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VIA FACSIMILE / FED EX

Dave Danner, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

RE: Docket No. TR-070696 (BNSF Railway Company v. City of Mount Vernon)

Dear Mr. Danner:

Pursuant to Paragraphs 80 and 81 of the Final Order in this case, BNSF respectfully requests a two-week continuance to provide a finalized private crossing agreement and proposed safety measures to the Commission, from January 16, 2009 to January 30, 2009.

By way of background: BNSF filed a petition on April 11, 2007 with the WUTC to close the Hickox Road public crossing in Mount Vernon, Skagit County, Washington. BNSF and WSDOT seek to close the crossing to address safety hazards associated with extension of a siding alongside mainline tracks at the location of the crossing.

In the Commission's Final Order, Order 06, entered on November 4, 2008, the Commission granted closure on the condition that the crossing be converted to an emergency-use private crossing. The Final Order requires BNSF to submit a private crossing agreement (between BNSF, the City of Mount Vernon, Skagit County and local Fire District) to the Commission no later than 75 days after entry of the final order — January 16, 2009. The Order also requires a diagnostic team to propose necessary safety measures at the private crossing to the Commission by the same date.

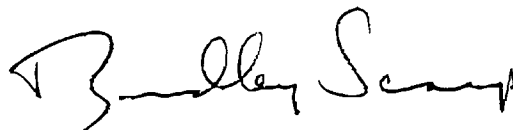
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While the parties have made substantial progress toward agreement on the terms and structure of the private crossing agreement, BNSF, Mount Vernon, Skagit County and the Fire District need to finalize the language and iron out remaining details. The diagnostic team has substantially agreed to the safety recommendations, but must finalize that process and ensure that the recommendation conforms with the language of the Final Order and the private crossing agreement. BNSF, on behalf of the parties to the private crossing agreement, thus *requests an extension to file the agreement and recommendation from January 16, 2009 to January 30, 2009.*

Thank you for your consideration to this matter and please let me know if you have any questions or request for additional information.

Very truly yours,

Montgomery Scarp MacDougall, PLLC



Bradley P. Scarp

of attorneys for BNSF Railway

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