

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

BNSF RAILWAY COMPANY,) DOCKET TR140382 and
) DOCKET TR140383
 Petitioner,)
vs.)
)
YAKIMA COUNTY,)
)
 Respondent.)
_____)

**RESPONDENT YAKIMA COUNTY'S POST-HEARING
BRIEF**

Respondent Yakima County's
Post-Hearing Brief

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I. INTRODUCTION

1. This pleading is submitted by respondent Yakima County, 128 North 2nd Street, Yakima, Washington, 98901.

2. This pleading puts at issue RCW 81.53.060, which authorizes the Washington Utilities and Transportation Commission (herein the “Commission”) to close railroad at-grade crossings where required by public safety.

3. BNSF cannot demonstrate that the safety benefit gained by closing the North Stevens Road and Barnhart Road crossings (collectively “the crossings”) is greater than the increased risk of collision caused by closing the crossings. For this reason, BNSF has not carried its burden of showing that public safety requires that the North Stevens Road and Barnhart Road crossings be closed.

II. STATEMENT OF FACTS

A. BNSF operations in Yakima County.

4. BNSF operates railroad lines in Yakima, Benton and Franklin counties in the State of Washington. BNSF operates a common carrier with no passenger trains between the City of Pasco and the City of Yakima.¹ The line passes through or near several municipalities in Yakima County, including the City of Toppenish, located about 20 miles southeast of Yakima, and the City of Granger, located about 10 miles southeast of

¹ Exhibit GN-1T (pre-filed testimony of Gary Norris), at p. 6, line 10.

Toppenish. The City of Prosser is located in Benton County about 20 miles southeast of Granger.

5. Between the cities of Toppenish and Prosser, the BNSF line runs parallel with and north of State Route 22 (“SR 22”). In the vicinity of the North Stevens Road crossing, the BNSF line also runs parallel with and south of South Track Road.

6. Aside from the petitions presently before the Commission, there are no known proposals by BNSF to change or modify either its railway line in the vicinity of the crossings or the crossings themselves.

7. The land surrounding the BNSF line in the vicinity of the North Stevens Road and Barnhart Road crossings is primarily agricultural. A variety of agricultural products are grown in the vicinity of the BNSF line. These products include wheat, mint, spearmint, grapes, hay, hops, corn, potatoes and asparagus.²

8. The crossings are used by farmers to access fields on both sides of the BNSF line. Other farming and related support businesses use the crossings to access farm land on either side of the BNSF line.³

² Exhibit AZ-1T (pre-filed testimony of Allen Zecchino), at p. 1, line 24; Exhibit CP-1T (pre-filed testimony of Curtis Parrish), at p. 1, line 23.

³ Exhibit DT-1T (Pre-filed testimony of Dave Trautman); Exhibit EB-1T (pre-filed testimony of Ed Boob); Exhibit AC-1T (Pre-filed testimony of Andy Curfman).

B. The North Stevens Road crossing.

9. The North Stevens Road crossing is located at milepost 68.40.⁴ North Stevens Road is a gravel roadway at the railway crossing.⁵ The crossing is controlled by stop signs and crossbucks.⁶ The roadway crosses the BNSF line at a nearly perpendicular angle.⁷ The BNSF line is level to the east and west of the crossing.⁸ No trees, hills, buildings or other structures limit visibility in either direction.⁹

10. Traffic counts taken by BNSF indicate a 24-hour traffic volume over the crossing that ranges from 64 to 74 vehicles.¹⁰ The traffic counts do not indicate the portion of these vehicles that comprise farm equipment.

11. At present, about 12-14 trains come through the North Stevens Road crossing each day.¹¹ The approved and existing train speed is 49 mph.¹²

1. Use of the North Stevens Road crossing.

12. SP Farms and Ranches owns and farms two 80-acre parcels that are bisected by the BNSF line (and SR 22) in the immediate vicinity of the North Stevens Road

⁴ Exhibit GN-1T (Pre-filed testimony of Gary Norris), at p. 6, line 12.

⁵ Exhibit GN-1T (Pre-filed testimony of Gary Norris), at p. 5, lines 26-27.

⁶ Id.

⁷ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 3, line 12.

⁸ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 3, line 15.

⁹ Id., at p. 3, lines 15-16; see also Exhibit KM-3.

¹⁰ Id., at p. 7, line 2.

¹¹ Exhibit GN-1T (Pre-filed testimony of Gary Norris), at p. 6, line 6).

¹² Id.

crossing.¹³ SP Farms and Ranches uses the North Stevens Road crossing to farm these parcels.¹⁴

13. SP Farms and Ranches uses the North Stevens Road crossing most intensively during the spring planting season and the fall harvest. During the spring planting season its farm equipment uses the crossing over a period estimated to be eight to ten consecutive days.¹⁵ During the fall harvest its farm equipment uses the crossing over a period estimated to be ten consecutive days.¹⁶ During these periods, multiple pieces of equipment may be utilizing the crossing simultaneously.¹⁷

14. TK Farms also operates in the vicinity of the North Stevens Road crossing. Farm manager Andy Curfman estimates that during the fall harvest its farm equipment and semi-trucks use the North Stevens Road crossing 70 times per week.¹⁸ This estimate did not include farm maintenance vehicles, which also use the crossing.¹⁹

¹³ Exhibit CP-1T (Pre-filed Testimony of Curtis Parrish, at p. 1, lines 27-30).

¹⁴ *Id.*, at p. 2, lines 12-13.

¹⁵ Curtis Parrish, TR 114:9-10.

¹⁶ Curtis Parrish, TR 114:24.

¹⁷ Curtis Parrish, TR 120:1.

¹⁸ Andy Curfman, TR 95:3-12, 96:4.

¹⁹ Andy Curfman, TR 97:6-9.

15. Other farming operations use the North Stevens Road crossing to transport farm equipment across the BNSF line. These users include Philip Sealock, Steven Bangs, Dean Oswalt and Craig Oswalt.²⁰

16. Philip Sealock, Dean Oswalt and Craig Oswalt submitted public comments opposing the closing of the North Stevens Road crossing.²¹ Dean Oswalt commented that he uses the crossing “on a daily basis.”²² Craig Oswalt commented that he using the crossing “a lot.”²³ Philip Sealock commented that he uses the crossing regularly for farming on both sides of the BNSF line.²⁴

17. The crossing is also used by commercial entities that provide services to farm operations in the vicinity of the North Stevens Road crossing. A crop advisor with Simplot Soilbuilders, Dave Trautman, estimated that Simplot uses the North Stevens Road crossing approximately 20-25 times per year to move trucks across the BNSF line.²⁵ Simplot’s trucks can weigh 90,000 pounds fully loaded with chemicals, which are often delivered on site to third party applicators.²⁶ Third party applicators commonly utilize TerraGators or similar large equipment with travel speeds at or below 35 mph.²⁷ It is common that both the third party applicator and Simplot’s chemical truck will utilize

²⁰ Curtis Parrish, TR 118:18, 22, 24.

²¹ Exhibit B-1.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Dave Trautman, TR 150:21.

²⁶ Dave Trautman, TR 150:10-12, 24-25.

²⁷ Dave Trautman, TR 155:11, 16-17.

the North Stevens Road crossing numerous times during a single day of field application.²⁸

18. A crop consultant with Husch & Husch Chemical and Fertilizer, Ed Boob, testified that North Stevens Road allows the large farm equipment used by Husch & Husch operators to more directly access fields and thereby avoid excess travel on SR 22.²⁹ This farm equipment includes RoGators that are hauled on trailers and also TerraGators.³⁰ TerraGators are more than 10 feet wide and travel at speeds of approximately 40 mph.³¹ The large tires on TerraGators cost \$8,000 each and are not designed for travel on pavement.³²

19. Loaded semi-trucks comprise a substantial portion of the farm equipment that utilizes the North Stevens Road crossing.³³ Andy Curfman testified that TK Farms can load a trailer in the field in 20 minutes and put a semi-truck with loaded trailer on the roadway every four minutes.³⁴ In cases where these semi-trucks and trailers move between parcels on opposite sides of the BNSF line, the crossing entirely eliminates the need to use SR 22.

²⁸ Dave Trautman, TR 150:9-17.

²⁹ Ed Boob, TR 76:16-18.

³⁰ Ed Boob, TR 64:18-19, 65:1

³¹ Ed Boob, TR 68, 4, 9, 18-20.

³² Ed Boob, TR 70:16-17.

³³ Andy Curfman, TR 99:1-2; 120:16.

³⁴ Andy Curfman, TR 102:6-13.

20. If the North Stevens Road crossing is closed, these semi-trucks and trailers will have to use alternate crossings. The semi-trucks and trailers will enter SR 22 into traffic from a dead stop without the benefit of a stop light or other controlled intersection.³⁵ The semi-trucks and trailers would not reach safe highway speed before arriving at an alternate crossing, at which point they turn back towards North Stevens Road.³⁶ SR 22 contains no acceleration lanes to accommodate the ingress and acceleration of these semi-trucks.

2. Grade crossings alternative to North Stevens Road.

21. If the North Stevens Road crossing is closed, traffic that would have utilized North Stevens Road to cross the BNSF line will be diverted to adjacent crossings. The two adjacent crossings are at South Track Road, located about one mile to the southeast, and at Meyers Road, located about 1.4 miles to the northwest of North Stevens Road.³⁷

a. The South Track Road crossing.

22. The crossing at South Track Road is located approximately one mile southeast of North Stevens Road. The crossing has one active safety measure, flashing lights, and one passive safety measures, crossbucks.³⁸

³⁵ Andy Curfman, TR 101:23-25, 102:1-5.

³⁶ Curtis Parrish, TR 121:24-25.

³⁷ Exhibit KM-1T (Pre-filed testimony of Kent McHenry, at p. 3, lines 26-28).

³⁸ Exhibit GN-4 (Pre-filed testimony of Gary Norris, Exhibit 3).

23. In the vicinity of the crossing, South Track Road runs parallel with the railway line. To the northwest of the crossing South Track Road runs parallel with the railway line on the north. The crossing occurs by means of an abrupt “S” curve. Southeast of the “S” curve South Track Road runs parallel with the railway line on the south. The crossing occurs at an oblique angle in the middle of the “S” curve.³⁹ Because the approach runs parallel with the crossing, visibility in one direction is almost entirely impaired (*i.e.*, a driver has impaired visibility of the track behind him or her).⁴⁰ This impairment is exacerbated by the high rate of speed of many vehicles on South Track Road.⁴¹

24. South Track Road is generally viewed by the travelling public as unsafe due to the prevalence of speeding.⁴² Andy Curfman testified that TK Farms tries to avoid using South Track Road because it is narrow and has a lot of high speed traffic.⁴³ Curtis Parrish testified that SP Farms and Ranches avoid using South Track Road when possible because it is narrow, making use by wide farm equipment difficult.⁴⁴

³⁹ *Id.*, at p. 4, line 19.

⁴⁰ *Id.*, at p. 4, lines 19-20.

⁴¹ Exhibit KM-1T (Pre-filed testimony of Kent McHenry, at p. 4, lines 16-23).

⁴² *Id.*, at p. 4, lines 17-18.

⁴³ Curfman, TR at 103:17-19.

⁴⁴ Parrish, TR at 109:24-25.

25. Vehicles commonly travel on South Track Road in excess of the legal speed limit.⁴⁵ A traffic count conducted in 2010 recorded 45 vehicles travelling on South Track Road at speeds in excess of 80 miles per hour during one 24-hour period.⁴⁶ South Track Road experiences higher accident rates than other classifications of roadway.⁴⁷

26. The probability of a vehicle-train collision at the South Track Road crossing using the U.S. Department of Transportation Accident Prediction Model has not been determined.⁴⁸ It is unknown whether the probability of a train-vehicle collision at the South Track Road crossing is greater than or less than the probability of a train-vehicle collision at the North Stevens Road or Barnhart Road crossings. No record evidence indicates whether or how closing the North Stevens Road crossing would impact crossing safety at the South Track Road crossing.

b. The Meyers Road crossing.

27. The Meyers Road crossing is located approximately 1.4 miles to the northwest of North Stevens Road. The Meyers Road crossing is controlled by active warning devices consisting of flashing lights and gates, as well as one passive warning device, crossbucks.⁴⁹

⁴⁵ *Id.*, at p. 8, lines 5-6.

⁴⁶ *Id.*, at 7-9.

⁴⁷ *Id.*, at p. 8, lines 21-23.

⁴⁸ Gary Norris, TR 272:20.

28. Meyers Road crosses the BNSF line at an oblique angle.⁵⁰ Meyers Road also crosses two sets of tracks.⁵¹ This feature makes the Meyers Road crossing particularly dangerous because a train stopped one set of track may obscure the approach of a second train on the other set of tracks.

29. The probability of a vehicle-train collision at the Meyers Road crossing using the U.S. Department of Transportation Accident Prediction Model has not been determined.⁵² It is unknown whether the probability of a train-vehicle collision at the Meyers Road crossing is greater than or less than the probability of a train-vehicle collision at the North Stevens Road or Barnhart Road crossings. No record evidence indicates whether or how closing the North Stevens Road crossing would impact crossing safety at the Meyers Road crossing.

C. The Barnhart Road crossing.

30. The Barnhart Road crossing is located at milepost 62.40.⁵³ The crossing is controlled by passive warning devices that include stop signs, crossbucks and pavement markings.⁵⁴ The roadway crosses the BNSF line at a nearly perpendicular angle.⁵⁵ The

⁴⁹ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, line 24.

⁵⁰ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, line 26.

⁵¹ *Id.*, at p. 4, line 27.

⁵² Gary Norris, TR 272:20.

⁵³ Exhibit GN-1T (Pre-filed testimony of Gary Norris, at p. 6, line 11.

⁵⁴ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 2, lines 23-24; Exhibit GN-1T (Pre-filed testimony of Gary Norris), at p. 5, line 18.

⁵⁵ *Id.*, at p. 2, line 25.

BNSF line is level to the east and west of the Barnhart Road crossing.⁵⁶ No trees, hills, buildings or other structures limit visibility in either direction.⁵⁷

31. At present, about 12-14 trains come through each day.⁵⁸ The approved and existing train speed is 49 mph.⁵⁹

32. Traffic counts taken by BNSF indicate a 24 hour traffic volume over the crossing that range from 84 to 102 vehicles.⁶⁰ The traffic counts do not indicate the portion of these vehicles that comprise farm equipment.

1. Use of the Barnhart Road crossing.

a. Farm use of the crossing.

33. Zecchino Farms is headquartered at 1543 Satus Longhouse Road and farms approximately 221 acres south of the BNSF line and SR 22 in the vicinity of the Barnhart Road crossings (the “south 221 acres”).⁶¹ Zecchino Farms generally stores its equipment at 1543 Satus Longhouse Road, which is near an intersection with Drainbank Road. The farm’s equipment currently accesses the south 221 acres by travelling west on Drainbank Road for approximately two miles to Barnhart Road, then travelling south on Barnhart

⁵⁶ Id., at p. 3, line 3.

⁵⁷ Id., at p. 3, lines 3-4 (Exhibit A to Pre-filed testimony of Kent McHenry).

⁵⁸ Exhibit GN-1T (Pre-filed testimony of Gary Norris, at p. 6, line 6).

⁵⁹ Id.

⁶⁰ Exhibit GN-1T (Pre-filed testimony of Gary Norris, at p. 6, line 26).

⁶¹ Exhibit AZ-1T (Pre-filed testimony of Allen Zecchino, at p. 1, lines 19-24).

Road across the BNSF line to SR 22, which directly abuts the south 221 acres.⁶² During an average farming year, farm equipment will use this route to access the south 221 acres during an estimated 20 days.⁶³ The Barnhart Road crossing allows Zecchino Farms to access the south 221 acres while avoiding SR 22.

34. If the Barnhart Road crossing is closed, Zecchino Farms' equipment will access the south 221 acres by travelling south and crossing the BNSF line on Satus Longhouse Road, then travelling northwest for about two miles on SR 22.⁶⁴

35. Zecchino Farms vehicles are moved at dawn and dusk. SR 22 is oriented generally east-west. Closure of the Barnhart Road crossing will divert Zecchino Farms' equipment onto SR 22 at a time when visibility is impaired by the rising and setting sun.⁶⁵

36. Farm manager Andy Curfman, estimates that during the fall harvest season TK Farms uses the Barnhart Road crossing 50 times per week to transport heavy farm equipment and semi-trucks across the BNSF line.⁶⁶

⁶² Exhibit AZ-1T (Pre-filed testimony of Zecchino, at p. 2, lines 11-22).

⁶³ Allen Zecchino, TR 143:16.

⁶⁴ Exhibit AZ-1T (Pre-filed testimony of Zecchino, at p. 2, lines 25-29, p. 3, line 1, also Exhibit A).

⁶⁵ Zecchino, TR 144:2-9.

⁶⁶ Andy Curfman, TR 96:4, 97:6-9.

37. Dave Trautman, a crop advisor with Simplot Soilbuilders, estimated that Simplot uses the Barnhart Road crossing approximately 10 times per year to move trucks across the BNSF line.⁶⁷ Simplot's trucks weigh approximately 90,000 pounds when fully loaded with chemicals.⁶⁸ Simplot often delivers its chemicals to third party applicators on site.⁶⁹

The third party applicators utilize TerraGators or similar equipment.⁷⁰ In the event the Barnhart Road crossing is closed, these third party applicators and Simplot's trucks will be diverted onto adjacent roadways, including SR 22, each time it becomes necessary to cross the BNSF line in the vicinity of Barnhart Road.⁷¹

b. Tribal Use of the Barnhart Road Crossing.

38. Members of the Yakama Nation believe it to be very important to follow the patterns of their ancestors.⁷² The Barnhart Road crossing is significant to the Satus Longhouse community of the Yakama Nation.⁷³

39. Barnhart Road in the vicinity of the crossing pre-dates the railroad and formerly existed as a trail used by members of the Yakama Nation.⁷⁴ This route (now Barnhart Road) has traditionally been used by members of the Yakama Nation to access the Satus

⁶⁷ Dave Trautman, TR 157:15.

⁶⁸ Dave Trautman, TR 156:24-25.

⁶⁹ Dave Trautman, TR 150:10-12.

⁷⁰ Dave Trautman, TR 155:11; 155:16-17.

⁷¹ Dave Trautman, TR 156:2.

⁷² Johnson Meninick, TR 147:20-22.

⁷³ Exhibit RD-1T (Pre-filed testimony of Roy Dick), at p. 2, lines 25.

⁷⁴ Johnson Meninick TR 247:12-13, 248:2-4.

Longhouse for funerals, memorials, gatherings, pow-wows and other purposes, as well as for travelling to and from cemeteries in the vicinity of the Satus Longhouse.⁷⁵

40. Closing the Barnhart Road crossing would effectively destroy a traditional funeral procession route that is culturally significant to members of the Satus Longhouse and those who mourn the passing of its members.⁷⁶

2. Grade crossings alternative to Barnhart Road.

41. If the Barnhart Road crossing is closed, traffic that would have used Barnhart Road to cross the BNSF line will be diverted to adjacent crossings. The two adjacent crossings are at Satus Longhouse Road, located about two miles southeast of Barnhart Road, and Indian Church Road, located about 1.5 miles northwest of Barnhart Road.⁷⁷

a. The Satus Longhouse Road crossing.

42. The Satus Longhouse Road crossing is controlled by passive safety measures that include a stop sign and crossbucks.⁷⁸ North of the crossing there is also an advance warning sign and pavement markings.⁷⁹ Advance warning is needed because visibility on the north approach to the crossing is impeded to the west by trees and brush.⁸⁰ At closer

⁷⁵ Johnson Meninick, TR 147:12-19.

⁷⁶ Exhibit RD-1T (Pre-filed testimony of Roy Dick), at p. 3, lines 14-16.

⁷⁷ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 3, lines 22-24.

⁷⁸ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, lines 4.

⁷⁹ *Id.*, at p. 4, line 5-6.

⁸⁰ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, lines 7-6; also Exhibit C to pre-filed testimony of Kent McHenry (KM-4).

distance, visibility of the BNSF line to the west is compromised by an abandoned building.⁸¹

43. The probability of a vehicle-train collision at the Satus Longhouse Road crossing using the U.S. Department of Transportation Accident Prediction Model has not been determined.⁸² It is unknown whether the probability of a train-vehicle collision at the Satus Longhouse Road is greater than or less than the probability of a train-vehicle collision at the North Stevens Road or Barnhart Road crossing. No record evidence indicates whether or how closing the Barnhart Road crossing would impact crossing safety at the Satus Longhouse Road crossing.

44. Satus Longhouse Road in the vicinity of the BNSF crossing is prone to flooding. The road was closed due to flooding for approximately two weeks in 1996.⁸³ The road was closed for two days due to flooding in 2007.⁸⁴

b. The Indian Church Road crossing.

45. The Indian Church Road crossing is controlled by active warning devices to include flashing lights and gates, as well as a passive warning device, crossbucks.⁸⁵

⁸¹ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, lines 8-9; also Exhibit C to pre-filed testimony of Kent McHenry (KM-4).

⁸² Gary Norris, TR 271:23.

⁸³ Roy Dick, TR 241:12, 22.

⁸⁴ Roy Dick, TR 242:9.

⁸⁵ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, line 15.

46. A large vehicle that turns north off of SR 22 at Indian Church Road and crosses the BNSF line cannot negotiate the tight corner to access Shuster Road.⁸⁶ For this reason, Indian Church road is not an available alternate crossing for some categories of vehicles, including semi-trucks, for access to land in the vicinity of Barnhart Road.

47. The approach to the crossing at Indian Church road negotiates a curve that degrades visibility of the BNSF line, particularly to the west.⁸⁷ Visibility to the west is also limited by trees and brush.⁸⁸

48. The probability of a vehicle-train collision at the Indian Church Road crossing using the U.S. Department of Transportation Accident Prediction Model has not been determined.⁸⁹ It is unknown whether the probability of a train-vehicle collision at the Indian Church Road crossing is greater than or less than the probability of a train-vehicle collision at the North Stevens Road or Barnhart Road crossing. No record evidence indicates whether or how closing the Barnhart Road crossing would impact crossing safety at the Indian Church Road crossing.

⁸⁶ Ed Boob, TR:74:4-7; Andy Curfman, TR 94:5-7.

⁸⁷ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, lines 10-11.

⁸⁸ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 4, lines 12-14.

⁸⁹ Gary Norris, TR 271:25.

D. Record evidence about SR 22 and South Track Road in the vicinity of the crossings.

49. In the event the petitions are granted, the most direct routes of access to alternate crossings requires the use of SR 22 and South Track Road.

1. State Route 22.

50. SR 22 is a rural state highway with a posted speed limit of 55 miles per hour.⁹⁰ According to the National Highway Safety Administration, rural highways with posted speed limits of 55 miles per hour, such as SR 22, have the highest number of fatalities of any classification of roadway in the United States.⁹¹

51. Traffic counts by Yakima County show daily traffic volumes of approximately 1,600 vehicles per day along SR 22 in the vicinity of Barnhart Road, and approximately 6,100 vehicles per day in the vicinity of North Stevens Road.⁹² It is unknown what proportion of this travel consists of farm equipment or semi-trucks.

52. SR 22 in the vicinity of the Barnhart Road crossing contains several bridges over which highway width is constricted. Evidence in the record, including photographs, demonstrate that a wide piece of farm equipment moving across one of these bridges impedes traffic in both directions along SR 22.⁹³

⁹⁰ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 7, line 7.

⁹¹ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 7, lines 10-16.

⁹² Norris Exhibit (GN-14CX).

⁹³ Exhibit AC-1T (Pre-filed testimony Andy Curfman, p. 5, lines 24-28 and Exhibit D); also Allen Zecchino, TR 142:10-21.

53. The Washington State Department of Transportation has expressed concern that closing the North Stevens Road and Barnhart Road crossings could affect the safety and operation of SR 22.⁹⁴

54. According to Allen Zecchino, equipment operators at Zecchino Farms avoid SR 22 “like the plague.”⁹⁵ Andy Curfman testified that TK Farms avoids running its equipment on SR 22 “whenever possible.”⁹⁶ Curtis Parrish testified that SP Farms and Ranches tries to avoid South Track Road for safety reasons, but that SR 22 is even more dangerous than South Track Road due to the volume and speed of traffic.⁹⁷

2. South Track Road.

55. South Track Road is a two-lane hard surfaced roadway with narrow shoulders and an unposted speed limit.⁹⁸ Vehicles commonly travel in excess of the legal speed limit for unposted roads of 60 miles per hour.⁹⁹ A traffic count conducted in 2010 recorded 45 vehicles travelling on South Track Road at speeds in excess of 80 miles per hour during one 24-hour period.¹⁰⁰ South Track Road experiences higher accident rates than other classifications of roadway.¹⁰¹

⁹⁴ Exhibit KM-7T (Rebuttal testimony of Kent McHenry, Exhibit C).

⁹⁵ Allen Zecchino, TR 139:10.

⁹⁶ Andy Curfman, TR 92:4-10.

⁹⁷ Curtis Parrish, TR 109:24-25, 110:12-13.

⁹⁸ Exhibit KM-1T (Pre-filed testimony of Kent McHenry), at p. 8, line 4-5.

⁹⁹ *Id.*, at p. 8, lines 5-6.

¹⁰⁰ *Id.*, at 7-9.

¹⁰¹ *Id.*, at p. 8, lines 21-23.

56. People who live and farm in the vicinity of the crossings view South Track Road as being unsafe for travel by farm equipment.¹⁰² Farmers in the vicinity of the crossings avoid using South Track Road for the transportation of farm equipment unless necessary.¹⁰³

E. Record evidence about the safety implications of diverting traffic onto SR 22 and South Track Road.

57. The American Association of State Highway and Transportation Officials (“AASHTO”) in its Green Book – Policy on Geometric Design of Highways and Streets characterizes circumstances in which the speed differential between vehicles travelling the same direction exceeds 15 mph as a “severe risk.”¹⁰⁴

58. Much of the farm equipment that will be diverted onto SR 22 if North Stevens Road and Barnhart Road are closed will travel at speeds substantially below the legal speed limit. This includes semi-trucks and trailers that will reach the turnoff for an alternate crossing without ever achieving the legal speed limit on SR 22.¹⁰⁵ This also includes TerraGators with maximum speeds of around 40 mph and large tractors with maximum speeds of around 20 mph.¹⁰⁶ Due to the significant speed differential, the presence of these vehicles on SR 22 presents a “severe risk” of collision.

¹⁰² Exhibit AZ-1T (Zecchino Pre-filed testimony, p. 3, lines 6-21); Exhibit CP-1T (Parrish Pre-filed testimony, at p. 3, lines 19-29, p. 4, lines 3-23); Exhibit AC-1T (Curfman Pre-filed testimony, p. 2, lines 26-29, p. 4, lines 9-28).

¹⁰³ Andy Curfman, TR:13-14; Andy Curfman, TR 103:17-20; Curtis Parrish, TR 109:24-25, 110:1.

¹⁰⁴ Kent McHenry, TR 192:18-21.

¹⁰⁵ Curtis Parrish, TR 121:24-25.

¹⁰⁶ Ed Boob, TR 68, 4, 9, 18-20; Exhibit AZ-1T (Pre-filed testimony of Allen Zecchino, at p. 4, line 27).

59. Yakima County experiences vehicle accidents, including fatal accidents, involving passenger vehicles and farm equipment.¹⁰⁷ One such fatal accident, in which a driver approaching slow-moving farm equipment from behind failed to appreciate the speed differential and collided with the equipment, occurred on March 1, 2015.¹⁰⁸

60. The Washington State Department of Transportation (“WSDOT”) has expressed concern that closing the North Stevens Road and Barnhart Road crossings may cause an increase in the number and trip duration of farm vehicles on SR 22. According to WSDOT: “Introducing slower farm vehicles with the high speed traffic of SR 22 will create operational concerns and would likely increase the risk of collisions.”¹⁰⁹

III. LEGAL STANDARD

61. The Commission is authorized to hear petitions from road authorities or railroads to close existing grade crossings.¹¹⁰

¹⁰⁷ Exhibit KM-1T (Pre-filed testimony of Kent McHenry, p. 5, line 13-14.

¹⁰⁸ *Id.*, at lines 14-125 and Exhibit KM-9.

¹⁰⁹ Exhibit KM-10.

¹¹⁰ RCW 81.53.060.

62. Petitioner BNSF carries the burden of proving by a preponderance of the evidence that public safety requires the closure of the North Stevens Road and Barnhart Road grade crossings.¹¹¹

63. In the event BNSF carries its burden to establish that public safety requires these crossings to be closed, the Commission must then determine whether the need for either crossing “is so great that it must be kept open notwithstanding its dangerous condition.”¹¹² In making this determination, the Commission evaluates: (a) the amount and character of the 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 additional traffic that would result from the closure; and (d) whether the alternate crossings are safer than the crossing proposed for closure.¹¹³

IV. ARGUMENT

A. **Summary of Argument.**

64. Concerns for public safety underlie Yakima County’s objection to BNSF’s petitions to close these crossings. As the operator of its own short-line railway, Yakima County appreciates and lauds efforts to improve grade crossing safety. However, grade

¹¹¹ BNSF Railway Company v. Snohomish County (TR-090121) (Initial Order Granting Petition to Close Logen Road Grade Crossing Subject to Conditions), at p. 11.

¹¹² Department of Transportation v. Snohomish County, 35 Wn.2d 247, 254, 212 P.2d 829 (1949).

¹¹³ See BNSF Railway Company v. City of Mount Vernon, TR-070696 (Nov. 4, 2008); Burlington Santa Fe v. City of Ferndale, TR-940330 (March 31, 1995); Burlington Northern Railroad Co. v. Skagit County, TR-940282 (Dec. 13, 1996); Union Pacific Railroad v. Spokane County, TR-950177 (July 3, 1996).

crossing safety should not be improved at the expense of the travelling public. BNSF barely acknowledges that closing these crossings will divert vehicles, including slow moving farm equipment, onto adjacent South Track Road and SR 22. The extent and impact of these diversions are neither addressed nor quantified by BNSF. Yakima County shares WSDOT's opinion that closing these crossings will introduce additional traffic onto SR 22 and thereby "create operational concerns" and "likely increase the risk of collisions." Unless and until these impacts can be quantified and weighed against the purported safety benefits of closing these crossings, the net safety impact of closing the crossings cannot be determined. On the record before the Commission, BNSF has not carried its burden of demonstrating by a preponderance of the evidence that public safety requires the closure of these crossings.

B. The crossings are not good candidates for closure.

65. The Commission has historically looked at the Federal Railroad Administration's criteria for evaluating the need for crossings.¹¹⁴ These criteria include: 1) redundancy of crossings (more than one crossing per mile in rural areas); 2) ability of vehicular traffic to be re-routed safely and efficiently to an adjacent crossing; 3) a high number of collisions at crossing; and 4) poor visibility.¹¹⁵

¹¹⁴ BNSF v. City of Sprague, (TR-010684) (Final Order Reversing Initial Order; Granting Petition to Close "D" Street Crossing, on Conditions), at 7 (citing FRA-Highway Rail Crossing Consolidation and Elimination: A Public Safety Initiative) *reversed by* City of Sprague v. Washington Utilities and Transportation Commission, Burlington Northern & Santa Fe Railroad Company, Lincoln County Superior Court Cause No. 03-2-00009-5 (July 27, 2005).

¹¹⁵ Id.

66. Three of these four factors indicate that the crossings are not good candidates for closure. There is no redundancy of crossings. The North Stevens Road and Barnhart Road crossing are both located at least one mile from adjacent crossings. There is no recorded history of a collision at either crossing. Both crossings have excellent visibility, especially as compared to adjacent crossings.

67. The fourth factor—the ability of vehicular traffic to be re-routed safely and efficiently to an adjacent crossing—is disputed by the parties. Record evidence is undisputed that closing the crossings will cause vehicles, including slow moving farm equipment, to be diverted to South Track Road and SR 22 in order to use adjacent crossings. This traffic diversion is neither safe nor efficient. BNSF has provided no record evidence to substantiate a contrary view.

68. Yakima County takes the position that none of these factors support closing these crossings. It is undisputed that three of the four factors do not support closing the crossings.

C. There is no proposal to change or modify the crossings.

69. BNSF does not dispute that: (1) the crossings are not especially dangerous, or (2) there are no proposals to modify either the crossings or the railway line in the vicinity of the crossings. The absence of either factor makes the petitions unique.

70. Petitions to close crossings commonly arise in the context of proposed track modifications that will result in a more dangerous crossing. One example is the pending petition in BNSF Railway Co. v. Whatcom County, TR-150189 (2015), prompted by a proposed extension of both sides of existing siding track. Other petitions arising under similar circumstances include BNSF Railway Co. v. Snohomish County, TR-3413309 (2009) (proposal to add a second set of tracks to existing grade crossing); BNSF Railway Company v. City of Mount Vernon, TR-070696 (2008) (proposal to add a second set of tracks to existing grade crossing); Burlington Northern Railroad Co. v. Skagit County, TR-940282 (1996) (tracks being upgraded for high speed passenger rail service).

71. Petitions also arise in contexts where crossings are characterized as “especially dangerous.” Examples include Department of Transportation v. Snohomish County, 35 Wn.2d 247 (1949) (affirming trial court order closing crossing characterized as “exceedingly dangerous.”), and BNSF v. City of Sprague, TR-010684 (2003)¹¹⁶ (crossing found to be “particularly dangerous” due to limited visibility on approach).

72. This case presents neither circumstance. BNSF’s own traffic expert conceded that these crossings are not particularly dangerous.¹¹⁷ There is no proposal to modify the

¹¹⁶ Final Order Reversing Initial Order; Granting Petition to Close “D” Street Crossing; on Condition, issued January 10, 2003. The order was subsequently reversed by the trial court in Lincoln County Superior Court Cause No. 03-2-00009-5, City of Sprague v. Washington Utilities and Transportation Commission, Burlington Northern & Santa Fe Railroad Company (July 27, 2005).

¹¹⁷ Gary Norris, TR 196:4.

crossings or the tracks in the vicinity of the crossings. The factors motivating BNSF's petitions are neither usual nor apparent.

D. The North Stevens Road and Barnhart Road crossings are not especially dangerous.

73. The Commission has in the past characterized certain grade crossings as “especially dangerous,” “particularly dangerous,” or “exceptionally hazardous.”¹¹⁸ Such crossings shall be referred to herein as “especially dangerous.” Factors to be considered in determining whether a grade crossing is especially dangerous include: (1) the existence of a curve in the tracks that limits sight distance of vehicles seeking to cross the tracks;¹¹⁹ (2) the existence of structures such as buildings, hills or trees that affect the ability of approaching motorists to see activity on the tracks;¹²⁰ (3) the presence of a steep grade at the approach to the tracks;¹²¹ (4) a grade crossing where railroad tracks cross a roadway at other than a 90-degree angle;¹²² (5) the presence of unique features such as “superelevated” tracks;¹²³ (6) the existence of multiple sets of tracks or a siding track;¹²⁴ or (7) a combination of through train lines and local car movements;¹²⁵

¹¹⁸ BNSF Railway Co. v. Snohomish County (TR-090121) (Initial Order Granting Petition to Close Logen Road Grade Crossing Subject to Conditions), at 13.

¹¹⁹ Island Park, LLC v. New York State Dept. of Transportation, 61 A.D.3d 1023 (N.Y. Sup. Ct. 2009).

¹²⁰ Klamath County v. Dept. of Transportation, 116 P.2d 924 (Ore. App. 2005).

¹²¹ Island Park, *supra*.

¹²² Klamath County, *supra*.

¹²³ Island Park, *supra*.

¹²⁴ BNSF Railway Company v. City of Mount Vernon, Docket No. TR-070696 (Nov. 4, 2008).

¹²⁵ State ex. rel. City of St. Joseph v. Public Service Com'n, 713 S.W.2d 593 (Mo. Ct. App. 1986).

74. None of these factors are present with respect to the North Stevens Road or Barnhart Road crossing. Both are located on straight, level sections of track with excellent visibility in both directions. The roadway approach to both crossings affords motorists excellent visibility in both directions unobstructed by buildings, hills or trees. Barnhart Road and North Stevens Road both cross the BNSF line at a 90-degree angle. Both crossings encounter a single set of tracks. No superelevated tracks, steep inclines or other unique features that enhance the danger of the crossings are present.

E. The alternate crossings have features characteristic of crossings the Commission has described as especially dangerous.

75. The crossing at Satus Longhouse Road lacks active safety measures and is demarcated by a stop sign and crossbucks. In contrast with Barnhart Road, the approach to the Satus Longhouse Road crossing from the north has compromised visibility to the west. At a distance of approximately 465 feet from the crossing, visibility to the west is compromised by trees and foliage.¹²⁶ At closer distance, visibility is compromised by an abandoned building.¹²⁷

76. The approach to Indian Church Road from the north negotiates a curve that degrades visibility of the approach, particularly to the west.¹²⁸ Visibility is also limited to the west by trees and foliage.¹²⁹

¹²⁶ Exhibit KM-1T (Pre-filed testimony of Kent McHenry, p. 4, lines 7-8).

¹²⁷ Id., p. 4, lines 8-9.

¹²⁸ Id., p. 4, lines 11-12.

¹²⁹ Id., p. 4, lines 12-13.

77. The crossing at South Track Road is especially dangerous for several reasons. First, the road itself is generally viewed as unsafe due in large part to the prevalence of speeding. Second, visibility in the approach to the crossing from both the north and south is limited by virtue of the fact that the crossing is situated in the middle of an abrupt “S” curve. Vehicles approaching the crossing, often at a high rate of speed, have no clear view of the tracks behind them, which may contain an oncoming train. Finally, South Track Road crosses the tracks at an oblique angle, compounding the visibility limitations created by the “S” curves.

78. Meyers Road crosses the tracks at an oblique angle that inhibits visibility to the west. Both South Track Road and Annahat Road intersect Meyers Road, which is an access route to I-82, in close proximity of the crossing.¹³⁰ Meyers Road also crosses multiple sets of tracks.

79. The presence at Meyers Road of multiple sets of tracks in the context of an oblique crossing is significant. In BNSF Railway Company v. Snohomish County, Docket No. TR-090121 (2009),¹³¹ BNSF petitioned to close the crossing at Logen Road in Snohomish County. WSDOT’s Amtrak division planned to construct a new train

¹³⁰ McHenry, TR 190:18-25.

¹³¹ Initial Order Granting Petition to Close Logen Road Grade Crossing Subject to Conditions, issued October 21, 2009.

station nearby. As part of this project, WSDOT planned to extend existing siding such that a second set of tracks would be added to the grade crossing at Logen Road.

Witnesses testified that freight trains parked on this new siding 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. Administrative Law Judge Adam Torem observed:

In the past, based on concerns regarding reduced visibility and multiple tracks, the Commission has characterized such crossings as “especially hazardous,” “particularly dangerous,” or “exceptionally hazardous.” 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.

Id., at p. 17-18 (internal citation omitted). Administrative Law Judge Torem ultimately granted BNSF’s petition to close the Logen Road at-grade crossing. Id., at p. 24. This determination was not disturbed by Commission review culminating in a final order dated November 30, 2009.

82. In a similar manner, a train stopped on the BNSF line near the Meyers Road crossing will obstruct the view of oncoming train traffic on the other track, thereby posing an increased risk of a vehicle-train collision. When considered with the oblique angle of the crossing and the congestion resulting from multiple roadway intersections in close proximity to the crossing, the Meyers Road crossing should be considered “especially dangerous.”

F. It remains unknown whether the alternate crossings are more or less dangerous than North Stevens Road or Barnhart Road.

83. BNSF has produced no evidence establishing the probability of a vehicle-train collision at the Meyers Road, South Track Road, Indian Church Road or Satus Longhouse Road crossings. Whether the probability of a vehicle-train collision at these crossings is greater or lesser than the probability of a similar collision occurring at the North Stevens Road or Barnhart Road crossing is unknown.

84. Instead of establishing the probability of a vehicle-train collision at the alternate crossings, BNSF asserts the broad proposition that the probability of a collision at a crossing without active safety measures is almost ten times greater than at a railway crossing controlled with active and passive devices.¹³²

85. Yakima County concurs that the probability of a collision at a crossing with active safety measures is lower than the probability of a collision at *an identical crossing* with only passive safety measures. What is unknown is whether this general statement applies in the context of the crossings at Satus Longhouse Road, Indian Church Road, South Track Road or Meyers Road. BNSF has not analyzed how the unique features of these crossings (such as the presence of multiple tracks or oblique approaches) impact the probability of a collision.

¹³² Exhibit GN-11T (Rebuttal testimony of Norris, at p. 2, lines 24-25).

86. The Satus Longhouse Road has only passive warning devices similar to those at the Barnhart Road crossing. Given the visibility impairment and higher traffic volumes, the probability of a train-vehicle collision at the Satus Longhouse Road crossing is likely higher than at the Barnhart Road crossing.

G. Closing the crossings will divert vehicles, including slow moving farm equipment, onto SR 22 and South Track Road.

87. It is undisputed that closing the North Stevens Road and Barnhart Road crossings will divert vehicles, including slow-moving farm equipment, onto SR 22 and South Track Road. BNSF has made no effort to ascertain the increase in vehicle traffic at adjacent crossings caused by closing these crossings or the safety impact of diverting these vehicles to the adjacent crossings.¹³³

H. BNSF has not carried its burden to show that public safety requires closure of these crossings.

88. BSNF's petitions are motivated by the fact that it is concerned only with its railway and associated grade crossings. Yakima County, in contrast, has jurisdiction over an expansive transportation infrastructure that includes both the grade crossings at issue here and the surrounding roadways. Yakima County's decision to intervene in this matter and oppose this position is motivated entirely by concerns of public safety.

¹³³ Gary Norris, TR 277:21.

89. Closure of the Barnhart Road and North Stevens Road grade crossings will impact transportation in Yakima County in two ways: (1) the probability of a collision at the crossings will be eliminated; and (2) the probability of a collision on the surrounding roadways, including SR 22, will increase. Closure is only appropriate if BNSF establishes by a preponderance of the evidence that reduced probability of a collision at the crossings is more significant than the increased probability of a collision on the surrounding roadways.

90. On the record before the Commission, there no evidence that quantifies the increased risk of collision that will result from closing these crossings. This unknown risk cannot be weighed against the purported benefit of closing the crossings. As a result, BNSF has not carried its burden of demonstrating by a preponderance of the evidence that closing the crossings will increase public safety.

V. CONCLUSION

91. Yakima County, the local agricultural industry, and the Yakama Nation have united in opposition to an ill-conceived and dangerous idea. Closing the crossings will divert traffic, including large slow-moving farm equipment and semi-trucks, to alternate crossings that can only be reached by a high speed highway and a dangerous county road. BNSF acknowledges that closing the crossings increases the probability of a collision along the highway and roadways. It has made no effort to quantify the increased probability of a collision resulting from the closure of these crossings. For this reason,

the petitions to close the North Stevens Road and Barnhart Road crossings should be denied.

DATED THIS 29th day of May, 2015.

MENKE JACKSON BEYER, LLP



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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 Menke Jackson Beyer, LLP, whose address is 807 North 39th Avenue, Yakima, Washington, 98902.

I hereby certify that the original and three copies of the foregoing have been sent by Overnight Delivery, to Mr. Steven King, Executive Director and Secretary, Washington State Utilities and Transportation Commission, 1300 South Evergreen Park Drive, S.W., Olympia, Washington, 98504; and a .pdf version electronically filed (www.utc.wa.gov/efiling) and emailed (records@utc.wa.gov). I also certify that true and complete copies have been sent via electronic mail to the following interested parties:

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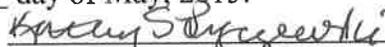
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct.

DATED THIS 29th day of May, 2015.


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Respondent Yakima County's
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