

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

BNSF RAILWAY COMPANY,)	DOCKET TR-070696
)	
Petitioner,)	ORDER 08
)	
v.)	
)	ORDER REQUIRING
CITY OF MOUNT VERNON,)	CONSTRUCTION OF CUL-DE-
)	SAC ON EASTERN APPROACH
Respondent.)	TO HICKOX ROAD
)	
.....)	

1 ***Synopsis:** In this Order, we resolve the remaining dispute between the participants on the diagnostic team and require Burlington Northern Santa Fe Railroad (BNSF) and the Washington State Department of Transportation (WSDOT) to construct a cul-de-sac on the eastern side of the private crossing at Hickox Road. This Order also approves all other recommendations of the diagnostic team for safety measures at the Hickox Road crossing and road approaches and at the Stackpole Road crossing and road approaches.*

2 **Nature of the Proceeding.** This proceeding involves a petition by BNSF to close a railway-highway crossing at-grade at Hickox Road, at the southern border of Mount Vernon, Washington. The request is occasioned by the extension by BNSF and the WSDOT of a siding at that location to allow upgrading of passenger train service between Seattle and Bellingham to operate at speeds over 100 miles per hour in a high-speed passenger rail corridor using BNSF’s single main-line track.

3 **Procedural History.** The Washington Utilities and Transportation Commission (Commission) granted BNSF’s petition, but required the railroad to negotiate a private crossing agreement with the City of Mount Vernon (the City), Skagit County (the County) and Skagit County Fire Protection District No. 3 (Fire District) to allow continued access across the tracks for local emergency response to flood-related

events and other incidents.¹ We conditioned closure of the crossing on formation of a diagnostic team “to determine the need for and configuration of any required safety precautions at the crossing.”² We required that the diagnostic team submit a report for review and approval prior to opening the private crossing.³ Finally, we required BNSF to work with the City and County to construct a turnaround cul-de-sac on the approach to the tracks at Hickox Road.⁴

4 Western Valley Farms, LLC (Western Valley Farms or Western Valley), a business operating a large dairy near the crossing, requested that we reconsider our Final Order, asking among other items, that we require BNSF and WSDOT to construct cul-de-sacs on both road approaches to the Hickox Road crossing. The Commission Staff joined in Western Valley’s request for two cul-de-sacs.

5 We denied Western Valley’s petition for reconsideration, for the most part, but granted the request to require cul-de-sacs on both approaches, finding there is a potential need for vehicles to turn around during flood and other emergencies and that the likelihood exists that drivers may mistakenly approach the closed crossing. We required construction of cul-de-sacs on both the eastern and western approaches to the private crossing “unless the diagnostic team determines and the Commission agrees that the second cul-de-sac is unnecessary.”⁵

6 **Diagnostic Team Report.** On February 9, 2009, the diagnostic team filed a letter with the Commission proposing certain safety measures at the Hickox Road and Stackpole Road crossings, enclosing a copy of the draft private crossing agreement. The team recommends that BNSF upgrade at its own expense the safety features at

¹ *BNSF Railway Company v. City of Mount Vernon*, Final Order on Review, Granting Administrative Review; Modifying Initial Order Granting Petition to Close Hickox Road Grade Crossing Subject to Conditions, Order 06, Docket TR-070696 ¶¶ 77, 80 (Nov. 4, 2008). The procedural history of this matter is set forth in detail in the Final Order and will not be repeated here.

² *Id.*, ¶ 52.

³ *Id.*, ¶¶ 52, 81.

⁴ *Id.*, ¶ 79.

⁵ *BNSF Railway Company v. City of Mount Vernon*, Order On Reconsideration, Granting in Part and Denying in Part Reconsideration of Order Granting Petition to Close Hickox Road Grade Crossing Subject to Conditions, Order 07, Docket TR-070696 ¶¶ 27-28 (Jan. 14, 2009). As a result of our order, a diagnostic team was formed to negotiate the private crossing agreement and resolve other related issues.

the Stackpole Road crossing to include active warning devices like those now at the Hickox Road crossing and to alter the turning radii at the intersection of Stackpole and Dike Roads. The team further recommends that BNSF install gates at its expense wide enough to allow emergency-response use on each side of the crossing. The gates will be open only for emergency-use by public safety and flood control jurisdictions, as provided in the private crossing agreement. Existing warning devices at the crossing will be removed and replaced with private crossing signs once the gates are installed.

- 7 The letter also notifies the Commission that the team could not reach consensus on whether to construct a cul-de-sac on the eastern approach to the crossing. BNSF and WSDOT assert that a cul-de-sac on the eastern approach is unnecessary, in part, because of development of adjacent property that may allow sufficient room for vehicles to turn around. They ask additional time to consider both the need for and an alternative design for the east side of the crossing.
- 8 The City, County and Fire District oppose the railroad's and WSDOT's request. They argue that any developer of property east of the crossing will not be required to build a cul-de-sac to provide adequate turnaround for large emergency and commercial vehicles, and will be required to widen Hickox Road only to the proposed driveway location – a significant distance east of the crossing. The City, County and Fire District ask that we enforce the provisions of Order 07 and require construction of cul-de-sacs on both the east and west sides of the private crossing.
- 9 **Commission Decision.** First, we approve the recommendations of the diagnostic team for safety measures at the Hickox Road and Stackpole Road crossings. The railroad, WSDOT, Staff, City, County, and Fire District agree on all but one recommended measure. A review of the recommendations indicates that the parties and team members have considered the safety implications of closing the Hickox Road crossing to the public and the need for improvements to the public roadways. The recommendations are reasonable and should meet the statutory goal of ensuring the safety of the crossings.

10 Second, we address the remaining dispute. In Order 07, we ordered the railroad and BNSF to build the second cul-de-sac unless the diagnostic team *and the Commission* found it unnecessary. As the team members can not agree whether the second cul-de-sac is necessary, we must make the determination. We find the City, County and Fire District's arguments persuasive that a cul-de-sac on the east side of Hickox Road is necessary. As the governmental body responsible for planning and issuing permits to developers, we defer to the City's judgment whether a potential developer would be required to improve the road or build a cul-de-sac: The City does not believe a developer would be required to do so. Further, delaying a decision to allow further negotiation up to the time of construction is neither practical nor protective of public safety. This proceeding has been lengthy, and it is not likely that the parties will quickly reach a consensus on whether to build the second cul-de-sac. The construction season will soon begin, and our resolution of this remaining issue should allow the railroad and WSDOT to finalize engineering and construction plans. Thus, we require BNSF and WSDOT to construct a cul-de-sac on the east side of the private crossing at Hickox Road.

ORDER

THE COMMISSION ORDERS:

- 11 (1) The recommendations of the diagnostic team for safety measures to be implemented at the Hickox Road and Stackpole Road crossings before the Hickox Road crossing is closed for public use are approved.
- 12 (2) Burlington Northern Santa Fe Railway and the Washington State Department of Transportation must construct a cul-de-sac on the eastern side of the private crossing at Hickox Road.
- 13 (3) The Commission retains jurisdiction over the subject matter of and the parties to the proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective February 27, 2009

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner