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7 BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION
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9 CITY OF KENNEWICK,)

10 Petitioner,)

11 v.)

12 UNION PACIFIC RAILROAD,)

13 Respondent.)

DOCKET NO. TR-040664 and

DOCKET NO. TR-050967

BNSF'S SUPPLEMENTAL BRIEF

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15 _____)
16 CITY OF KENNEWICK,)

17 Petitioner,)

18 v.)

19 PORT OF BENTON and TRI-CITY &
OLYMPIA RAILROAD,)

20 Respondent.)
21 _____)

22 Respondent BNSF Railway Company (BNSF), formerly the Burlington Northern and Santa
23 Fe Railway Company, submits the following Supplemental Brief in response to the petition by the
24 City of Kennewick (City) to extend Center Parkway at-grade across four active railroad tracks at
25 Richland Junction.¹ BNSF respectfully requests that the Commission deny the City's petition.

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27 ¹ BNSF generally takes exception to the arguments set forth in the City's Supplemental Brief. In this brief,
however, BNSF is only stating its position for the record as it understands that respondents Tri-City and Olympia
Railroad's and the Union Pacific Railroad's supplemental briefs will analyze these issues in greater detail.

1 **I. At-Grade Crossings Present Safety Risks And New Crossings Favor Grade Separation.**

2 Washington law clearly disfavors at-grade crossings and specifically states that any new
3 crossings must be grade separated when practicable. RCW 81.53.020. The reasoning is based on
4 the longstanding awareness that at-grade crossing present risks to safety. *Reines v. Chicago,*
5 *Milwaukee, St. Paul & Pacific Railroad Co.*, 195 Wash, 146, 80 P.2d 406 (1938). Here, the record
6 is replete with evidence to substantiate the safety risk inherent in extending a road across four active
7 tracks where a significant number of switching operations are conducted each day. This includes
8 slower moving, frequently stopped, and back-and-forth moving trains which present a particular
9 problem when impatient pedestrians, bicyclists and even motorists simply ignore the safety hazard
10 posed by those operations. Given that the City did not conduct any safety studies of the proposed
11 crossing (Plummer, TR, 138:3-7). The reasoning behind the statutory requirement should be given
12 its full import.

13 **II. The City Has Not Met Its Burden Of Demonstrating Acute Public Need For Crossing.**

14 The Commission has previously allowed an at-grade crossing when there is an “acute public
15 need” that outweighs the danger created by the crossing. *Town of Tonasket v. Burlington Northern*
16 *Railroad Company*, TR 921371 (1993). In doing so, the Commission noted the inherent danger of
17 at-grade crossings, the strong public policy against them and the heavy burden to overcome before
18 such a crossing will be allowed. Here, the City has not demonstrated an “acute public need” so
19 much as it has identified a minor convenience that is prospective at best. Because the City has not
20 met its burden, the petition should be denied.

21 **III. Commission Should Not Consider Conceptual Changes To Proposed Crossing.**

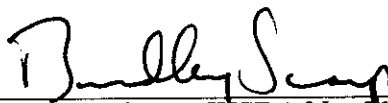
22 Various problems with the crossing were identified before and at the hearing including the
23 rough surface of the roadway which would restrict vehicle speed, reduction in the room available to
24 store rail cars, and structural requirements necessary for moving the switching operation. Those
25 problems have only been addressed *conceptually* instead of actually. Notwithstanding the
26 arguments by which BNSF requests the petition be denied, the Commission should consider only the
27 actual proposal before it and not including conceptual changes which the City may address.

1 **Conclusion**

2 For the reasons stated herein, and for which additional detailed support and analysis is
3 expected to be provided in the supplemental briefs of the Union Pacific and Tri-City & Olympia
4 railroads, BNSF respectfully requests that the Commission deny the City of Kennewick's petition
5 for an at-grade crossing across four railroad tracks.

6 DATED this 19th day of January, 2007.

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10 Of Attorneys for Defendant
11 BNSF Railway Company

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