proceeding.

- 68 (3) BNSF petitioned the Commission on February 4, 2015, for authority to close the highway-railway at-grade crossing at Valley View Road in Whatcom County, Washington.
- 69 (4) The Valley View Road crossing is located in a primarily rural area. On an average day, four freight trains serving six customers come through the crossing twice each day, for a total of eight trips, at a speed of 10 miles per hour, and less than 400 vehicles make use of the crossing.
- 70 (5) The Valley View Road crossing is within 1.2 miles of a crossing to the west at Main Street, and within 1.3 miles of a crossing to the east at Ham Road. Both of those crossings provide the general public with suitable alternative access across the tracks with a minimum of inconvenience during normal conditions.
- 71 (6) Once the siding extension is constructed at the Valley View Road crossing, the crossing will become especially hazardous. In addition to the crossing being blocked at unscheduled times for up to several hours, the trains parked on the siding will obstruct motorists' view of the main line track.
- 72 (7) The public convenience and necessity do not require that the Valley View Road crossing remain open. The crossing is located in a lightly-populated area, and the negligible increase in emergency response times will still fall within the acceptable range.
- 73 (8) BNSF should be required to fund and install signage at the south approach, east approach, and west approach to the Valley View Road crossing at Arnie Road. BNSF should also be required to fund and install a hammerhead turnaround at this location as required by the Manual of Uniform Traffic Control Devices.
- 74 (9) BNSF should be required to fund both the installation of signage at the north approach to the Valley View Road crossing at Creasey Road, and the redesign of the intersection to allow vehicles to turn around in accordance with Whatcom County's recommendations for redesign.
- 75 (10) BNSF should be required to fund and install improvements at Ham Road, including gates, flashing lights, increased signage, and new pavement markings in accordance with its Petition.

- 76 (11) BNSF should be required to fund and construct a right-bound turn lane at the intersection of Main Street and Portal Way.

**ORDER**

THE COMMISSION ORDERS:

- 77 (1) BNSF Railway Company's petition to close the Valley View Road at-grade highway rail crossing is granted, subject to the following conditions, which must be met prior to closure:
- (a) In accordance with its Petition, BNSF Railway Company shall work with Whatcom County to install signage at the Valley View Road and Arnie Road intersection, specifically one sign at the south approach, one at the east approach, and one at the west approach. BNSF Railway Company shall bear the cost of the installation.
  - (b) BNSF Railway Company shall work with Whatcom County to construct a turnaround that meets the requirements of the MUTCD near the south approach to the crossing at Valley View Road from Arnie Road. BNSF Railway Company shall bear the cost of construction.
  - (c) In accordance with its Petition, BNSF shall work with Whatcom County to install signage at the north approach to the crossing at Valley View Road from Creasey Road. BNSF Railway Company shall bear the cost of the installation.
  - (d) BNSF Railway Company shall work with Whatcom County to construct a turnaround that meets the requirements of the MUTCD near the north approach to the crossing at Valley View Road from Creasey Road. BNSF Railway Company shall bear the cost of construction.
  - (e) In accordance with its Petition, BNSF Railway Company shall upgrade the safety features at the Ham Road crossing to include gates, flashing lights, increased signage, and new pavement



markings. BNSF Railway Company shall bear the cost of these upgrades.

- (f) In accordance with its Petition, BNSF Railway Company shall work with Whatcom County to construct a right-bound turn lane at the intersection of Main Street and Portal Way. BNSF Railway Company shall bear the cost of construction.

- 78 (2) 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 March 8, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
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 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

WAC 480-07-830 provides that before the Commission enters 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. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

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 must serve on each party of record one copy of any Petition or Answer filed with the Commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and three copies of your petition or answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250