

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
against BNSF Railway Co.
in the Amount of \$105,000

DOCKET TR-121921

SETTLEMENT AGREEMENT

1 This Settlement Agreement is entered into by both parties for the purpose of
resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this agreement are BNSF Railway Company (BNSF or the Company)
and the Staff of the Washington Utilities and Transportation Commission (Staff)
(collectively, the parties).

II. BACKGROUND

3 On December 21, 2012, Staff sent a letter to BNSF identifying seven grade crossings
that Staff had previously notified the Company were defective and required repair. The
letter stated that BNSF must either correct each defect and provide Staff with a written
response describing how the defects were corrected, or, if not corrected, provide a detailed
plan for correcting each defect, including a specific completion date. Staff's letter directed
the Company to provide its written response by January 21, 2013. BNSF did not respond to
this letter.

4 Upon re-inspection by Staff on January 29, 2013, Staff believed that BNSF failed to

correct the defects at the seven crossing at issue. On February 25, 2013, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against BNSF in the amount of \$105,000.

5 On March 14, 2013, the Company filed its response to the penalty assessment, disputing the allegations of defects and the penalty assessment and requesting that the Commission remit the penalties and discontinue its prosecution to recover them. In the alternative, the Company requested a hearing and a settlement conference sufficiently in advance of the hearing date to allow the parties to resolve the matter without hearing.

6 On March 22, 2013, Staff filed its reply to the Company's response. Staff supported the Company's proposal to schedule a settlement conference to allow the parties time to try to negotiate a settlement of this matter and requested a scheduling conference.

7 Based on the filings of the parties, on March 27, 2013, the Commission's director of the Administrative Law Division notified the parties that the Commission would hold in abeyance the enforcement of the penalty assessment and BNSF's request for a hearing pending settlement discussions between the parties.

III. AGREEMENT

8 The Parties have reached agreement on the issues raised in this docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement to resolve this matter.

9 The Company acknowledges that there were some violations of WAC 480-62-225. The parties agree to a \$55,000 penalty with the remaining \$50,000 suspended with

conditions. The \$55,000 penalty shall be due and payable upon Commission approval of this agreement.

10 The remaining \$50,000 of the penalty amount shall be suspended for, and waived after, one year from the date the Commission approves this Settlement Agreement, provided that, BNSF complies with the following conditions. The Company shall respond within 30 days to any notice from the Commission regarding routine crossing defects and within seven days for severe crossing defects, unless a different commitment date is agreed to by Staff and the Company. The Staff agrees to consider Company requests for a reasonable amount of additional time to cure a defect. Upon completion of grade crossing defect repairs, the Company shall submit a photograph or photographs to the Commission showing the repairs. If BNSF does not comply with these conditions in Whatcom, Skagit, and Snohomish Counties, Staff will recommend to the Commission that the full \$50,000 suspended amount be enforced. If BNSF does comply with these conditions, Staff will recommend to the Commission that the Company has fulfilled the conditions and that the suspended portion of Penalty Assessment, TR-121921, be dismissed.

IV. GENERAL PROVISIONS

11 The Parties agree that this Settlement Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement Agreement is not binding unless and until accepted by the Commission. The Parties agree to cooperate in submitting this Settlement Agreement promptly to the Commission for acceptance.

12 The Parties have entered into this Settlement Agreement to avoid further expense, inconvenience, uncertainty, and delay of continuing litigation. The Parties recognize that

this Settlement Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement Agreement or any Commission order fully adopting those terms. This Settlement Agreement shall not be construed against either party because it was a drafter of this Settlement Agreement.

13 The Parties have negotiated this Settlement Agreement as an integrated document to be effective upon execution and Commission approval. This Settlement Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Settlement Agreement in its entirety.

14 The Parties may execute this Settlement Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

15 The Parties shall take all actions necessary, as appropriate, to carry out this Settlement Agreement.

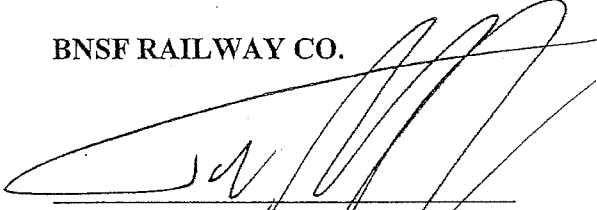
16 In the event that the Commission rejects or modifies any portion of this Settlement Agreement, each party reserves the right to withdraw from this Settlement Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of the order rejecting part or all of this Settlement Agreement. In such event, neither party will be bound or prejudiced by the terms of this Settlement Agreement, and either party shall be entitled to seek reconsideration of the Order.

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Respectfully submitted,

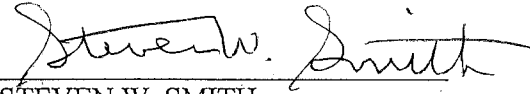
BNSF RAILWAY CO.



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May 30, 2013