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1 **I. INTRODUCTION**

2 Both law and policy in Washington State are unambiguous that at-grade crossings present a
3 substantial danger to the public and should be closed absent a strong showing of public necessity.
4 This matter involves two separate Petitions to close rural at-grade crossings in Yakima County.
5 The testimony established that both crossings, the North Stevens Road crossing and the Barnhart
6 Road crossing, are uniquely dangerous and present a substantial risk to public safety. Likewise,
7 the testimony showed no public necessity sufficient to outweigh this risk to public safety. To the
8 contrary, the testimony established that each of the duplicative crossings is only sparsely used by a
9 small handful of agribusinesses, who oppose the closure based upon minimal inconvenience to
10 their business operations. BNSF Railway Company (“BNSF” or “Petitioner”), therefore,
11 respectfully requests that the Commission grant both of its Petitions and that each of the two
12 crossing be closed in the interest of public safety.

13
14 **II. SUMMARY OF KEY FACTS MANDATING CLOSURE**

15 While the North Stevens Road and Barnhart Road crossings have important differences
16 and must each be individually analyzed under the respective Petitions, both crossings share a
17 number of key similarities that demand closure in the interest of public safety.

18 First, as testimony from both the Petitioners and the Respondents established, the North
19 Stevens Road and Barnhart Road crossings are both dangerous. At-grade railroad crossings are
20 inherently dangerous, and this conclusion underlies the policy of both the State and the Federal
21 Railroad Administration that public safety mandates the closure of at-grade crossings whenever
22 plausible. The efforts of the railroads, the WUTC, and the FRA in seeking such closures over the
23 past decades has been central to the dramatic reduction in at-grade crossing accidents during that
24 time. Here, each crossing is unpaved, has various obstructions to visibility, is used, at least to
25 some extent, by heavy trucks and slow-moving farm equipment, and is controlled solely by
26 passive warning devices.

1 Second, the alternative available crossings adjacent to the Barnhart Road and North
2 Stevens Road crossings are substantially safer. Three of the four alternative crossings have active
3 warning devices, which the Federal Railroad Administration studies demonstrate are ten times
4 safer than the type of passive warning devices present at both the Barnhart Road and the North
5 Stevens Road crossings.

6 Third, the existing use of the North Stevens Road and Barnhart Road crossings, each rural
7 dirt roads, is extremely limited. Each of the crossings has very limited traffic flow, with average
8 daily traffic counts ranging between 39 and 102.

9 Fourth, closure would only result in *de minimis* inconveniences to the community.
10 Testimony at the hearing made clear that any inconvenience associated with additional travel will
11 be focused on a small handful of agribusinesses with portions of their land holdings adjacent to the
12 crossings. While it is evident that a number of those businesses have significant political power
13 within Yakima County, the minimal inconvenience to those few well-connected businesses does
14 not justify the inherent risk to the community associated with keeping each crossing open. As the
15 public comment of their trade organization made clear, these businesses generally oppose *all*
16 at-grade closures near agribusinesses, in favor of the convenience of their constituents over the
17 well-established safety benefit to the community.

18 Fifth, any minimal amount of additional slow-moving farm traffic added to roads does not
19 outweigh the real and established risk of a catastrophic event if the Barnhart Road and North
20 Stevens Road crossings remain open. While respondents' pre-filed testimony made claims about
21 more substantial volumes of slow-moving "farm traffic" being diverted to the state highway, these
22 claims could not withstand scrutiny. Testimony established that the number of trips by
23 slow-moving farm vehicles (as opposed to farm cars, pick-ups, and semi-trucks) that would be
24 rerouted at each of the two crossing averaged out to less than one additional slow moving vehicle
25 every other day. With the substantial existing volume of slow-moving farm vehicles already
26 operating in that area, any hypothetical increase would be statistically insignificant.

1 Given each of these circumstances, the inherent safety risks to the community associated
2 with keeping each of the crossings open is not outweighed by the necessity or convenience of the
3 community.
4

5 III. LEGAL FRAMEWORK

6 a. The Commission Has Both the Authority and Duty to Close At-Grade 7 Crossings in the Interest of Public Safety.

8 Chapter 81.53 of the Revised Code of Washington grants the Washington Utilities and
9 Transportation Commission (“WUTC” or “Commission”) the authority to regulate the safety of
10 railroad grade crossings.¹ The “legislature finds that grade crossing, rail trespass, and other safety
11 issues continue to present a public safety problem.”² RCW 81.53.020 states the legislature’s
12 preference for overcrossings and undercrossings where practicable, and prohibits the construction
13 of a crossing at grade without prior Commission approval. “The principle underlying this
14 provision is that grade crossings are inherently dangerous.”³ Closing at-grade rail crossings is
15 among the most effective means of addressing this public danger.⁴ The systematic and successful
16 closure of dangerous at-grade crossings over the past 15-plus years has been instrumental in
17 dramatically reducing the number of at-grade crossing accidents during that time.⁵

18 When an at-grade railroad crossing becomes too dangerous to keep open to public travel, a
19 railroad company or other government body may file a petition with the Commission to close the
20 crossing.⁶ Where, as here, a petition to close a crossing is opposed, the WUTC holds a public
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22
23 1 RCW §§ 81.53.010 et seq.

24 2 RCW § 81.53.271, Findings -- 2003 c 190.

25 3 *Burlington Northern & Santa Fe Ry. Co., v. City of Sprague*, Docket No. TR-010684, 2003 WL 24122604 (2003)
(hereinafter “*Sprague*”).

26 4 Exhibit GN-IT, pp. 3:20-4:3, Exhibit GN-12, p.3.

27 5 *Sprague*, Docket No. TR-010684, 2003 WL 24122604 (2003) (“the numbers show that over the period of time the
railroads have been acting aggressively to close unnecessary crossings, such accidents have decreased”); Exhibit
GN-IT, pp. 3:20-4:3, Exhibit GN-12, p. 3.

6 See RCW 81.53.060.

1 hearing to “resolve contested issues on the basis of the official record in a proceeding.”⁷ The
2 Commission is then authorized to issue a final order closing the at-grade crossing.⁸

3 **b. In Determining Whether Closure Is Mandated, Washington Law**
4 **Unambiguously Declares that Public Safety Must Be the Focus.**

5 “All crossings at grade are dangerous, and the policy of the law is strongly against the
6 allowance of such crossings.”⁹ In addition to dangers inherent at all grade crossings, “there are
7 factors that may make a particular crossing especially hazardous,” including “vegetation or other
8 obstacles that limit the motorist’s view of the tracks as the motorist approaches the crossing.”¹⁰

9 The Federal Highway Administration has instructed that “state agencies should utilize their
10 authority to close crossings whenever possible.”¹¹ Because of the inherent dangers of grade
11 crossings, “the Commission generally will grant a petition to close a grade crossing unless the
12 public need for the crossing outweighs the hazards that result from the crossing.”¹²

13 The Washington Supreme Court has established the following analysis for balancing safety
14 with such public need:

15 Having found that the grade crossing herein is dangerous and
16 unsafe, we must also consider the convenience and necessity of
17 those using the crossing and whether the need of the crossing is *so*
18 ***great that it must be kept open notwithstanding its dangerous***
condition.¹³

19 _____
20 7 WAC 480-07-820.

21 8 *Id.* All initial orders are “subject to further action by the commission as provided in WAC 480-07-825” and
22 become final orders of the commission unless the commission reviews the initial order.” *See* WAC 480-07-825. If a
23 party requests administrative review, the Commission “may by final order adopt, modify, or reject an initial order after
24 considering the pleadings and the record. Alternatively, the commission may remand the matter for further
25 proceedings with instructions to the presiding officer.” WAC 480-07-825(9).

26 9 *Burlington Northern Railroad Company v. City of Ferndale*, Docket No. TR-940330, 1995 WL 18090851 (1995)
27 (hereinafter “*Ferndale*”) (citing *Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 195 Wn. 146, 80 P.2d 406
(1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn. 2d 95, 104 P.2d
764 (1940). *See also Burlington Northern R.R. Co. v. Skagit County*, Docket No. TR-940282, 1996 WL 34900586,
(1996) (hereinafter, “*Skagit County*”).

10 *Skagit County*, Docket No. TR-940282, 1996 WL 34900586.

11 Railroad-Highway Grade Crossing Handbook, Chapter 4 (Rev. 2d. Ed., August 2007), available at
http://safety.fhwa.dot.gov/xings/com_roaduser/07010/sec04a.cfm.

12 *Ferndale*, Docket No. TR-940330, 1995 WL 18090851 (1995).

13 *Department of Transportation v. Snohomish County*, 35 Wn. 2d 247, 254, 212 P.2d 829 (1949) (hereinafter,
“*Snohomish*”) (emphasis added);

1 Accordingly, “by law, [a dangerous crossing] *can only remain open if* ‘the need for the crossing is
2 so great that it must be kept open notwithstanding its dangerous condition.’”¹⁴

3 In determining whether public convenience and need so outweigh the danger of the
4 crossing, the Commission may consider:

5 the amount and character of travel on the road and on the highway,
6 the availability of alternate crossings, whether the alternate
7 crossings are less hazardous, and ability of alternate crossings to
8 handle any additional traffic that would result from the closure, and
the effect of closing the crossing on public safety factors such as
police control.¹⁵

9 As there will always be some level of inconvenience to the community, the law on crossing
10 closures throughout the country has long made clear that public safety outweighs inconvenience to
11 the public.¹⁶

12 **c. Issues Unrelated to Present Safety, Necessity, and Convenience Are Not**
13 **Considered.**

14 In balancing the factors above, the Commission “may only consider whether or not
15 convenience and necessity justifies the closing of the crossing.”¹⁷ Factors not directly pertinent to
16 convenience or necessity, such as loss of business¹⁸ and external policy considerations¹⁹, are
17 outside the appropriate scope of the WUTC’s consideration, and are therefore ignored.²⁰
18 Similarly, “only the present public need should be considered in determining whether to close a
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21 14 *B.N.S.F. Railway Company v. Snohomish County*, Docket No. TR-090121, 2009 WL 3413309, (Oct. 21, 2009)
22 (Hereinafter, “*Logan Road*”).

23 15 *Skagit County*, Docket No. TR-940282 at p. 4 (1996); *see also Ferndale*, Docket No. TR-940330, 1995 WL
24 18090851 (1995); *Union Pac. R.R. v. Spokane County*, Docket No. TR-950177 (1996).

25 16 *Leathers v. Mo. Hwy. & Transp. Comm 'n*, 961 S.W.2d 83, 87 (Mo. App. Ct. 1997) (“The Commission places the
26 consideration of public safety above that of public convenience.”); *State ex rel. City of St. Joseph v. Pub. Serv. Comm*
27 *'n*, 713 S.W.2d 593, 597 (Mo. App. Ct. 1986); *Prosser v. Seaboard Air Line R. Co.*, 216 S.C. 33, 39, 56 S.E.2d 591
(S.C. 1949) (“This case further holds that public safety is paramount to that of public convenience and necessity, and
with this we find no fault.”).

17 *Snohomish*, 35 Wn. 2d at 255.

18 *Id.*

19 *BNSF Railway Co. v. Mt. Vernon*, 2007 WL 2907339 (2007) (hereinafter, “*Mt. Vernon I*”).

20 *Snohomish*, 35 Wn. 2d at 255; *see also Mt. Vernon I*, 2007 WL 2907339 (2007).

1 crossing.”²¹ The fact that growth and construction *may* happen in the future should not be
2 considered in the Commission’s analysis.²²

3 4 **IV. THE NORTH STEVENS ROAD CROSSING SHOULD BE CLOSED**

5 **a. Background on North Stevens Road Crossing**

6 The North Stevens Road crossing is an unpaved, rural, at-grade crossing.²³ It is controlled
7 by passive warning devices, namely crossbucks and stop signs.²⁴ The roadway approach from the
8 south turns at approximately a 45 degree angle shortly before approaching the tracks.²⁵ Brush
9 obscures the view to the east and west from the southern approach.²⁶ Although a small dirt road,
10 the speed limit on North Stevens Road, including as it approaches the crossing, is 50 miles per
11 hour.²⁷ The average daily vehicle traffic count over the North Stevens Road crossing is between
12 39 and 74 vehicles per day.²⁸ The average daily train count at the North Stevens Road crossing is
13 between 12 and 14, with an actual and maximum train speed of 49 miles per hour.²⁹

14 **b. The Duplicative North Stevens Road Crossing Is Inherently Dangerous.**

15 It is well established that at-grade rail crossings present a substantial danger to the public.³⁰
16 The weight ratio of a car to a train is about that of a soda can to a car—about 4,000 to 1.³¹
17 Accordingly, basic physics mandates that a train-vehicle collision, particularly at speed, has a high
18 probability of catastrophic results.³²

19 The risk of a train-vehicle accident is particularly acute at the North Stevens road crossing,
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21 ²¹ *Ferndale*, Docket No. TR-940330, 1995 WL 18090851 (1995).

22 ²² *Sprague*, Docket No. TR-010684, 2003 WL 24122604 (2003).

23 ²³ Exhibit GN-1T, p.5:14-6:3; Exhibit GN-6; Exhibit KM-29-CX.

24 ²⁴ Exhibit GN-1T, p.5:14-6:3; Exhibit GN-6; Exhibit KM-29-CX.

25 ²⁵ Exhibit KM-29-CX, p. 5.

26 ²⁶ Exhibit KM-29-CX, pp. 9, 10, 12, 13.

27 ²⁷ Petition, p. 4.

28 ²⁸ Petition, p. 4; Exhibit GN-1T, pp. 6:22-7:3.

29 ²⁹ Petition, p. 4; Exhibit GN-1T, 6:12.

30 ³⁰ *Ferndale*, Docket No. TR-940330, 1995 WL 18090851; *Reines*, 195 Wn. at 146; *State ex rel. Oregon-Washington Railroad & Navigation Co.*, 5 Wn. 2d 95; *Skagit County*, Docket No. TR-940282, 1996 WL 34900586; RCW § 81.53.271, Findings -- 2003 c 190.

31 ³¹ Exhibit DA-1T, p. 3:15-21, Exhibit DA-2, p. 7.

32 ³² Exhibit DA-1T, pp. 3:15-4:2, Exhibit DA-2, p. 7.

1 which is controlled solely by passive warning devices, namely crossbucks and stop signs.³³
2 Recent data from the Federal Railroad Association indicates that when adjusted for volume, the
3 risk of a train-vehicle collision at crossings with only passive warning devices is approximately ten
4 times greater than crossings with active warning devices, such as gates, lights, and whistles.³⁴ As
5 traffic engineering expert Gary Norris explained:

6 The reason for this is fairly obvious: people are much less likely to
7 try to drive across tracks in front of the train, either accidentally or
8 intentionally, if they have to run a red light and evade lowered gates.
9 Under passive control, the driver must determine if it is safe to cross
 whereas under active control the driver is informed through gates
 and flashers that it is not safe to cross.³⁵

10 Respondent concedes the obvious safety risks associated with crossings, such as the North Stevens
11 Road crossing, controlled solely by passive warning devices.³⁶

12 Further, the use of the North Stevens Road crossing by various heavy or slow-moving
13 vehicles, described in the testimony of various Yakima County witnesses, presents additional
14 dangers to the community. First, the low speed and lack of maneuverability of such vehicles
15 increases the likelihood of a collision.³⁷ Second, the substantial weight of such vehicles increases
16 the likelihood that a collision with a train would result in catastrophic consequences, including
17 derailment of the train.³⁸ Moreover, as Respondent's witnesses testified, a number of these
18 vehicles carry fertilizers, pesticides, and other chemicals, which may constitute hazardous
19 materials under the U.S. Department of Transportation regulations.³⁹ Were such a
20 chemical-loaded vehicle struck by a fast-moving train, there is an unacceptable risk of chemical
21 leaks, groundwater contamination, explosion, derailment, and/or death.⁴⁰

22
23 33 Exhibit GN-11T, pp. 2:17-4:2, Exhibit CN-12.

24 34 Exhibit GN-11T, p. 2:22-25, Exhibit CN-12.

25 35 Exhibit GN-11T, p. 2:25-3:1.

26 36 Hearing Transcript, Vol. III, 192:5-11, 221:13-19.

27 37 Exhibit DA-1T, p. 7:4-5; Exhibit FP-1T, pp. 3:21-4:20; Hearing Transcript, Vol. III, pp. 206:20-207:23.

38 Exhibit GN-11T, p. 2:18-3:25; Exhibit DA-5T, p. 2:7-23; Exhibit FP-1T, pp. 3:21-4:20; Hearing Transcript, Vol. III, pp. 206:20-207:23.

39 Hearing Transcript, Vol. III, 148:7-149:4.

40 Hearing Transcript, Vol. III, 72:8-18, 149:1-4, 154:15-23.

1 The North Stevens Road crossing also suffers from limitations on visibility. Notably,
2 visibility at the crossing is compromised from the southern approach by brush and other
3 vegetation.⁴¹ It is well established that the inability of vehicles to clearly see down the tracks
4 results in a dangerous condition.⁴²

5 Neither Yakima County nor the Yakama Nation meaningfully deny the danger of the North
6 Stevens Road crossing. Instead, they only note the absence of any accidents at this crossing. Of
7 course, Washington law has long rejected this argument.⁴³ As the Washington Supreme Court
8 succinctly stated, by analogy, in the seminal *Snohomish* case:

9 A father, with knowledge that his ten-year-old son
10 constantly attended the so-called Western movies, would
11 hardly be considered prudent if he persisted in permitting a
12 loaded pistol to lie around the home, on the theory that there
was no danger in so doing since the boy had not yet shot any
one while playing with it.⁴⁴

13 Simply put, “[t]he lack of prior disastrous consequences from such events at these locations in the
14 past does not predict that accidents will not occur there in the future.”⁴⁵

15 As set forth above, it is well established that “[a]ll crossings at grade are dangerous, and the
16 policy of the law is strongly against the allowance of such crossings.”⁴⁶ Here, the danger is
17 apparent given the lack of active warning devices, the types of traffic using the crossing, and
18 limited visibility. Accordingly, under Washington law, the North Stevens Road crossing must be
19 closed unless “the need of the crossing is so great that it must be kept open notwithstanding its
20 dangerous condition.”⁴⁷

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23 41 Exhibit KM-29-CX, pp. 9, 10, 12, 13.

24 42 *Skagit County*, Docket No. TR-940282, 1996 WL 34900586.

25 43 *Sprague*, Docket No. TR-010684, 2003 WL 24122604.

26 44 *Snohomish*, 35 Wn. 2d at 256-57.

27 45 *Sprague*, Docket No. TR-010684, 2003 WL 24122604.

46 *Ferndale*, Docket No. TR-940330, 1995 WL 18090851 (citing *Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 195 Wn. 146, 80 P.2d 406 (1938)); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104 P.2d 764 (1940). See also *Skagit County*, Docket No. TR-940282, 1996 WL 34900586.

47 *Logan Road*, Docket No. TR-090121, 2009 WL 3413309.

1 c. **The Danger to The Public Is Not Outweighed by Minimal Inconvenience**
2 **to the Four Agribusinesses that Wish to Continue Using It.**

3 In analyzing whether the need for the North Stevens Road crossing is “so great that it must
4 be kept open notwithstanding its dangerous condition,” the Commission considers “the amount
5 and character of travel on the road and on the highway, the availability of alternate crossings,
6 whether the alternate crossings are less hazardous, and ability of alternate crossings to handle any
7 additional traffic that would result from the closure, and the effect of closing the crossing on public
8 safety factors such as police control.”⁴⁸ Respondents have failed to present evidence
9 demonstrating that the public’s need for the North Stevens Road crossing is “so great that it must
10 be kept open notwithstanding its dangerous condition.”⁴⁹

11 **i. The North Stevens Road Crossing Is Rarely Used.**

12 Contrary to the rosy characterization of the North Stevens Road crossing in Yakima
13 County’s witnesses’ pre-filed testimony, the North Stevens Road is a small rural, unpaved,
14 at-grade crossing, with average daily vehicle use of between 39 and 74 vehicles.⁵⁰ Testimony at
15 the hearing made clear that there are only a handful of well-connected agribusinesses that make up
16 the vast majority of the minimal traffic over the North Stevens Road crossing, and they are driving
17 the County’s opposition.⁵¹ Notably, SP Farms testified that it was aware of only three others who
18 use the North Stevens Road crossing – T&K Farms and two farms operated by Mr. Sealock and
19 Mr. Bangs, respectively. Both Mr. Sealock and Mr. Bangs withdrew their pre-filed testimony,
20 and thus were not offered for cross-examination as to the extent of any use of the crossing.

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26 48 *Skagit County*, Docket No. TR-940282, 1996 WL 34900586.
27 49 *Snohomish*, 35 Wn.2d at 254 (emphasis added).
 50 Exhibit GN-1T, p.5:14-6:3; Exhibit GN-6; Exhibit KM-29-CX.
 51 Hearing Transcript, Vol. III, 193:12-15.

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ii. The Crossings Adjacent to North Stevens Road Are Safer and Can Absorb the Additional Traffic.

Testimony clearly established that both the Myers Street crossing and the South Track Road crossing, the two crossings adjacent to the North Stevens Road crossing, are substantially safer than the North Stevens Road crossing.

As set forth above, the North Stevens Road crossing is a rural, unpaved, at-grade crossing, controlled by passive warning devices, with an angled approach, and brush obscuring the view to the east and west from the southern approach.⁵²



⁵² Exhibit KM-29-CX.
PETITIONER'S POST HEARING BRIEF – page 13
Docket Nos: TR-140382 and TR-140383

1 The alternative crossing to the West, at Myers Road, is a paved crossing, controlled by
2 active warning devices, including lights, gates, and bells. The visibility in each direction, from
3 each approach, is excellent.⁵³
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14 Testimony conclusively demonstrated that these features, and in particular, the existence of
15 active warning devices, make the Myers Road crossing substantially safer than the North Stevens
16 Road crossing.⁵⁴
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23 53 Exhibit KM-28-CX.

24 54 Exhibit GN-11T, pp. 2:17-3:25; Exhibit GN-12; Exhibit FP-1T, p. 3:14-19; Exhibit MET-1T 4:8-11; Hearing
25 Transcript, Vol. III., pp. 201:5-202:10. 254:8-13. Respondent attempted to argue that the alternative crossings were
26 safer based upon rankings from the FRA accident prediction model, a model typically used for allocation of funding
27 resources. Exhibit GN 13CX. As explained by Gary Norris, this is not evidence of the safety, or relative safety, of
the crossings. Hearing Transcript Vol. III, 289:4-294:23. Notably, the report itself is explicit that, among other
things, “[t]his computer model *does not* rank crossings in terms of most to least dangerous. *Use of WBAPS data in
this manner is incorrect and misleading.*” Exhibit GN CX 13 (emphasis added). Further, as demonstrated, the
methodology and inputs are dated and not generally reliable. Hearing Transcript Vol. III, 291:7-292:7. The use of
such ranking also defies common sense based upon observation. Hearing Transcript Vol. III, 292:8-293:13.

1 The alternative crossing to the East, at South Track Road, is also a paved crossing,
2 controlled by active warning devices, including lights and bells, and advance LED warning signs



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11 funded by the WUTC and installed in 2013.⁵⁵ While there are turns near the crossing, the advance
12 LED warning signs alert drivers in advance of the turns, and the tracks are in the middle of a 400
13 foot straightaway.⁵⁶ As with the Myers Road crossing, the visibility at the South Track Road
14 crossing is excellent in each direction, from each approach.⁵⁷

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16 Again, testimony conclusively demonstrated that these features, and in particular, the
17 existence of active warning devices, made the South Track Road crossing substantially safer than
18 the North Stevens Road crossing.⁵⁸

19 Moreover, given the minimal amount of traffic that will be diverted, it is uncontested that
20 both the Myers Road crossing and the South Track Road crossing could safely absorb any
21 additional traffic resulting from the closure of the North Stevens Road crossing.⁵⁹

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24 55 Exhibit KM-30-CX; Hearing Transcript, Vol. III, pp. 174:18-175:16.

25 56 Exhibit KM-30-CX.

26 57 Exhibit KM-30-CX.

27 58 Exhibit GN-11T, pp. 2:17-3:25; Exhibit FP-1T, p. 3:14-19; Exhibit MET-1T 4:8-11; Hearing Transcript, V. III.,
pp. 201:5-202:10. The safety differential between the actively- and passively-controlled crossings would appear
even more dramatic here, given Yakima County's own witness's description of a substantial problem enforcing the
use of stop signs, countywide. Hearing Transcript, Vol. III, pp. 194:3-195:19.

59 Exhibit GN-1T, p. 13:4-7.

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2 iii. **Inconvenience and Risks to Safety Associated with Closure Are**
3 **Minimal.**

4 Before the County was contacted by a handful of politically-connected businesses, it was
5 strongly in favor of the closure of the North Stevens Road crossing, filing its own Petition to close
6 the North Stevens Road crossing.⁶⁰ In that Petition, Yakima County’s chief witness, Kent
7 McHenry, a licensed engineer with more than 20 years of experience, certified that there would be
8 no “homes or businesses that might be affected by the closure.”⁶¹ After receiving political
9 pressure, however, Yakima County changed its position, withdrawing its Petition, and asserting in
10 opposition to this Petition that there was a safety risk associated with putting a large volume of
11 additional slow-moving farm traffic on State Route 22 and South Track Road.⁶²

12 Again, this assertion could not stand up to scrutiny. The substantial volume of “farm
13 vehicles” referenced in Yakima County’s witnesses’ testimony turned out to consist almost
14 exclusively of the types of semi-truck trailers that already are prevalent on State Route 22, and
15 other highways around Yakima, “all day long and all night long.”⁶³ Testimony regarding *slow*
16 *moving* farm equipment, on the other hand, demonstrated that the quantity of additional
17 *slow-moving* farm equipment that would be diverted to State Route 22, or other highways, would
18 be *de minimis*. T&K Farms testified that its slow-moving farm vehicles used the North Stevens
19 Road crossing 5-10 times per week, for three months out of the year (totaling roughly 60-120
20 crossing annually).⁶⁴ SP Farms testified that it used the North Stevens Road with such
21 slow-moving equipment 36 times annually.⁶⁵ No other farmers or residents testified about their
22 use of the crossing.⁶⁶ Based upon the numbers provided, the closure would result in less than 160

23
24 60 Exhibit KM-19-CX.

25 61 Exhibit KM-19-CX, p. 5.

26 62 Exhibit KM-24-CX; Hearing Transcript, Vol. III, p. 193:13-15.

27 63 Hearing Transcript, Vol. III, pp. 99:21-101:10.

 64 Hearing Transcript, Vol. III, pp. 94:21-95:12, 99:21-101:10.

 65 Hearing Transcript, Vol. III, p. 115:20-22.

 66 Although two chemical supply companies that service the above referenced farmers also testified that they used the North Stevens Road crossing during to service those customers during farming season, both admitted that they passed

1 additional trips annually for slow-moving farm vehicles. Even accepting the testimony of the
2 farm company representatives, this equates to only one additional trip every other day.

3 As both Petitioner and Respondents' witnesses testified, there is a substantial amount of
4 slow moving farm traffic already existing on State Route 22, and other adjacent highways in the
5 area.⁶⁷ The addition of one short trip to that existing traffic, every other day, is *de minimis*, and
6 cannot justify the failure to remedy the admittedly dangerous condition created by the North
7 Stevens Road crossing.

8 In assessing other safety risks besides the purported diversion of "slow-moving" farm
9 vehicles, neither Yakima County nor the Yakama Nation presented testimony demonstrating
10 access by school buses or emergency services would be affected by the closure of the North
11 Stevens Road crossing. The evidence demonstrated that North Stevens Road crossing was either
12 not used for these purposes, or alternative routes were equally available.⁶⁸

13 **d. Conclusion: The North Stevens Road Crossing Should Be Closed.**

14 Given the lack of active warning devices, the types of traffic using the crossing, and the
15 limited visibility at the crossing, Petitioner has plainly established that the North Stevens Road
16 crossing is dangerous.

17 While respondents have presented evidence of some minor inconvenience to a small
18 handful of businesses with fields abutting the North Stevens Road crossing, they are not, as the law
19 requires, "so great that it must be kept open notwithstanding its dangerous condition."⁶⁹ In
20 analyzing whether the public's need for the North Stevens Road crossing is "so great that it must
21 be kept open notwithstanding its dangerous condition," the Commission considers "the amount

22 other crossings on their way to the farms abutting the North Stevens Road crossing that could just as easily be used,
23 and in most cases would require less travel on State Route 22. Hearing Transcript, Vol. III, pp. 67:9-25, 151:9-14.
24 Each also admitted that they already had to travel between 20 and 30 miles from their shops to reach North Stevens
25 Road, often times using State Route 22 or other highways and freeways. Hearing Transcript, Vol. III, pp. 67:9-25;
26 149:16-21.

25 67 Exhibit TS-1T, pp. 2:26-3:23; Exhibit GN-11T, p. 4:4-19; Exhibit AC-1T, pp. 5:7-6:4; Exhibit AC-3, 4, 5; Hearing
26 Transcript, Vol. III, pp. 67:9-16, 85:8-86:8, 91:13-16, 92:11-18, 149:9-21, 152:3-9; Hearing Transcript, Vol. V, pp.
354:9-355:9.

26 68 Exhibit GN-1T, pp. 11:5-12:24; Exhibit GN-9; Exhibit GN-10.

27 69 *Logan Road*, Docket No. TR-090121, 2009 WL 3413309.

1 and character of travel on the road and on the highway, the availability of alternate crossings,
2 whether the alternate crossings are less hazardous, and ability of alternate crossings to handle any
3 additional traffic that would result from the closure, and the effect of closing the crossing on public
4 safety factors such as police control.”⁷⁰ For each of the reasons set forth above, the County has
5 failed to present evidence demonstrating that the public’s need for the North Stevens Road
6 crossing is “so great” as to require the dangerous crossing to remain open.⁷¹
7

8 **V. THE BARNHART ROAD CROSSING SHOULD BE CLOSED**

9 **a. Background on Barnhart Road Crossing.**

10 The Barnhart Road crossing is a rural, at-grade crossing.⁷² The approach is paved to the
11 South, and unpaved to the North. It is controlled by passive warning devices, namely crossbucks
12 and stop signs, and a pavement marking on the south side only.⁷³ Brush obscures the view to the
13 east and west from the northern approach.⁷⁴ Although only a small dirt road, the speed limit on
14 Barnhart Road, including approaching the crossing, is 50 miles per hour.⁷⁵ The average daily
15 traffic count at the Barnhart Road crossing is between 72 and 102 vehicles per day.⁷⁶ The average
16 daily train count at the Barnhart Road crossing is between 12 and 14, with an actual and maximum
17 train speed of 49 miles per hour.⁷⁷

18 **b. The Duplicative Barnhart Road Crossing Is Inherently Dangerous.**

19 As set forth above in detail with respect to the North Stevens Road crossing, it is well
20 established that at-grade rail crossings present a substantial danger to the public.⁷⁸ At hearing,
21 testimony established numerous features that make the Barnhart Road crossing Dangerous,
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23 ⁷⁰ *Skagit County*, Docket No. TR-940282.

24 ⁷¹ *Snohomish County*, 35 Wn.2d at 254.

25 ⁷² Exhibit GN-1T, p.5:13-22; Exhibit GN-5; Exhibit KM-32-CX.

26 ⁷³ Exhibit GN-1T, p.5:13-22; GN-5; Exhibit KM-32-CX.

27 ⁷⁴ Exhibit KM-32-CX, pp. 3, 4, 6, 7, 9, 10, 12, 13, 15, 16.

⁷⁵ Hearing Transcript, Vol. III, p. 160:10-17.

⁷⁶ Petition, p. 4, GN-1T, pp. 6:23-7:3.

⁷⁷ Petition, p. 4.

⁷⁸ See notes 30-32, *supra*.

1 including that it is controlled solely by passive warning devices, namely crossbucks and stop
2 signs.⁷⁹

3 Further, the use of the Barnhart Road crossing by various heavy or slow-moving vehicles,
4 described in the testimony of Yakima County and Yakama Nation witnesses, presents additional
5 dangers to the community, as both the likelihood and severity of a collision increases as a result of
6 the low speed and lack of maneuverability of such vehicles.⁸⁰ As Yakima County's witnesses
7 testified, a number of these vehicles carry fertilizers, pesticides, and other chemicals, which may
8 constitute hazardous materials under the U.S. Department of Transportation regulations.⁸¹ Were
9 such a chemical-loaded vehicle struck by a fast-moving train, there is an unacceptable risk of
10 chemical leaks, groundwater contamination, explosion, derailment, and/or death.⁸²

11 The Barnhart Road crossing also suffers from limitations on visibility due to extensive
12 vegetation growth.⁸³ As Mr. Peterson testified, "the Barnhart Road crossing, of all of the
13 crossings basically from North Myers to Satus Longhouse, in my opinion, had the least amount of
14 visibility down the track, especially on the approach to the crossings."⁸⁴ It is well established
15 that the inability of vehicles to clearly see down the tracks results in a dangerous condition.⁸⁵ As
16 with the North Stevens Road crossing, the fact that there has not been an accident in recent
17 memory is not indicative of "does not predict that accidents will not occur there in the future."⁸⁶

18 As set forth above, the law is clear that "[a]ll crossings at grade are dangerous, and the
19 policy of the law is strongly against the allowance of such crossings."⁸⁷ Here, the danger is
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21 79 Exhibit GN-1T, p. 8:12-19. Exhibit GN-11T, pp. 2:17-4:2, Exhibit GN-12; Exhibit FP-1T, p. 3:14-19; *see also*
22 discussion of the relative safety of crossings with active vs. passive controls at p. 7 and notes 34-35, *supra*.

23 80 Exhibit DA-1T, p. 7:4-5; Exhibit FP-1T, pp. 3:21-4:20; Hearing Transcript, Vol. III, pp. 206:20-207:23; *see also*
24 additional discussion of issue at p.6 and notes 37-40, *supra*.

25 81 Hearing Transcript, Vol. III, 148:1-149:4.

26 82 Hearing Transcript, Vol. III, 72:8-18, 149:1-4, 154:15-23.

27 83 Exhibit KM-32-CX, pp. 3, 4, 6, 7, 9, 10, 12, 13, 15, 16.

84 Hearing Transcript, Vol. III, p. 201:19-23.

85 *Skagit County*, Docket No. TR-940282, 1996 WL 34900586.

86 *Sprague*, Docket No. TR-010684, 2003 WL 24122604; *Snohomish*, 35 Wn. 2d at 256-57.

87 *Ferndale*, Docket No. TR-940330, 1995 WL 18090851 (citing *Reines v. Chicago, Milwaukee, St. Paul & Pacific*
R.R., 195 Wn. 146, 80 P.2d 406 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla*
County, 5 Wn.2d 95, 104 P.2d 764 (1940)). *See also Skagit County*, Docket No. TR-940282, 1996 WL 34900586.

1 apparent given the lack of active warning devices, the types of traffic using the crossing, and
2 limited visibility. Accordingly, under Washington law, the Barnhart Road crossing must be
3 closed unless “the need of the crossing is *so great* that it must be kept open notwithstanding its
4 dangerous condition.”⁸⁸

5 c. **The Danger to the Public Is Not Outweighed by the Minimal**
6 **Inconvenience to Sporadic Funeral Processions that Travel Upon It, or the**
7 **Two or Three Agribusinesses Which Wish to Continue to Use It.**

8 In analyzing whether the need for the Barnhart Road crossing is “so great that it must be
9 kept open notwithstanding its dangerous condition,” the Commission considers “the amount and
10 character of travel on the road and on the highway, the availability of alternate crossings, whether
11 the alternate crossings are less hazardous, ability of alternate crossings to handle any additional
12 traffic that would result from the closure, and the effect of closing the crossing on public safety
13 factors such as police control.”⁸⁹ Neither Yakima County nor the Yakama Nation have presented
14 evidence demonstrating that the public’s need for the Barnhart Road crossing is “so great that it
15 must be kept open notwithstanding its dangerous condition.”⁹⁰

16 i. **The Barnhart Road Crossing Is Rarely Used.**

17 As with the North Stevens Road, Respondent attempted to paint the Barnhart Road
18 crossing as more substantial than it is. The Barnhart Road crossing is a small rural, unpaved,
19 at-grade crossing, with average daily vehicle use of only between 72 and 102 vehicles per day.⁹¹

20 Testimony from the Yakama Nation’s witnesses at the hearing demonstrated that the
21 Barnhart Road crossing is used sporadically, at best, for funeral processions from the Satus
22 Longhouse to the Satus Point Cemetery.⁹² The Yakama Nation’s witnesses established that such
23 funerals happen only a few times a year, at most, and the procession has at times used alternative
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25 ⁸⁸ *Logan Road*, Docket No. TR-090121, 2009 WL 3413309 (emphasis added).

26 ⁸⁹ *Skagit County*, Docket No. TR-940282, 1996 WL 34900586.

27 ⁹⁰ *Snohomish*, 35 Wn.2d at 254 (emphasis added).

⁹¹ Petition, p. 4, Exhibit GN-1T, pp. 6:23-7:3.

⁹² Hearing Transcript, Vol. III, p. 238:8-24.

1 routes, such as over the Indian Church Road crossing.⁹³

2 Similarly, testimony at the hearing made clear that there are three agribusinesses that make
3 up the vast majority of the minimal traffic over the Barnhart Road crossing.⁹⁴ Zecchino Farms
4 testified that it was aware of only two others who use the Barnhart Road crossing – T&K Farms,
5 and a farm owned by Mr. Oswalt.⁹⁵ Mr. Oswalt was not a witness and was not available for cross
6 examination as to the extent of his business’s use of the Barnhart Road crossing, if any.

7 **ii. Traffic Will Be Diverted to Safer Crossings, Which**
8 **Have the Capacity to Absorb the Additional Traffic.**

9 Testimony also clearly established that the Indian Church Road crossing was substantially
10 safer than the Barnhart Road crossing, while the Satus Longhouse Road crossing was marginally
11 safer than the Barnhart Road crossing.

12 As set forth above, The Barnhart Road crossing is a rural, at-grade crossing, controlled by
13 crossbucks and stop signs, with visual obstructions from vegetation on the northern approach.⁹⁶



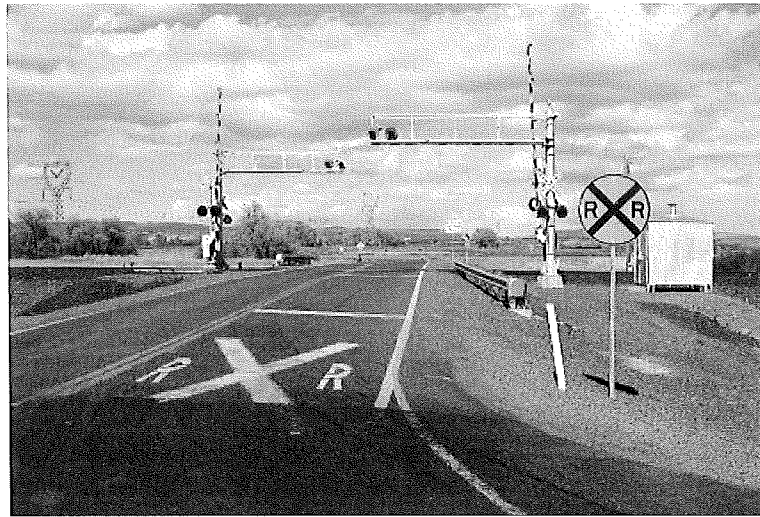
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24
25 ⁹³ Hearing Transcript, Vol. III, p. 238:8-24; AAP-14-CX. See also Hearing Transcript, Vol. III, p. 240:8-15 and
26 Hearing Transcript, Vol. V, p. 348:8-18 (discussing use of alternative route).

27 ⁹⁴ Hearing Transcript, Vol. III, 137:5-18.

⁹⁵ *Id.*

⁹⁶ GN-1T, p.5:13-22; GN-5; KM-32-CX.

1 The alternative crossing to the West, at Indian Church Road, is a paved crossing, controlled
2 by active warning devices, including lights, gates, and bells.⁹⁷ The visibility in each direction,
3 from each approach, is excellent.⁹⁸



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14 Testimony conclusively demonstrated that these features, and in particular, the existence of
15 active warning devices, made the Indian Church Road crossing substantially safer than the
16 Barnhart Road crossing.⁹⁹

17 The alternative crossing to the East, at Satus Longhouse Road, is also a paved crossing. It
18 is controlled by clearly visible ground markings, crossbucks, and stop signs. While there are
19 some obstructions on approach from the North, the visibility at the Satus Longhouse Road
20 crossing, itself, is excellent.¹⁰⁰

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22 97 Exhibit KM-31-CX.

23 98 Exhibit KM-31-CX.

24 99 Exhibit GN-11T, pp. 2:17-3:25; Exhibit FP-1T, p. 3:14-19; Exhibit MET-1T 4:8-11; Hearing Transcript, V. III.,
25 pp. 201:5-202:10, 254:8-13. Respondent attempted to argue that the alternative crossings were safer based upon
26 rankings from the FRA accident prediction model, a model typically used for allocation of funding resources. Exhibit
27 GN CX 13. As explained by Gary Norris, this is not evidence of the safety, or relative safety, of the crossings.
Hearing Transcript Vol. III, 289:4-294:23. Notably, the report itself is explicit that, among other things, “[t]his
computer model **does not rank crossings in terms of most to least dangerous. Use of WBAPS data in this manner is
incorrect and misleading.**” Exhibit GN CX 13 (emphasis added). Further, as demonstrated, the methodology and
inputs are dated and not generally reliable. Hearing Transcript Vol. III, 291:7-292:7. Finally, the use of such a
ranking defies common sense based upon observation. Hearing Transcript Vol. III, 292:8-293:13.

100 Exhibit KM-33-CX; Hearing Testimony, Vol. III, p. 188:7-21.



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10 Again, testimony conclusively demonstrated that these features made the Satus Longhouse
11 Road crossing safer than the Barnhart Road crossing.¹⁰¹

12 Moreover, given the minimal amount of traffic that will be diverted, it is uncontested that
13 both the Indian Church Road crossing and the Satus Longhouse Road crossing could safely absorb
14 any additional traffic resulting from the closure of the Barnhart Road crossing.¹⁰²

15
16 **iii. Inconvenience and Risks to Safety Associated with Closure Are**
17 **Minimal.**

18 As it was with the North Stevens Road crossing, the County previously was strongly in
19 favor of the closure of the Barnhart Road crossing, filing its own Petition to close the Barnhart
20 Road crossing, before being contacted by a handful of politically-connected agribusinesses.¹⁰³ In
21 the County's Petition to close the Barnhart Road crossing, Yakima County's chief witness in this
22 matter, Kent McHenry, a licensed engineer with more than 20 years of experience, again certified
23 that there would be no "homes or businesses that might be affected by the closure."¹⁰⁴ After
24

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26 _____
101 Exhibit KM-33-CX; Hearing Testimony, Vol. III, p. 201:18-202:10.

102 Exhibit GN-1T, pp. 12:27-13:7.

103 Exhibit KM-19-CX.

104 Exhibit KM-19-CX, p. 5.

1 receiving political pressure, however, the County backed off, withdrew its own Petition, and
2 asserted in opposition to this Petition that there was a safety risk associated with putting a large
3 volume of additional slow-moving farm traffic on State Route 22.¹⁰⁵

4 This assertion is even less credible with respect to the Barnhart Road crossing than it is
5 with respect to the North Stevens Road crossing, and again could not stand up to scrutiny under
6 cross-examination. As with the North Stevens Road crossing, the substantial volume of “farm
7 vehicles” referenced in Yakama County’s witnesses’ testimony turned out to consist almost
8 exclusively of the types of semi-truck trailers that already are prevalent on State Route 22, and
9 other highways around Yakima, “all day long and all night long.”¹⁰⁶ Testimony regarding *slow*
10 *moving* farm equipment, on the other hand, demonstrated that the quantity of additional
11 *slow-moving* farm equipment that would be diverted to State Route 22, or other highways, would
12 be *de minimis*. T&K Farms testified that its use of the Barnhart Road crossing was even more
13 limited than the North Stevens Road crossing.¹⁰⁷ At that crossing, T&K farms testified that
14 slow-moving farm vehicles only used the crossing 5-10 times per week, for three months out of the
15 year (totaling roughly 60-120 crossing annually).¹⁰⁸ Zecchino Farms also testified that it used the
16 Barnhart Road crossing with slow-moving equipment only about 20 days annually.¹⁰⁹ No other
17 farmers or residents testified about their use of the crossing.¹¹⁰ Based upon the numbers
18 provided, the closure would result in less than 140 additional trips annually for slow moving farm
19 vehicles. Again, even crediting Respondent’s witnesses’s testimony, this equates to less than one
20 additional trip for such vehicles every other day.

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22 105 Exhibit KM-24-CX; Hearing Transcript, Vol. III, p. 193:13-15.

23 106 Hearing Transcript, Vol. III, pp. 99:21-101:10.

24 107 Hearing Transcript, Vol. III, pp. 95:13-96:4.

25 108 Hearing Transcript, Vol. III, pp. 94:21-95:12, 99:21-101:10.

26 109 Hearing Transcript, Vol. III, p. 143:9-16

27 110 Although two chemical supply companies that service the above referenced farmers also testified that they used the Barnhart Road crossing during to service those customers during farming season, both admitted that they passed other crossings on their way to the farms abutting the Barnhart Road crossing that could also be used, and in most cases would require less travel on State Route 22. Hearing Transcript, Vol. III, pp. 75:8-19, 152:23-153:3. Each also admitted that they already had to travel between 20 and 30 miles from their shops to reach Barnhart Road, often times using State Route 22 or other highways and freeways. Hearing Transcript, Vol. III, pp. 75:13-19; 149:16-21.

1 As both Petitioner and Respondents' witnesses testified, there is a substantial amount of
2 slow moving farm traffic already existing on State Route 22, and other adjacent highways in the
3 area.¹¹¹ The addition of one short trip to that existing traffic, every other day, is *de minimis*, and
4 cannot justify the failure to remedy the admittedly dangerous condition created by the Barnhart
5 Road crossing.

6 The Yakama Nation also testified that there would be inconvenience to sporadic funeral
7 processions a few times per year, at most.¹¹² The Nation's witnesses testified that some funerals
8 take the alternate route over the Indian Church Road crossing, which is only .3 miles longer, and
9 avoids taking the slow moving funeral procession on the highway.¹¹³ It also allows the
10 slow-moving funeral procession, which could contain as many as 300 people, to use the safer
11 Indian Church Road crossing with its active warning devices.¹¹⁴ While the Yakama Nation has
12 asked the Commission to consider the importance of the "traditional" route over Barnhart, which is
13 only sometimes used, consideration of the issue is beyond the proper scope of the Commission's
14 analysis.¹¹⁵

15 Neither Yakima County nor the Yakama Nation expressed safety, convenience, or
16 necessity concerns regarding access by school buses.¹¹⁶ However, the Yakama Nation expressed
17 some concern regarding emergency vehicle access to three home sites north of the railroad tracks,
18 near Barnhart Road.¹¹⁷ Upon cross-examination, however, it was apparent that emergency
19 services would not be adversely affected.

20 Emergency services in the vicinity of the Barnhart Road crossing typically come from
21 either Toppenish or Granger.¹¹⁸ If coming from Toppenish, emergency vehicles would take

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23 111 Exhibit TS-1T, pp. 2:26-3:23; Exhibit GN-11T, p. 4:4-19; Exhibit TS-1T, pp. 2:26-3:23; Hearing Transcript, Vol.
24 III, pp. 67:9-16, 85:8-86:8, 91:13-16, 92:11-21, 149:9-21, 152:3-9; Hearing Transcript, Vol. V, pp. 354:9-355:9.

25 112 Hearing Transcript, Vol. III, p. 238:12-24.

26 113 Hearing Transcript, Vol. III, p. 240:8-15 and Hearing Transcript, Vol. V, p. 348:8-18 (discussing use of
27 alternative route).

114 Hearing Transcript, Vol. III, pp. 224:24-225:7.

115 *Snohomish*, 35 Wn. 2d at 255; *Mt. Vernon I*, 2007 WL 2907339.

116 Exhibit GN-1T, p. 12:1-16; Exhibit GN-10.

117 Exhibit AAP-3; Hearing Transcript, Vol. III, pp.227:23-228:8.

118 Exhibit AAP-3; Hearing Transcript, Vol. III, p.228:9-12.

1 State Route 22, and therefore pass Indian Church Road. Were the Barnhart Road crossing closed,
2 emergency vehicles could simply take the Indian Church Road crossing without any substantial
3 delay.¹¹⁹ Similarly, if coming from Granger, emergency vehicles would be able to access to the
4 three homesites without crossing to the South of the tracks, or traveling additional distance, by
5 turning directly off of Indian Church Road onto Drainbank Road, north of the BNSF line.¹²⁰

6 **d. Conclusion: The Barnhart Road Crossing Should Be Closed.**

7 Given the lack of active warning devices, the types of traffic using the crossing, and the
8 limited visibility at the crossing, Petitioner has plainly established that the Barnhart Road crossing
9 is dangerous.

10 While respondents have presented evidence of some minor inconvenience to a small
11 handful of businesses with fields abutting the crossings, they are not “so great that it must be kept
12 open notwithstanding its dangerous condition.”¹²¹ In analyzing whether the need for the Barnhart
13 Road crossing is “so great that it must be kept open notwithstanding its dangerous condition,” the
14 Commission considers “the amount and character of travel on the road and on the highway, the
15 availability of alternate crossings, whether the alternate crossings are less hazardous, and ability of
16 alternate crossings to handle any additional traffic that would result from the closure, and the effect
17 of closing the crossing on public safety factors such as police control.”¹²² Neither Yakima
18 County nor the Yakama Nation have presented evidence sufficient to demonstrate that the public’s
19 need for the Barnhart crossing is “so great.”¹²³

23 119 Exhibit AAP-3; Hearing Transcript, Vol. III, pp.228:18-229:3. Alan Pinkham initially had a concern that a fire
24 truck coming from Toppenish would have difficulty making the right turn onto Drainbank Road, when coming North
25 on Indian Church Road. However, the two nearest fire stations to the referenced home sites are in Granger, and just
26 south of State Route 22 on Satus Longhouse Road. Exhibit GN-9. Accordingly, it is unlikely that any firetruck
27 would be coming from Toppenish. GN-9; Hearing Transcript, Vol. III, pp.233:23-235:8.

120 Exhibit AAP-3; Hearing Transcript, Vol. III, p.229:6-25.

121 *Logan Road*, Docket No. TR-090121, 2009 WL 3413309.

122 *Skagit County*, Docket No. TR-940282.

123 *Snohomish County*, 35 Wn.2d at 254.

CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp, PLLC, whose address is 1218 Third Avenue, Suite 2500, Seattle, Washington, 98101.

I hereby certify that the original and 3 copies of PETITIONER’S POST HEARING BRIEF has been sent by FedEx to WUTC and filed electronically. I also certify that true and complete copies have been sent via electronic mail to the following interested parties:

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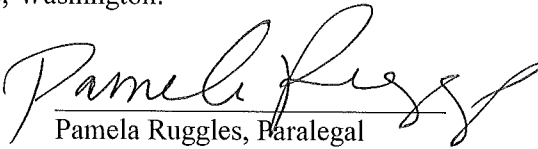
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I declare under penalty under the laws of the State of Washington that the foregoing information is true and correct.

DATED this 1st day of June, 2015 at Seattle, Washington.


Pamela Ruggles, Paralegal