Exhibit No. 92 (FP-2T)

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY, a Delaware Corporation, Petitioner vs. CITY OF MOUNT VERNON Respondents, SKAGIT COUNTY, WSDOT, and WEST VALLEY FARMS, LLC, Intervenors.	DOCKET NO: TR-070696 PREFILED REBUTTAL TESTIMONY OF FOSTER PETERSON

1. **Have you reviewed any of the WUTC's prefiled testimony in this case?**

Yes, I have read the prefiled testimony of Thomas Zeinz, Paul Curl, and Robert Johnston.

2. **Let's begin by talking about Mr. Zeinz's testimony. Did you agree with any of his conclusions?**

I believe that we agree about the safety issues involved where a road crosses both mainline and siding tracks. We agree that the Hickox crossing will likely be blocked often, possibly for an

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extended period of time. We also agree that keeping the Hickox crossing open would increase the risk of a crossing collision where motorists may ignore crossing warning devices by trying to "beat" an oncoming train or falsely presuming activated signals are for a stopped train a second train is approaching but their view of the second train is blocked by the stopped train.

3. **Do you disagree with any of Mr. Zeinz's conclusions?**

I disagree with Mr. Zeinz's recommendation to improve both Stackpole and Blackburn crossings if the Hickox Road crossing is closed.

4. **Why do you disagree that both Stackpole and Blackburn need to be improved if Hickox is closed?**

I believe it is sufficient to close Hickox without upgrading either Stackpole or Blackburn, for the reasons described below. I also believe that it is sufficient to close Hickox and upgrade Stackpole to have active warning protection, without changing the Blackburn crossing. I do note, however, that Mr. Zeinz was not apparently asked to consider the option of closing the Hickox crossing, leaving the Blackburn crossing as-is, and improving the Stackpole crossing to have active warning devices (when asked to compare alternatives on Page 13 of his prefiled testimony).

5. **Why do you disagree with Mr. Zeinz's recommendation to improve the Blackburn crossing?**

I visited each crossing involved in this matter (Blackburn, Hickox and Stackpole) on November 6, 2007. First and foremost, the Blackburn crossing meets all required safety standards for grade crossings. This was also acknowledged in Mr. Johnston's prefiled testimony.

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6. **Is there another reason you disagree with Mr. Zeinz's recommendation to improve the Blackburn crossing?**

Yes. I disagree with Mr. Zeinz's claim that the Blackburn crossing's traffic signal placement and coordination increases the likelihood of motorist confusion. The Blackburn crossing not only has active crossing protection, but has the additional component of normal traffic signals. Although this is generally unusual at grade crossings, it actually makes the crossing safer than a crossing with only flashing lights and gates (notably, Mr. Johnston also testified that on "the positive side, the Blackburn . . . railroad signals are connected with traffic signals").

7. **Why do traffic signals make the grade crossing safer?**

Driver behavior at crossings equipped with traffic signals is modified because drivers stop at or before the railroad stop line even when a train is not approaching. The consistent stopping location, with or without the presence of a train, means drivers will not become confused about a safe location to stop when a train is approaching the crossing. Lights and gates really become icing on the cake when traffic signals are installed. It is very difficult to imagine a driver claiming "I didn't know what that meant" - because traffic signals are such a basic part of operating a motor vehicle. Drivers are less likely to ignore active crossing protection when they are also facing a red traffic light. Blackburn involves four streets intersecting, and drivers would stop at the same traffic lights even if the tracks did not exist.

Also, I am unaware of any information that the Blackburn crossing has had problems with drivers facing conflicting warning devices - such as facing lowering warning gates but green traffic lights. That would be the only scenario of conflicting warning devices I believe could be considered confusing - but I am not aware of a situation in which that has happened.

8. **How are the warning devices linked to traffic signals at Blackburn?**

When a train is coming to a crossing at or near a street intersection, such as the Blackburn crossing, the oncoming train trips a sensor that "preempts" the traffic signals. This means that the

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traffic signals change to clear any traffic that may be on the crossing the train is approaching. At Blackburn, the signals are wired so that the traffic signal lights will turn red before a train nears, preventing motorists from entering the crossing. Preemption means the lights will not be green when the gates lower.

9. **Do you believe the north siding switch should be relocated?**

No. Blackburn is located at the north end of the siding. Mr. Zeinz did not address the fact or did not have information that the siding track has been designed so a train in the siding will not block Blackburn. There will not be the same visibility or safety concerns that drivers may ignore warning devices when they cannot see an oncoming train. Further, a train pulling into the siding will travel through the Blackburn crossing whether the siding switch is located north or south of the crossing. Trains may not travel faster than 20 m.p.h. when pulling into the Mt. Vernon siding, so the speed of a train will be relatively slow. See Exhibit 1, attached hereto (BNSF Timetable for Bellingham Subdivision) whether it has just pulled into the siding or is about to pull into the siding. In my opinion, the cost of such construction outweighs the benefit, if any.

10. **Are there any other factors that explain why you recommend closing Hickox but leaving the Blackburn crossing as-is, even though both would cross siding and mainline tracks?**

Yes. Another factor that I have considered is where the speed limit changes near the crossings. The speed limit between mileposts 51.0 and 67.9 (Stackpole, Hickox and Blackburn are located between these mileposts) is 79 m.p.h. for passenger trains and 60 m.p.h. for freight trains. See Exhibit 1. More than two miles north of Hickox and less than one mile north of Blackburn, at MP 67.9, the speed limit is slower: it is 50 m.p.h. for passenger trains and 45 m.p.h. for freight trains. A northbound passenger train must be traveling at or slower than 50 m.p.h. when its lead locomotive reaches MP 67.9, so it is likely that trains will be slowing when they cross Blackburn in anticipation of the reduced speed limit ahead. It follows that since Hickox is more

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than two miles from the speed zone change, northbound trains will likely be traveling across Hickox at a faster speed than at Blackburn - potentially up to 29 m.p.h. faster for passenger trains. Southbound trains cannot speed up until the entire train has passed MP 67.9, so it correspondingly follows that a southbound passenger train could well be traveling at or slightly faster than 50 m.p.h. at Blackburn (depending on its length), but may potentially reach 79 m.p.h. by the time it crosses Hickox. Keeping the Blackburn crossing as-is is less dangerous than keeping the Hickox crossing open, for the reasons described in my earlier answers but also because trains potentially cross Hickox at a greater rate of speed.

11. **Do four-quadrant gates solve the safety concerns at Hickox?**

Not necessarily. The FRA has recognized that vehicle presence detection systems that keep exit gates up longer may encourage drivers to follow violators through crossings using the oncoming traffic exit gate opening in a steady stream, defeating the intended warning. Further, drivers who know the exit gates will not close when a vehicle is on the crossing may be more likely to try to beat the "entrance" gate, knowing the exit gate will not lower on top of their vehicle. Here, Hickox is unique in that motorists (especially drivers familiar with the crossing) who know the crossing may be blocked might be tempted to go around the gates to avoid having to retrace their route and use an alternative crossing. It is not safe to have an open crossing in the middle of siding track. Neither Blackburn nor Stackpole are in the middle of a siding track.

12. **Do you have any exhibits to illustrate the scenario of motorists ignoring or trying to beat gates at a crossing?**

It is my understanding that BNSF will provide two or three demonstrative videos showing drivers ignoring warning devices, a scenario I discussed in my earlier testimony. This will illustrate the concern of keeping the Hickox crossing open, creating potential temptation for motorists to try to beat safety gates to cross the tracks.

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13. **What is your professional conclusion about whether to install four-quadrant gates at Hickox?**

Four-quadrant gates do not eliminate the safety hazards posed at the Hickox crossing. It is my opinion that the proper mitigation in this case is to close the Hickox crossing, the only way to eliminate its safety hazards. The other two crossings, Blackburn and Stackpole, have adequate, safer crossing protection. The WUTC admits that Blackburn and Stackpole meet all required safety standards.

14. **In your opinion, as between the following alternatives, which would you deem safer: (a) leaving the Hickox Road crossing open, but with four-quadrant gates, or (b) closing the Hickox Road crossing and diverting the traffic to the Blackburn and Stackpole crossings with no improvement to either of these alternative crossings?**

Under the circumstances described, (b) closing the Hickox Road crossing and diverting the traffic to the Blackburn and Stackpole crossings with no improvement to either of these alternative crossings would be safer. Whether or not Hickox has two-quadrant or four-quadrant gates, the crossing is going to be blocked significantly, so it is safer to avoid any potential conflict with motor vehicles. Stackpole has excellent visibility, and Blackburn has adequate safety devices, including normal traffic signals. It is unsafe to create incentives for drivers to "beat" lowering gates (to avoid having to take a detour when a train is parked in the siding) and risk feeling trapped between the gates if the driver does not make it across in time.

15. **In your opinion, as between the following alternatives, which would you recommend: (a) leaving the Hickox Road crossing open, but with four-quadrant gates, (b) closing the Hickox Road crossing and installing active warning devices at Stackpole crossing, or (c) closing the Hickox Road crossing with improvements being made to both Stackpole and Hickox crossings?**

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I would recommend (b). Closing the Hickox crossing is the best, safest way to mitigate the hazards presented by extending the siding track across the road. I do not believe that Blackburn needs to be upgraded, and I believe Mr. Zeinz's analysis is based on incorrect information (trains parked across Blackburn, confusion because of stop lights, etc.).

16. **Did any part of Mr. Zeinz's testimony change your conclusion that the Hickox crossing should be closed?**

No. If this stretch of track has three crossings now and goes to two, it will concentrate where vehicles and pedestrians have contact with railroad tracks. Removing one whole crossing from mix means that crossing cannot have any accidents, and drivers will not risk wasting travel time by driving to the crossing, seeing it blocked, retracing their journey, and taking an alternative route. The bottom line is that Hickox will be blocked by trains with regularity. Closing the Hickox crossing is the best solution.

DECLARATION

I, Foster Peterson, declare under penalty of perjury under the laws of the State of Washington that the foregoing PREFILED REBUTTAL TESTIMONY OF FOSTER PETERSON is true and correct to the best of my knowledge and belief.

DATED this 29th day of November, 2007.

FOSTER PETERSON

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DATED this 30th day of November, 2007.

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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 Montgomery Scarp MacDougall, PLLC, whose address is 1218 Third Avenue, Suite 2700, Seattle, Washington, 98101.

I hereby certify that the original and 12 copies of PREFILED REBUTTAL TESTIMONY OF FOSTER PETERSON has been sent by FedEx to Carole J. Washburn at WUTC and a PDF and word perfect version sent by electronic mail. I also certify that true and complete copies have been sent via electronic mail and U.S. Mail to the following interested parties:

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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 30th day of November, 2007 at Seattle, Washington.

Lisa Miller

Lisa Miller, Paralegal

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Exhibit No. 93 (FP-3)

DOCKET TR-070696
PREFILED REBUTTAL TESTIMONY OF FOSTER PETERSON

"EXHIBIT 1"

BNSF TIMETABLE FOR BELLINGHAM SUBDIVISION

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