

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY	)	Docket TR-070696
	)	
PETITIONER	)	SKAGIT COUNTY FIRE
	)	PROTECTION DISTRICT NO. 3,
vs.	)	CITY OF MOUNT VERNON and
	)	SKAGIT COUNTY'S JOINT
CITY OF MOUNT VERNON	)	ANSWER TO BNSF'S PETITION
	)	FOR ADMINISTRATIVE REVIEW
RESPONDENT	)	
_____	)	

1 Skagit County Fire Protection District No. 3 , the City of Mount Vernon and Skagit County, collectively referred to as "Municipalities" hereby submit the following Joint Answer to BNSF Railway Company's Petition for Administrative Review.

2 The Municipalities oppose BNSF's proposed language change relating to paragraph 115(2)(c) of the initial order. The Municipalities take the position that paragraph 115(2)(c) should either not be modified, or, if BNSF's request for a diagnostic team to determine whether the existing applicable warning devices should be retained after the Hickox Road crossing is converted to a private emergency access crossing is granted, then the revision of paragraph 115(2)(c) should be limited to that issue as reflected in the Municipalities' proposed language in Exhibit A to this answer.

3 BNSF's proposed changes to Paragraph 115(2)(c) of the initial order includes two changes that exceed the scope of BNSF's requested review:

**1. BNSF's Proposed removal of language from Paragraph 115(2)(c) should be rejected:**

4 The initial order states:

*Third, BNSF shall enter into negotiations with the City of Mount Vernon, Skagit County, and Skagit County Fire Protection District No. 3 to draft a private crossing agreement that ensures continued access across the tracks for local emergency response to flood-related events as well as incidents where the health, safety, and welfare of local residents would be improved.*

5 BNSF proposes the following change:

*Third, BNSF shall enter into negotiations with the City of Mount Vernon, Skagit County, and Skagit County Fire Protection District No. 3 to draft a private crossing agreement that ensures continued access across the tracks for local emergency response to flood-related events ~~as well as incidents where the health, safety, and welfare of local residents would be improved.~~*

6 BNSF's request to remove this language is unsupported by any evidence, analysis or authority. WAC 480-07-825(3) requires that a petition for review "clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks." In regard to the above language, BNSF has not complied with this requirement. BNSF has only stated a remedy and has not identified the nature of the challenge to this language, has not submitted any evidence to support the proposed language change and has not cited any law, rule or other authority in support of removing the language.

7 BNSF did not raise a timely challenge to the following portions of the Initial Order, both of which directly support the language that BNSF has asked the Commission to strike:

*Nevertheless, a reasonable sense of caution and prevention requires expanding the scope of this private crossing agreement beyond flood-related emergencies so as to provide Fire District No. 3 with maximum flexibility in its response options so as to best protect those citizens working and residing on the west side of the Hickox Road crossing.<sup>1</sup>*

*Access shall not be limited to flood-related events, but shall be permitted for any and all threats to the health, safety, and welfare of local residents.  
.....<sup>2</sup>*

8           BNSF has not raised a timely or substantive challenge to support its request to strike the specified language from Paragraph 115(2)(c), and the Commission must reject this proposed change.

**2. BNSF's Proposed addition of language to Paragraph 115(2)(c) should be rejected:**

9           BNSF proposes the addition of the following sentence:

*The private crossing agreement shall determine which party will undertake the work and cost of removal.*

10           To the extent this language represents an attempt to place any financial responsibility on the Municipalities for removal of the safety signaling or installation of improvements to allow a gated private crossing, the Municipalities object to the requested language. Once again this is a modification that is offered without any evidence, legal authority or analysis and the modification must be rejected based on WAC 480-07-825(3). Moreover to the extent the language is intended to place any of the costs of the removal of any signaling equipment on a party other than BNSF, such language would directly conflict with RCW 81.53.100 and .130 which clearly places the financial responsibility associated with the closing of the crossing on BNSF. The Municipalities' taxpayers do not

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<sup>1</sup> Initial Order ¶ 82

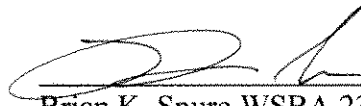
<sup>2</sup> Initial Order ¶ 84

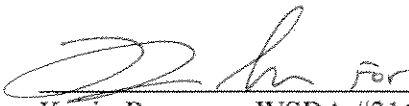
benefit from the closing of Hickox Road, rather, as the record reflects, the health and safety of the Municipalities' taxpayers are jeopardized by the closure. The cost of removal of any warning devices, if required, as well as the cost of installing the necessary equipment to convert the crossing to a private crossing should remain with the party responsible for and benefiting from the closing, BNSF.

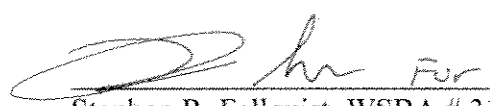
11 BNSF has not raised a timely or substantive challenge in support of the proposed language, the language is inconsistent with BNSF's statutory duty to pay the costs associated with the closing and the Commission must reject this change.

12 The Municipalities respectfully request that the Commission reject BNSF's proposed changes to Paragraph 115(2)(c) in the manner reflected in the attached Exhibit A.

Dated: 7-24-08.

  
\_\_\_\_\_  
Brian K. Snure WSBA 23275  
Attorney for Skagit County Fire  
Protection District No. 3, Intervenor

  
\_\_\_\_\_  
Kevin Rogerson WSBA #31664  
City Attorney  
City of Mount Vernon, Respondent

  
\_\_\_\_\_  
Stephen R. Fallquist, WSBA # 31678  
Deputy Prosecuting Attorney, Civil Division  
Skagit County, Intervenor

## EXHIBIT A

### Skagit County Fire Protection District No. 3, City of Mount Vernon and Skagit County's Joint Answer to BNSF's Petition for Administrative Review

#### Initial Order ¶115(2)(c):

(c) Third, BNSF shall enter into negotiations with the City of Mount Vernon, Skagit County, and Skagit County Fire Protection District No. 3 to draft a private crossing agreement that ensures continued access across the tracks for local emergency response to flood-related events as well as incidents where the health, safety, and welfare of local residents would be improved. BNSF shall submit this agreement to the Commission no later than seventy-five days after entry of a Final Order in this matter.

#### BNSF Proposed Language:

Third, BNSF, the City of Mount Vernon, Skagit County and Skagit County Fire District 3 shall negotiate in good faith and enter into a private crossing agreement that ensures continued access across the tracks for local emergency response and flood-related events. The private crossing agreement shall reflect a diagnostic team's determination as to the applicable warning devices, if any, to be implemented when the crossing is converted to an emergency-access private crossing. The private crossing agreement shall determine which party will undertake the work and cost of removal. BNSF shall submit this agreement to the Commission no later than seven-five days after entry of a Final Order in this matter.

#### Municipalities' Language if diagnostic team approach is approved by the Commission:

Third, BNSF, the City of Mount Vernon, Skagit County and Skagit County Fire District 3 shall negotiate in good faith and enter into a private crossing agreement that ensures continued access across the tracks for local emergency response and flood-related events as well as incidents where the health, safety, and welfare of local residents would be improved. The private crossing agreement shall reflect a diagnostic team's determination as to the applicable warning devices, if any, to be implemented when the crossing is converted to an emergency-access private crossing. ~~The private crossing agreement shall determine which party will undertake the work and cost of removal.~~ BNSF shall submit this agreement to the Commission no later than seven-five days after entry of a Final Order in this matter.