

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THE BURLINGTON NORTHERN)	
AND SANTA FE RAILWAY)	DOCKET NO. TR-010684
COMPANY,)	
)	THIRD SUPPLEMENTAL ORDER
Petitioner,)	
)	INITIAL ORDER DENYING
v.)	PETITION
)	
CITY OF SPRAGUE,)	
)	
Respondent.)	
.....)	

Synopsis: This initial order recommends denial of Burlington Northern and Santa Fe Railway Company’s petition to close the “D” Street or the “F” Street at-grade railroad crossings in the City of Sprague.

I. INTRODUCTION

1 **Nature of Proceeding:** Docket No. TR-010684 involves a filing by Burlington Northern and Santa Fe Railway Company (“Burlington Northern”) for permission to close an at-grade crossing in the City of Sprague, Washington.

2 **Appearances:** Daniel Kinerk, attorney, Seattle, Washington, represents Burlington Northern. Sylvia Fox, Mayor of the City of Sprague, represents the City of Sprague. Jonathan Thompson, Assistant Attorney General, represents Washington Utilities and Transportation Commission Staff (“Commission Staff” or “Staff”).

3 **Procedural History:** Burlington Northern initially filed its petition to close the “D” Street at-grade railway crossing in the City of Sprague on May 8, 2001.¹ The Commission set the matter for a prehearing conference to take place on March 26, 2002. At the prehearing conference the parties agreed to a schedule calling for

evidentiary and public hearings to take place in May, 2002. Subsequently the hearings were adjourned, at the request of the City of Sprague, until September, 2002. An evidentiary hearing took place upon due and proper notice to all interested parties before Administrative Law Judge Theodora M. Mace on September 18 and 19, 2002 in Sprague, Washington. A public hearing took place on September 18, 2002 in Sprague, Washington. In addition to 28 exhibits submitted during the evidentiary hearing, Burlington Northern submitted a post-hearing exhibit pursuant to a bench request made during the hearing and Commission Staff submitted a post-hearing exhibit consisting of letters written by members of the public in addition to public comments made at the public hearing on September 18, 2002.

- 4 **Initial Order:** The presiding Administrative Law Judge proposes that the Commission deny the petition of Burlington Northern to close the “D” Street or the “F” Street at-grade railway crossings in the City of Sprague.

II. BACKGROUND

- 5 Sprague is a city with a population of approximately 500 located about 40 miles south west of Spokane. It is located in a rural area of eastern Washington.

- 6 Burlington Northern runs a main line track, as well as two side tracks, east and west through Sprague. There are several streets running north and south in Sprague that currently cross the Burlington Northern line as it runs through the town. These streets are denoted “B”, “D”, and “F.”² The “B” Street crossing is the one furthest east³, with the “F” Street crossing the furthest west. Each crossing is approximately 600 feet from the crossing on either side of it. The crossing at “C” Street was closed in 1987, pursuant to Commission Order in Cause No. TR-2005.⁴ The “E” Street crossing was also closed in 1987 pursuant to Commission Order in Cause No. TR-2006.⁵

¹ On September 12, 2002, Burlington Northern filed an amended petition seeking, in the alternative, to close the “F” Street crossing.

² Exhibit Nos. 1-4 and 18 consist of maps and photographs and provide assistance in visualizing the layout of the City of Sprague’s streets and railway crossings.

³ Highway 23, the main access to the city from Interstate 90, runs north and south further east of “B” Street and crosses over the railway line on an overpass.

⁴ Exhibit No. 19.

⁵ Exhibit No. 20.

- 7 The bulk of the developed part of Sprague is south of the railway line. The new school is also south of the railway line, in the southwest corner of the city, most easily reached from the north by means of crossing the railway line at “F” Street. There are some residences, a church and a baseball field located north of the railway line. The town has plans for further development north of the railway line because that is where there is vacant land, but more importantly, because that land is on higher ground. Further development south of the railway line is hampered by the fact that parts of it are in a flood plain.
- 8 The city has designated “D” Street an emergency route. The fire department and other emergency response facilities are located on “C” Street south of the railway line and use both the “D” Street crossing and the “F” Street crossing to access the north part of the town. However, access to the north by either crossing is hindered by the weight limitations governing use of the bridge on Railroad Street between “D” and “F” north of the tracks.
- 9 The Grange, one of Sprague’s main businesses, is located north of the railway tracks off “D” Street and Railroad Avenue.⁶

III. EVIDENCE

- 10 **Burlington Northern.** Burlington Northern presented testimony and exhibits that demonstrated the public safety concern motivating the railway to close at-grade street crossings such as the “D” and “F” street crossings in Sprague. Burlington Northern witness Mr. Cowles pointed out that 42% of vehicle-train collisions from 1997 to 2000 occurred at railroad crossings with active warning devices.⁷ This statistic is borne out by other statistics contained in the U.S. Department of Transportation, Federal Railroad Administration Annual Report 2000.⁸ Mr. Larsen, a Burlington Northern locomotive engineer and a volunteer with the company’s Operation Lifesaver education program, testified that if a train is going 55 mph, it takes a mile for it to come to a stop. Approximately 30 trains per day run through Sprague,

⁶ The railway line runs just south of, and parallel to, Railroad Street, which is an east-west road owned and maintained by Burlington Northern. Another similar road is Boxcar Avenue, located just south of, and parallel to, the tracks. Boxcar Avenue runs only between “B” Street and “D” Street.

⁷ Exhibit No. 7

⁸ Exhibit No. 10

traveling at 45 mph.⁹ Mr. Larsen also stated that in 2001 there were 3,502 train vehicle collisions at protected crossings in the United States. Of those, 38 occurred in Washington State, most of them on the west side of the state. *Testimony at 110-112.*

- 11 In response to the concern about the high probability of collisions occurring at gated crossings, the Federal Railroad Administration (“FRA”) and Burlington Northern have implemented a program to close street grade gated crossings. The FRA’s goal is to close 25% of public and private at-grade crossings by the year 2001, using the number of such crossings in existence in 1991 as the base.¹⁰
- 12 To determine which crossings to close, the FRA recommends that the following criteria be considered: 1) redundancy of crossings (more than four crossings per mile in urban areas; more than one per mile in rural areas); 2) ability of vehicular traffic to be re-routed safely and efficiently to an adjacent crossing; 3) a high number of collisions at a crossing; 4) poor visibility.¹¹
- 13 Burlington Northern utilizes somewhat similar criteria: 1) redundancy; 2) whether the crossing is a designated emergency route; 3) whether it has low traffic volumes. In addition, Mr. Cowles indicated the railway looks at inconvenience due to closing, necessity for the crossing, and the accident history at the specific crossing. He stated that the railway would not want to land lock any individual or business. *Testimony at 133-137.*
- 14 Mr. Cowles pointed out that there is low average daily traffic flow of 130 vehicles per day at the “D” Street crossing. The “F” Street crossing experiences a flow of 120 vehicles daily and “B” Street, 150 vehicles per day.¹² Mr. Cowles indicated that emergency vehicles could use alternate routes to get to the north side of town, along “B” or “F” Streets. However, in view of the weight limitations on the bridge on Railroad Street, north of the tracks, closure of “D” Street crossing would be better because vehicles could avoid the bridge if they used “B” or “F” Street routes.
- 15 Mr. Cowles also stated that the Grange Supply store in town might experience some inconvenience associated with closing the “D” Street crossing, but that there were

⁹ Testimony at 87-89.

¹⁰ Exhibit No. 9

¹¹ Exhibit No. 8, p. 5

¹² Exhibit Nos. 12-14.

plans to move the store to a closed Chevron station located in the southeast part of town. In any event, even if the Grange remained at the corner of “D” Street and Railroad Street, if the “D” Street crossing closed, Burlington Northern would remove the signal bungalow to the south of the Grange which now impedes the flow of truck traffic to and from the Grange.

16 Mr. Cowles also observed that there have been no incidents or accidents at any of the Sprague crossings that he is aware of.¹³ However he asserted that even if there were no accident history, the probability of accidents at protected crossings continued to represent a significant enough public safety concern to warrant closure.

17 **Commission Staff.** Staff witness Ahmer Nizam testified about the federal policy promoting grade crossing closures. He cited sections from the Railroad-Highway Grade Crossing Handbook,¹⁴ which recommend factors to be considered when closure of a grade crossing is an issue. These factors include: existence of alternative routes within a reasonable travel time and distance from the closed crossing; sufficient capacity in the alternative routes to accommodate diverted traffic safely and efficiently; sufficient access over the railroad by emergency vehicles, ambulances, fire trucks and police; frequent use of the crossing by emergency vehicles; economic assessment of the positive and negative impacts of crossing closures. The Handbook suggests that criteria for closing mainline crossings include main line sections with more than five crossings within a one-mile segment.

18 Mr. Nizam also asserted that RCW 81.53 grants the Commission authority to approve new grade crossings if there is a proven public necessity. Similarly, if a grade crossing is to be eliminated, it is appropriate to consider whether there is a need for the crossing. Chapter 8 of the Manual on Uniform Traffic Control Devices, a federal document that the state of Washington has adopted, indicates that any crossing for which a need cannot be demonstrated should be closed. *Testimony at 206-210.*

19 Mr. Nizam reviewed a number of these various criteria as they applied to the City of Sprague. He observed that there would be problems with closing the “F” Street

¹³ Testimony at 165-166. This was bolstered by the testimony of Mr. Lamparter, a 60-year resident of Sprague, who could remember no accidents at any of the crossings during his 30 years with the fire department. *Testimony at 259.* Company witness Froscheiser also testified that there have been no accidents at crossings in Sprague in the last 50 years. *Testimony at 103.*

¹⁴ Exhibit No. 17.

crossing because of the load limit on the bridge on Railroad Street and pedestrians crossing the railroad at “F” Street on the way to the school. Mr. Nizam did not regard “F” and “D” Streets to be redundant to each other, because of the weight restrictions on the Railroad Street bridge. *Testimony at 223.* However, he did regard “B” and “D” Streets, each within 600 feet of the other, to be redundant. Mr. Nizam noted, however, that “D” Street was designated as a primary route for emergency vehicles to the north side of town.

20 Mr. Nizam measured the difference in time it would take an emergency vehicle to get to a point north of the tracks from the fire station on “C” Street south of the tracks, using the “B” Street crossing instead of “D” Street. He concluded that under normal circumstances the time differential was approximately 20 seconds.

21 Mr. Nizam stated that one of the biggest difficulties in recommending a closure of the “D” Street crossing was the impact on the Grange Supply business located at “D” Street and Railroad Street north of the tracks. He recognized that the Grange was a significant source of income in the city and that, if customers and suppliers experienced inconvenience in approaching or leaving the business, it might cause loss of business to competitors. However, in his opinion, trucks leaving the Grange would be able to exit by turning right, or north, on “D” Street and then turning right on Alder, a street running east and west just north of the Grange Supply store, based on his personal observation of the width of the streets at that intersection. In addition, he measured approximately 110 feet of turning space in front of the Grange if the signal box for the “D” Street crossing were removed. He was aware that much, if not all, of the Grange’s business might relocate to the Chevron station in the southeast part of town.

22 Finally Mr. Nizam testified that “D” Street crossing experienced significant pedestrian traffic, based on his own observation and the testimony he had heard both at the hearing and at a prior town meeting.

23 As a result of his analysis, Mr. Nizam recommended closure of the “D” Street crossing rather than the “F” Street crossing. He conditioned his recommendation on either mitigation of the traffic situation at the Grange by removal of the signal box and amelioration of the turning area in front of the Grange or, in the alternative, the Grange’s relocation of all of its business activities to the Chevron station. Furthermore, he recommended that if the “D” Street crossing were closed, Burlington

Northern be required to install a signalized pedestrian crossing at "D" Street.

Testimony at 221-222; 376-380.

- 24 **City of Sprague.** The City of Sprague presented testimony from townspeople responsible for fire and emergency operations, from the manager of the Grange Supply store, and from the Mayor of the town, who is also a business owner. All were opposed to any grade crossing closures in the city on grounds that the railway had already closed two crossings; there had been no accidents at the Sprague crossings; and, closure of the crossings would further divide the town and severely reduce emergency and other access to the northern part of the town, where expansion and development were taking place.
- 25 Mr. Kon Lamparter, Fire Chief for Lincoln County fire District #1, testified that the city had an ambulance and eight EMTs. The city operated large fire trucks and a water truck, but also operated smaller emergency vehicles. The two smallest of the emergency vehicles could cross the bridge on Railroad Street safely, but because of the weight limitations on the bridge, Mr. Lamparter said that if a crossing had to be closed the better course would be to close the "D" Street crossing. However, he was concerned that in winter, because there was a hill on "D" Street north of town, if the "D" Street crossing were closed, emergency vehicles coming from the "C" Street fire station would not have enough momentum to negotiate the hill unless they came straight at it from south of the tracks on "D" Street. Mr. Lamparter acknowledged that in the last year only one fire emergency had occurred in the north part of town and emergency vehicles used "F" Street as their point of access.
- 26 Mr. Don Ringwood, Chairman of the Board of Fire Commissioners of Lincoln County Fire District #1 voiced his concern that it was not the normal emergency run or the normal day that would cause problems in getting to a fire, but rather extremes of weather, or blockages of roads and highways due to accidents, or blockage of the railroad by standing cars.
- 27 Ms. Beth Ann Engels, general manager of the Sprague Grange Supply store, testified that the Grange Supply had been in Sprague for 69 years. The store currently employs 22 people. The store sells petroleum, fuel, hardware, feed, chemicals, fertilizer, seed, twine, auto parts, and garden supplies.

28 Ms. Engels stated that the store is visited by at least three semi-trucks daily. In addition, two big trucks per week come to drop off merchandise. She personally observed the traffic of such trucks in and out of the Grange facility. She stated her belief that diesel trucks would not be able to make a turn in front of the Grange to exit east on Railroad Street if the “D” Street crossing closed because upwards of 30 feet from the tracks is unusable due to the rocky sloping surface there and because vehicles are frequently parked in front of the Grange and block egress on Railroad Street. Furthermore, trucks with trailers could not go north on “D” Street from the Grange and turn right onto Alder to exit east to the highway because they would have insufficient space to make the right turn onto Alder. However, Ms. Engels acknowledged that similar trucks turn right off “D” Street into the alley way behind the Grange.

29 Ms. Engels indicated that even if the Grange moved its hardware and fuel operations to the Chevron station, it would not move its chemical supply business for which convenient truck access was crucial. She stated that 90% of her customers use the “D” Street crossing to exit and that closing the crossing would hurt her business because inconvenience would drive customers to competitors. She confirmed that the move to the Chevron station was being planned because in one and a half years, the Grange Supply fuel tanks would be out of compliance with federal fuel containment regulations.

30 Mayor Sylvia Fox testified generally about the problems that would be caused in the City of Sprague if either the “D” or the “F” Street crossings were closed.

IV. DISCUSSION AND DECISION

A. “D” Street Crossing.

31 The statutory provision governing the process and criteria for closing railway grade crossings is RCW 81.53.060, which provides that either a city official or the railway may petition the Commission to change, or eliminate, an existing railway crossing, on the basis that public safety requires it. Underlying the statutory provision for eliminating grade crossing closures is a strong concern that such crossings, even those protected by gates and warning signals, are inherently dangerous. The statistics demonstrating the probability of train-vehicle collisions at protected grade crossings are dramatic. Moreover, the numbers show that over the period of time the railroads

have been acting aggressively to close crossings, such accidents have decreased.¹⁵ Nevertheless, there have been no accidents at the crossings in Sprague and there was extensive testimony about the need for the crossing and the inconvenience to the public should it be closed.

32 In oral argument, Staff pointed out that in the case of *Department of Transportation v. Snohomish County*,¹⁶ the court concluded that the Commission had the authority to weigh the public convenience and necessity associated with a crossing against the inherent danger of the crossing in determining whether to allow it to remain open. In the *Snohomish County* case, the railroad sought to close the Park Avenue crossing over two main line tracks running through an unincorporated portion of Mukilteo. The trains passing over the crossing traveled at 60 miles per hour. In addition, the crossing was found to be exceedingly dangerous because of the grade of Park Avenue south of the tracks, and because of the poor visibility at the crossing.¹⁷

33 Staff also cited two Commission decisions¹⁸ in which the Commission analyzed the public convenience and necessity in reaching a determination to close crossings. In the *Skagit County* case, the crossing at issue was one through which high-speed rail passenger service would pass. Furthermore, the crossing did not allow good advance sight of approaching trains, and the proximity of the crossing to the intersection with old Highway 99 created additional hazards, because vehicles exited the highway at speeds up to 50 to 60 miles per hour. Finally, there were no gates or warning bells at the crossing.¹⁹

34 In the *Spokane County* case cited by Staff, the railroad sought to close the Ashton Road crossing in the Otis Orchards area of Spokane County. Approximately 237 vehicles per day used the crossing. The crossing lacked gates or signal lights, although there were cross bucks and stop signs. The Commission found that the crossing was particularly hazardous because trees on each side of the crossing

¹⁵ The numbers on Table 1-12 of Exhibit No. 10 indicate that since the implementation of the grade crossing closure program, total highway-rail crossing incidents have decreased from a total of 4,153 nationally and 50 in the State of Washington in 1995, to 3,032 nationally and 24 in the state in 2000.

¹⁶ *Dept. of Transportation v. Snohomish County*, 35 WA 2d 247 (1949) (“*Snohomish County*”).

¹⁷ *Snohomish County* at 253-254.

¹⁸ *Burlington Northern v. Skagit County*, Docket No. TR-940282, May, 1995 (“*Skagit County*”) and *Union Pacific Railroad v. Spokane County*, Docket No. TR-950176, July, 1996 (“*Spokane County*”).

¹⁹ *Skagit County* decision at 5-6.

obstructed the view of the tracks when in foliage, and houses near the tracks also obstructed the view.²⁰

35 In the case at hand, the evidence of similar additional or particular danger at the “D” Street crossing is unpersuasive. The Sprague situation is easily differentiated from the fact situations in the cases cited by Staff. There has not been a single vehicle-train collision in Sprague in 50 years, in spite of the fact that up until 1987 there were five grade crossings in the town.²¹ There are gates and warning signals at the “D” Street crossing. The grade crossing is flat. There is only a single main line track. The evidence failed to reveal any problems with visibility at the crossing. Vehicle traffic volume over the crossing is low. The speed of the trains passing through is not as high as the speeds involved in the cases cited, largely because Sprague is a city rather than an unincorporated area or open countryside.

36 Nor was the evidence addressing adequate alternative routes convincing. Mr. Nizam indicated, even though the “F” Street crossing is within 600 feet of the “D” Street crossing, he did not consider the two redundant because of the access “F” Street provided to the school from the north side of town. In addition Sprague officials responsible for fire safety and emergency response work expressed deep concern that closure of the “D” Street crossing would hamper their ability to respond in emergencies on the north side of town. Mr. Lamparter spoke of problems that would occur if large emergency vehicles had to ascend the hill on “D” Street north of town in icy winter conditions without the ability to approach the hill straight on from “D” Street south of the tracks. According to guidelines in the FHA Handbook “crossings that are frequently utilized by emergency vehicles should not be closed.”²² While use of “D” Street for emergencies is not frequent because of the size of the town, Sprague has designated “D” Street and emergency route and Sprague officials consider it important for access to the whole town. Although Mr. Nizam presented evidence that there is only 20 seconds difference in the response time to the north side if the “D” Street crossing is not used, he measured the 20 seconds on a clear day, under normal summer conditions. As both Mr. Lamparter and Mr. Ringwood stated, their fear is not being able to respond in less than ideal conditions, when closure of the “D” Street crossing might imperil lives and property.

²⁰ *Spokane County* decision at 6-7.

²¹ Exhibit No. 25 and Tr. 114.

²² Exhibit No. 17 at p. 93.

37 With regard to public convenience, Ms. Engels testimony demonstrated the importance of the “D” Street crossing to the business operations of the Grange Supply Store. In addition, Mr. Nizam, in making his recommendations for mitigation, recognized the importance of the Grange to the City of Sprague. Mr. Nizam’s testimony that there would be adequate turning space for trucks seeking to leave the Grange even if the “D” Street crossing closed must be tempered by the fact that he is not a professional truck driver. On the other hand, Ms. Engles, though similarly unlicensed, has observed personally the difficulties trucks have had in maneuvering around the Grange facility even with the “D” Street crossing open and in place.

38 Furthermore, the FHA guidelines also call for a careful “economic assessment of the positive and negative impacts of crossing closures.”²³ It is clear that there would be a significant negative impact on the operations of the Grange if the “D” Street crossing were closed. The Grange is a large employer in Sprague and faces some level of competition for its goods and services from both nearby competitors as well as from the city of Spokane. Closing “D” Street would cause serious inconvenience to truckers seeking to enter or leave the facility, even though experienced drivers might be able technically to perform the maneuvers necessary to turn and exit the Grange if the “D” Street crossing were to be closed.

39 For these reasons, it is concluded that Burlington Northern has not shown that the “D” Street crossing is particularly dangerous, that there are adequate alternative routes should the crossing be closed, or that the “D” Street crossing closure would serve public convenience and necessity. Balancing the inherent public safety concern with grade crossings against the public convenience and necessity for the “D” Street crossing warrants a recommendation that the Commission should not authorize closing the crossing.

B. “F” Street Crossing.

40 Although there is always some danger inherent in the existence of a gated crossing, the Commission may balance the convenience and necessity associated with the crossing in determining whether to close it, as discussed above. The testimony and evidence do not support the closing of the “F” Street crossing. Mr. Cowles, Mr. Nizam and Mr. Lamparter each testified that closing the “F” Street crossing would

²³ *Id* at 93.

impede access to the school in the south part of town as well as to residences in the north part of town. In the instance of the “F” Street crossing, there is ample evidence of the convenience of the crossing and the need for it to preserve access routes. For this reason, Burlington Northern’s amended petition to close the “F” Street at grade crossing should be rejected.

V. ORDER

41

For the reasons stated in the body of this Order, it is recommended that the Commission deny the petition and amended petition of Burlington Northern to close either the “D” Street at-grade crossing or the “F” Street at-grade crossing in the City of Sprague, Washington.

Dated at Olympia, Washington, and effective this 21st day of October, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

WAC 480-09-780(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-09-780(3). WAC 480-09-780(4) states that any *Answer* to any Petition for review may be filed by any party within (10) days after service of the Petition.

WAC 480-09-820(2) provides that before entry of a Final Order any party may file a *Petition to Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or

for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-09-120(2). An Original and nineteen copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia Washington 98504-7250.