

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY,

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

DOCKET TR-090121

JOINT RESPONSE OF
COMMISSION STAFF AND BNSF
TO REQUEST TO REOPEN
CROSSING

1 The Washington Utilities and Transportation Commission Staff (“Commission Staff”) and the Burlington Northern Santa Fe Railway Company (“BNSF”) jointly submit this response to the letter filed by Lynn Logen on September 16, 2010. Commission Staff is separately submitting a Declaration of Kathy Hunter dated September 23, 2010. BNSF has separately submitted declarations of Richard Wagner dated September 14 and 20, 2010. In the September 16 letter, Mr. Logen asks the Commission to order that the Logen Road at-grade crossing be reopened. Commission Staff and BNSF oppose Mr. Logen’s request.

I. BACKGROUND

A. The Initial and Final Orders in Docket TR-090121

2 On January 22, 2009, BNSF filed a petition to close the Logen Road at-grade railroad crossing in Snohomish County. Lynn Logen opposed the closure and filed a petition to intervene, which was granted.¹ The Honorable Adam Torem, Administrative

¹ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 01](#) ¶ 11 (Feb. 19, 2009).

Law Judge, presided over an evidentiary hearing on March 30, 2009.

3 On October 21, 2009, Judge Torem issued an Initial Order granting BNSF's petition to close the Logen Road.² Paragraph 74 of the Initial Order provided as follows:

- (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.

(Emphasis added.)

4 On November 10, 2009, BNSF filed a petition for administrative review, asking the Washington Utilities and Transportation Commission ("Commission") to modify the Initial Order.³ Among other things, BNSF asked the Commission to modify the timing in which BNSF must satisfy Conditions (2)(b) and (2)(c) quoted above. With respect to Condition (2)(c), BNSF asked the Commission to allow BNSF to close the Logen Road railroad crossing before constructing the turnaround cul-de-sac.

5 On November 30, 2009, the Commission issued a Final Order.⁴ Among other things, the Commission modified the timing of Condition (2)(c) imposed in the Initial Order "to

² *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 03](#) ¶ 74 (Oct. 21, 2009).

³ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [BNSF Railway's Petition to Reopen and Petition for Administrative Review](#) (Nov. 10, 2009). See [RCW 34.05.464](#); [WAC 480-07-825](#).

⁴ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 04](#) (Nov. 30, 2009).

require the Logen Road crossing to be closed prior to construction of the turnaround cul-de-sac at the crossing.”⁵

6 In Paragraph 40 of the Final Order, the Commission revised Paragraph 74 of the Initial Order, as follows:⁶

The conditions in paragraph 74 of the Initial Order, Order 03 in this proceeding, are modified as follows:

Authority to close the Logen Road crossing is granted upon the following conditions:

- (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). This condition shall be fulfilled prior to the closure of Logen Road.
- (b) Second, BNSF shall work with Snohomish County to improve road conditions at the 300th Street NW/Dettling Road grade crossing. This condition need not be fulfilled prior to closure of the Logen Road crossing, but shall be fulfilled during the siding track extension project.
- (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. This condition shall be fulfilled simultaneously with closure of the Logen Road crossing to the extent reasonably possible.

7 No party sought reconsideration, rehearing, or judicial review.

B. The Closure of Logen Road and the Request to Reopen

8 On September 13, 2010, Lynn Logen filed with the Commission a letter expressing doubt that Conditions (a) and (c) had been fulfilled.⁷ On September 14, 2010, BNSF filed a

⁵ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 04](#) ¶ 5 (Nov. 30, 2009); *see id.* ¶ 37.

⁶ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 04](#) ¶ 40 (Nov. 30, 2009).

⁷ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Letter from Lynn Logen to David Danner](#) (Sept. 13, 2010).

Notice of Compliance with photographs of the 271st Street NW crossing.⁸ BNSF closed the Logen Road at-grade crossing on or about September 15, 2010.

9 On September 17, 2010, Mr. Logen filed a letter stating that Conditions (a) and (c) of the Commission’s Final Order did not appear to have been fully met. Mr. Logen asked the Commission to order that the Logen Road at-grade crossing be reopened.⁹

10 On September 20, 2010 BNSF filed a Supplemental Notice of Compliance.¹⁰ On September 22, 2010, Commission Staff inspected the 271st Street NW crossing and now files the Declaration of Kathy Hunter Regarding Compliance, dated September 23, 2010.

II. ARGUMENT

11 The conditions required before closure of the Logen Road at-grade crossing have been fulfilled. The Commission should deny Mr. Logen’s request to reopen the crossing.

A. **Condition (a)—Upgrades at 271st Street NW**

12 In Condition (a) of the Final Order, the Commission required BNSF to perform work at the railroad crossing at 271st Street NW in Stanwood before closing the Logen Road crossing, “as directed by a diagnostic safety team.”¹¹

13 On February 8, 2010, a diagnostic safety team visited the 271st Street NW site in Stanwood.¹² Its members included Commission Staff representatives and representatives

⁸ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Notice of Compliance & Ex. A](#) (Sept. 14, 2010).

⁹ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Letter from Lynn Logen to David Danner](#) (Sept. 16, 2010).

¹⁰ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Supplemental Notice of Compliance](#) (Sept. 20, 2010).

¹¹ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 04](#) ¶ 40 (Nov. 30, 2009).

¹² *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, Declaration of Kathy Hunter Regarding Compliance ¶ 4 (Sept. 23, 2010).

from BNSF and the Washington State Department of Transportation.¹³ The team recommended signs and pedestrian facilities.¹⁴ On September 14, 2010, Richard Wagner of BNSF submitted photographs in this docket depicting the 271st Street NW crossing.¹⁵ On September 20, 2010, Mr. Wagner submitted a description of the work that had been completed at the site.¹⁶ On September 22, 2010, Commission Staff visited the 271st Street NW site and found that the recommendations of the diagnostic team had been substantially complied with.¹⁷

14 Upgrades at the 271st Street NW crossing have been completed in accordance with Condition (a) of the Commission’s Final Order. Condition (a) was the only condition that the Commission required BNSF to fulfill before closing the Logen Road crossing.¹⁸

B. Condition (c)—Turnaround Cul-de-sac at Logen Road

15 In Condition (c) of the Final Order, the Commission directed BNSF to construct a turnaround cul-de-sac at Logen Road, “simultaneously with closure of the Logen Road crossing to the extent reasonably possible.”¹⁹ Paragraphs 5 and 37 of the Final Order demonstrate that the Commission expected BNSF to construct the cul-de-sac *after* closing the Logen Road crossing.

16 BNSF closed the Logen Road crossing on or about September 15, 2010. At that

¹³ *Id.*

¹⁴ See *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Supplemental Notice of Compliance](#) ¶ 5 (Sept. 20, 2010).

¹⁵ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Notice of Compliance & Ex. A](#) (Sept. 14, 2010).

¹⁶ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Supplemental Notice of Compliance](#) (Sept. 20, 2010).

¹⁷ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, Declaration of Kathy Hunter Regarding Compliance ¶ 5 (Sept. 23, 2010).

¹⁸ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 04](#) ¶ 40 (Nov. 30, 2009).

¹⁹ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, [Order 04](#) ¶ 40 (Nov. 30, 2009).

time, it had not yet begun constructing the cul-de-sac.²⁰ BNSF expects to begin constructing the cul-de-sac during the week of September 27, 2010.

17 BNSF has complied with Condition (c) in its closure of the Logen Road crossing.


III. CONCLUSION

18 BNSF has properly closed the Logen Road crossing in compliance with Conditions (a) and (c) of the Commission's Final Order. Lynn Logen's request to reopen the crossing should be denied.

DATED this 23rd day of September 2010.

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²⁰ *BNSF Railway Co. v. Snohomish County*, Docket TR-090121, Letter from Lynn Logen to David Danner (Sept. 16, 2010).

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III. CONCLUSION

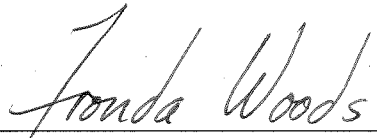
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