

[Service Date January 14, 2008]

January 14, 2008

**NOTICE OF ADDITIONAL HEARING DATE
(Set for January 31, 2008, at 9:00 a.m.);
NOTICE OF DEADLINE FOR SUBMISSION OF PUBLIC COMMENT; NOTICE
OF DEADLINE FOR FILING OF ADDITIONAL EXHIBITS; NOTICE OF
DEADLINES CONCERNING POST-HEARING BRIEFS**

RE: *BNSF Railway Company v. City of Mt. Vernon*, Docket TR-070696

TO ALL PARTIES:

On January 9, 2008, the Washington Utilities and Transportation Commission (Commission) completed the majority of the evidentiary hearing in this matter. Due to the unavailability of several witnesses, the parties agreed that the Commission should schedule one more day of witness testimony and cross-examination. Further, this notice addresses various filing deadlines associated with the case's remaining procedural events.

NOTICE OF ADDITIONAL HEARING DATE: The Commission schedules one additional hearing date in this matter, to commence on **Thursday, January 31, 2008, at 9:00 a.m., in the WSDOT Second Floor Conference Room, Goldsmith Bldg, 401 Second Avenue South, Suite 200, Seattle, Washington.** Due to the off-site location of this session, a teleconference bridge line will not be made available; parties wishing to participate in or observe this session must attend in person. Parties waiving their right to attend this session must notify the Commission in advance.

The following witnesses shall be made available for cross-examination at the January 31, 2008, session:

- Thomas Zeinz (by Commission Staff at 9:00 a.m.)
- Albert Liou (by City of Mount Vernon at approximately 10:30 a.m.)
- Richard Smith (by Western Valley Farms – by telephone at 11:00 a.m.)

Parties wishing to re-examine other witnesses or present additional witnesses must submit a request to the Commission no later than Tuesday, January 22, 2008, specifying the witness(es) and the area(s) into which additional inquiry remains necessary. Responses opposing such requests must be filed no later than Friday, January 25, 2008. Finally, where there is agreement among all parties as to the need to re-examine any witness, stipulations to that effect may be filed as late as Monday, January 28, 2008. The Commission will decide any disputed requests relating to witnesses on that same date.

NOTICE OF DEADLINE FOR SUBMISSION OF PUBLIC COMMENT: The Commission establishes Friday, February 1, 2008, as the final date on which public comments will be accepted in this docket. Items not received by 5:00 p.m. on that date will *not* be appended to the record or otherwise considered by the Commission.

NOTICE OF DEADLINE FOR POST-HEARING FILING OF ADDITIONAL EXHIBITS: As noted during the course of the evidentiary hearing, parties who introduced additional exhibits not previously filed with the Commission's Records Center must ensure that such documents, whether actually offered or admitted during the hearing or not, are electronically filed and timely submitted in accordance with the provisions of Order 01, ¶ 22-25, and Order 02, ¶ 9, no later than Friday, February 1, 2008, as noted below. The evidentiary record for this matter shall be closed on that date; late-filed exhibits will be stricken from the record.

NOTICE OF DEADLINES FOR FILING OF POST-HEARING BRIEFS: In accordance with the parties' request, the Commission will entertain post-hearing briefs in this matter. The Commission requests that each party's brief, at minimum, relate the legal standard to be applied in this matter under RCW 81.53 to each of the following possible outcomes: (a) denial of the petition and retention of the public grade crossing at Hickox Road, expanded to accommodate new siding track; (b) partial grant of the petition and conversion of the Hickox Road grade crossing to gated private crossing for emergency use only; or (c) grant of the petition and full closure of Hickox Road grade crossing. Briefing on each potential result (or other options) shall include a detailed description of any requested mitigation the Commission should impose upon BNSF (*e.g.* upgrades to Hickox Road grade crossing safety devices, upgrades to other crossings, etc.) and reference to the legal authority through which the Commission can require the requested action(s). Further, the briefs should explore the impacts to public safety requirements as well as to public convenience and necessity for each potential outcome of this proceeding.

The Commission sets the following dates for parties to file the various enumerated post-hearing items with the Commission:

Additional Exhibits Introduced at Hearing	Friday, February 1, 2008
Post-Hearing Briefs	Friday, February 15, 2008
Requests to File Supplemental Briefs	Friday, February 22, 2008
Response to Requests on Additional Briefs	Tuesday, February 26, 2008

In addition, although the parties did not call for the filing of responsive post-hearing briefs, the Commission will entertain requests for responsive briefing upon the parties' review of each other's post-hearing briefing. Any party wishing to submit a supplemental or otherwise responsive brief shall submit its request, with appropriate explanation and justification as to what unforeseen issues were raised, by the date noted above. Other parties wishing to respond in favor of or in opposition to the request shall do so in accordance with the given schedule. The Commission will rule on the request as soon as feasibly possible and, if a request is granted, set a deadline for submission of the brief(s).

Thank you for your attention to these matters.

Sincerely,

ADAM E. TOREM
Administrative Law Judge