

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. TR-980897
)	
Petitioner,)	ORDER GRANTING PETITION
v.)	FOR CROSSING CLOSURE
)	AND ADOPTING SETTLEMENT
KLICKITAT COUNTY AND)	AGREEMENT
BURLINGTON NORTHERN)	
SANTA FE RAILWAY COMPANY,)	
)	
Respondent.)	
.....)	

Synopsis: In this order, the Commission grants a petition by Commission Staff to close a grade crossing located at Depot Road (County Road 2002) at railroad milepost 84.98 in Klickitat County, west of Lyle, Washington. The Commission accepts and adopts a settlement agreement among the parties that provides for conditions on the crossing closure.

I. PROCEDURAL HISTORY

- 1 **Notice and Hearing.** A hearing for the presentation of a proposed settlement and questioning of witnesses was heard in Lyle, Washington on June 5, 2002, before Administrative Law Judge Lawrence Berg, pursuant to due and proper notice to all interested parties. Public testimony was heard on the evening of June 5, 2002, in Lyle, Washington.
- 2 **Parties:** Jonathan C. Thompson, Assistant Attorney General, Olympia, represents the Commission Staff (“Staff”). Mike Cowles, Public Projects Manager, Seattle, represents Burlington Northern and Santa Fe Railway Company (“BNSF”). Keith Grunde, Engineer, Klickitat County Public Works Department represents Klickitat County (“County”).
- 3 **Procedure:** This matter arose upon a petition filed by the Washington Utilities and Transportation Commission (“Commission”) on June 26, 1998, for closure of an at-grade crossing of Depot Road and BNSF tracks at railroad milepost 84.98 in Klickitat County, west of Lyle, Washington. BNSF consented that the grade crossing be closed and abandoned to public use. However, the County opposed the closure

because of uncertainty over the availability of funding to make road improvements necessitated by the proposed closure. A public meeting was initially conducted in October 1999 to assess public sentiment to the proposed closure. Subsequently, the parties engaged in negotiations regarding conditions proper for effecting the closure. On March 26, 2002, the parties filed with the Commission a proposed Settlement Agreement. The parties on June 4, 2002, filed a Stipulated Statement of Facts that – in tandem with the Settlement Agreement – they contend resolves all issues in the proceeding, consistent with pertinent law and with the public interest. A hearing for the presentation of the proposed settlement and public comments was held in Lyle, Washington on June 5, 2002. The parties waived an initial order, asking that the proposal for settlement and the record be forwarded directly to the Commission for action.

4 During the hearing regarding the proposed Settlement Agreement it became apparent to the parties that the Settlement Agreement needed written clarification. The parties filed an Amended Settlement Agreement on June 18, 2002, that included their proposed clarification.

5 **Commission:** The Commission finds that the proposed Amended Settlement Agreement is consistent with law and with the public interest. The Commission adopts the proposed agreement as its own resolution of the issues in the proceeding, and incorporates the Amended Settlement Agreement as if it were set forth in its entirety in this order.¹

II. DISCUSSION AND DECISION

6 BNSF owns and maintains a mainline track and sidings that run along the north shore of the Columbia River past the unincorporated community of Lyle in Klickitat County. State Route 14 (“SR-14”), a public highway, generally parallels the BNSF tracks on their north side, opposite the river.

7 A motorist on SR-14 can turn south at Depot Road and cross the BNSF track, at grade, to access an area that lies between the railroad tracks and the river. This area includes land owned by the Confederated Tribes and Bands of Yakima Indians, the U.S. Army Corps of Engineers, and various private parties, as well as a public boat launch that also provides access to an in-lieu² fishing site.

¹ The Amended Settlement Agreement is admitted as Exhibit No. 5. A copy of the Amended Settlement Agreement also is attached to this Order as Attachment A.

² An “in lieu” fishing site is a site acquired and managed by the United States to satisfy the federal government’s 1939 treaty commitment to provide facilities to replace the “usual and accustomed” Indian fishing grounds that were inundated by dam construction on the Columbia River.

- 8 The area between the Columbia River and the BNSF tracks is also accessible to vehicles by way of the Seventh Street railroad overpass, which is located slightly less than half a mile southeast of the Depot Road at-grade crossing. A portion of Depot Road presently connects these two crossings on the side of the tracks opposite SR-14. A short spur off this portion of Depot Road, called Cove Road, provides access to the public boat launch.
- 9 In May 1995, Klickitat County filed a petition³ with the Washington Utilities and Transportation Commission (Commission) in which it sought authority to install warning signals at the Depot Road crossing. Commission Staff investigated the petition and concluded that, rather than installing warning devices, a safer solution would be to close the crossing altogether. In Staff's view, the Seventh Street overcrossing provided a reasonable alternate access across the tracks to the same area served by the Depot Road crossing. Staff therefore sent a letter to Klickitat County in July 1995 suggesting closure of the crossing. In August of 1995, the County wrote back, objecting to Staff's proposal to close the crossing. The County's letter expressed the view that the area served by the crossing ought to have two separate access points, and that the cost of roadway improvements to Depot Road that would be necessitated by closure would be too expensive for the County.
- 10 Staff agreed with the County that the alternative access provided by Seventh Street would need improvement to be considered an adequate alternative access to the area that motorists currently access by using the Depot Road crossing. Depot Road between Seventh Street and Cove Road is gravel and is only a single lane in width. It does not meet applicable safety standards or Klickitat County road standards. Specifically, it is too narrow and has inadequate curves and radii at its intersections with Cove Road and Seventh Street. As presently configured it could not support the increased traffic that would result from closing the Depot Road crossing.
- 11 In June 1998, Staff petitioned the Commission to initiate a proceeding to close the Depot Road crossing.⁴ Staff's petition stated that the crossing should be closed because of the low volume of vehicles using the Depot Road grade crossing, the danger caused by the severe downgrade of Depot Road approaching the crossing, and the availability of safer alternate access via the Seventh Street overpass – assuming that road improvements would be funded by The Washington State Department of Transportation (“WSDOT”).

³ See Docket No. TR-950702.

⁴ The petition initiating the proceeding was filed on June 26, 1998 pursuant to RCW 81.53.060. On July 7, 1998, BNSF filed a Respondent Waiver of Hearing, thereby consenting to the proposal to close the crossing.

- 12 WSDOT was consulted and in February 2002 agreed to fund roadway improvements to address safety concerns at the Depot Road public grade crossings, on the condition that the Depot Road grade crossing be closed.⁵
- 13 Highway-rail grade crossings are considered inherently dangerous due to the possibility and consequences of train/vehicle collisions at crossings.⁶ RCW 81.53.020 states a legislative preference for overcrossings and undercrossings where practicable.
- 14 As part of the Amended Settlement Agreement, BNSF has agreed to remove or relocate a portion of siding track, so that the track does not cross Depot Road or interfere with the necessary improvements to Depot Road. BNSF has also agreed to convey to Klickitat County as much of the railroad right-of-way as Klickitat County requires to assemble its own right-of-way, and will remove a “camp car” that the railway currently maintains along the Depot Road siding.
- 15 Klickitat County agrees to improve the portion of Depot Road between the Seventh Street overpass and Cove Road, which is the predominant destination for vehicles traveling on Depot Road. Upon closure of the grade crossing, BNSF will install barricades or employ some other means to terminate Depot Road on either side of the tracks within the BNSF right-of-way.
- 16 On balance, we conclude that the existing crossing is unsafe, that a reasonable alternative for access to contiguous properties exists, and that we should adopt the proposed amended settlement as a proper means to resolve the issues in this proceeding. The parties are commended for finding an appropriate resolution of the matter.

III. FINDINGS OF FACT

- 17 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over railway-highway crossings at grade.
- 18 (2) The nearest crossing to Depot Road is at Seventh Street where there is an overpass. Diverting traffic to Seventh Street would result in a minor increase

⁵ WSDOT has also stated that it will install an additional barricade and signage along SR-14 to prevent motorists from entering Depot Road if the crossing is closed. *See* Commission Staff Response to Bench Request No. 1, dated July 2, 2002.

⁶ *See Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 195 Wash. 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).

to driving distances and times for vehicular destinations along Depot Road south of the railway tracks.

- 19 (3) The Depot Road crossing is dangerous because of the severe downgrade of the road approaching the crossing, which can become slippery during wet and cold weather conditions.
- 20 (4) Five members of the public testified at the public hearing regarding closure of the crossing. Most witness expressed concerns regarding routine access to private property south of the tracks and emergency service access via Depot Road, but did not expressly oppose or support the proposed closure. One person opposed the proposed closure because of increased vehicular traffic at the Seventh Street overpass, and another person supported closure because trains would no longer be required to sound their horns when passing through Lyle.⁷ Three other public members submitted written letters. One of those persons opposed closure because due to traffic concerns regarding increased traffic on Seventh Street, and the other two support closure because it would increase safety and decrease noise.
- 21 (5) The proposed Amended Settlement Agreement offered by the parties on June 18, 2002, provides for closure of the crossing and for roadway modifications necessary to render the location of the former crossing safe.

IV. CONCLUSIONS OF LAW

- 22 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of these Applications.
- 23 (2) The Depot Road crossing should be closed because the severe downgrade of the road approaching the crossing is dangerous. Furthermore, the crossing is inherently dangerous and a reasonable alternative for access to contiguous properties exists.
- 24 (3) The closure of the Depot Road crossing is consistent with the public interest and is required by the public safety, consistent with under Chapter 47.79 RCW.
- 25 (4) The Commission has the authority to approve settlement agreements pursuant to RCW 34.05.060 and WAC 480-09-466.
- 26 (5) Adoption of the proposed amended settlement agreement is consistent with the public interest and results in resolution of all significant issues relating to the

⁷ The public witness supporting closure also previously filed a letter with the Commission.

crossing closure. The Commission should adopt the proposed amended settlement agreement.

V. ORDER

- 27 (1) We approve and adopt as our own for purposes of this proceeding the
Amended Settlement Agreement attached to this Order as Appendix A.
- 28 (2) We grant the Petition of Commission Staff to close the Depot Road crossing in
Klickitat County, Washington.
- 29 (3) The Commission retains jurisdiction to effectuate the terms of this order.

DATED at Olympia, Washington, and effective this _____day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner

NOTICE TO ALL PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within ten (10) days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09820(1).

ATTACHMENT A