

# Montgomery Scarp MacDougall, PLLC

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January 30, 2009

VIA FACSIMILE and U.S. MAIL

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

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REGULATORY MANAGEMENT  
2009 FEB - 2 AM 8:51  
STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

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

Dear Mr. Danner:

Despite the parties' diligent efforts to finalize the safety recommendations and private crossing agreement, it appears that we will be unable to present final documents by close of business today, January 30<sup>th</sup>. The parties have generally discussed requesting additional time to submit a proposed Agreement diagnostic team recommendations, however, not all of the parties are available on this Friday afternoon to discuss that limited request. BNSF, Mt. Vernon and Skagit County have all recognized and agree to the need for an additional one-week extension, so those parties respectfully request an additional one-week continuance to provide a final draft of the private crossing agreement and diagnostic team recommendations to the Commission, from January 30, 2009 to February 6, 2009.

The parties represent that there appears to be agreement on the principal components of the Private Crossing Agreement, after revisions have been made in drafts transmitted back and forth during the process, however, there has not yet been approval on some of the revised terms and language. Similarly, the diagnostic team has substantially agreed to the safety recommendations, including electronic gates, but the fire district authorities have proposed more specific crossing gate details today that need to be discussed and approved by WSDOT, Commission staff, and BNSF's operations department.

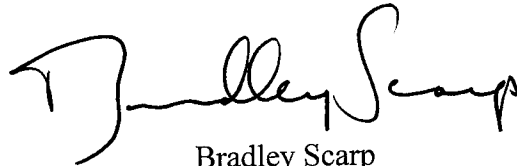
We should specify that the parties are at this point contemplating an agreement in principal agreed upon by counsel for recommendation to their clients. Final authority or approval, especially by the municipalities will be subject to their respective procedures and protocols which, we understand, may take more than a week and up to two weeks once the final draft is presented.

Therefore, BNSF, on behalf of the parties to the private crossing agreement and diagnostic team, thus **requests an additional one-week extension to file the agreement and recommendation from January 30, 2009 to February 6, 2009.** BNSF does not anticipate additional delay or that this request will prejudice the Commission or the parties. A one-week extension hopefully will ensure the final agreements are detailed, complete, and agreed to by the parties before presentation to the WUTC.

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 Scarp

Attorney for BNSF Railway

cc: Stephen Fallquist  
Scott Lockwood  
Brian K. Snure  
Kevin Rogerson  
Gary T. Jones  
Jonathan Thompson  
Adam E. Torem