

[Service Date October 10, 2002]

October 10, 2002

Mr. J. M. (Mike) Cowles
Manager, Public Projects
Burlington Northern & Santa Fe Railway Company
2454 Occidental Avenue South, Suite 1-A
Seattle, WA 98134

Re: Burlington Northern & Santa Fe Railway Company v. City of Sprague
Docket No. TR-010684

Dear Mr. Cowles:

This is to indicate that I inadvertently received a copy of your letter of September 30, 2002, to Commission Staff member Ahmer Nizam and must disregard it for purposes of writing the initial decision in Docket No. TR-010684.

Your letter came to my attention because, as the hearing officer assigned to the case, I am on the Commission Record Center's distribution list for Docket No. TR-010684. Thus, even though the letter was addressed to the attention of Mr. Nizam, I reviewed it briefly when it crossed my desk in order to determine whether it was appropriate for me to address it. However, my brief review of the letter indicates that it addresses the merits of the case and I have determined that pursuant to Commission rule WAC 480-09-140 on ex parte communications, I must disregard it in my deliberations on the case.

According to the rule on ex parte communications, because I am the presiding officer in the adjudicative proceeding between Burlington Northern and the City of Sprague, I may not take into consideration a written communication from one of the parties to the case about its merits, unless all parties have been sent a copy of the communication and proof is submitted that all parties have been sent a copy. Since your letter was not served on all parties, I cannot take it into consideration.

In addition, we did not provide for the submission of written briefs at the close of the hearing in Docket No. TR-010684. Rather, the parties elected to make oral argument on the record. Since your letter appears to constitute a brief (a statement of Burlington Northern's argument or position on the merits of the case), and there was no provision for briefs, there is further grounds for disregarding the letter in reaching a decision.

Thank you for your participation in the case to date. I hope you will realize that the provisions of WAC 480-09-140 are designed to preserve the fairness of the process for all parties involved.

If you have any questions about this, I would suggest you contact your attorney, Mr. Kinerk, who may be able to advise you further on the matter.

Sincerely,

THEODORA M. MACE
Administrative Law Judge

cc: Jonathan Thompson
Sylvia Fox
Daniel Kinerk
Ahmer Nizam