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5 **BEFORE THE WASHINGTON**
6 **UTILITIES AND TRANSPORTATION COMMISSION**

7 WASHINGTON UTILITIES AND
8 TRANSPORTATION COMMISSION,

9 Complainant,

10 v.

11 BNSF RAILWAY COMPANY,

12 Respondent.

DOCKET TR-150284

JOINT RESPONSE TO
REQUEST FOR SUPPLEMENTAL
INFORMATION

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14 BNSF RAILWAY COMPANY (“Respondent”), and STAFF OF THE WASHINGTON
15 UTILITIES AND TRANSPORTATION COMMISSION (“Complainant”), by its attorneys of
16 record herein, jointly respond to the request for supplemental information regarding why the two
17 lube oil incidents (Causes of Action Nos. 10 and 13) were not reportable under WAC 480-62-
18 310(1)(a).

19 Cause of Action No. 10 relates to a December 13, 2014 incident in which locomotive
20 lube oil was spilled onto rail tracks. Causes of Action No. 13 relates to a January 25, 2015
21 incident in which locomotive lube oil was spilled onto ballast. BNSF reported the spills to the
22 EOC on the same days they occurred, in less than an hour after the incidents occurred. The
23 Complaint alleged that 1 violation of WAC 480-62-310 had occurred for each incident because
24 BNSF’s report was made more than 30 minutes after BNSF learned of the event.
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JOINT RESPONSE TO REQUEST FOR
SUPPLEMENTAL INFORMATION – 1

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1 Under the Washington Utilities and Transportation Commission regulations, the duty to
2 report arises only if the spill constituted a “release of any hazardous material” within the
3 meaning of WAC 480-62-310(1)(a).¹

4 Staff and BNSF agree for purposes of settlement that the spills at issue did not constitute
5 “release of any hazardous material” within the meaning of WAC 480-62-310(1)(a). The primary
6 basis for this conclusion is that lube oil is not listed in the table of hazardous materials in
7 Department of Transportation’s regulations (49 CFR Part 172), which has been adopted by the
8 Commission by reference. WAC 480-62-999. Lube oil therefore does not constitute a
9 “hazardous material” for purposes of WAC 480-62-310(1)(a).

10 In addition, in evaluating the reporting requirement under WAC 480-62-310(1)(a) for
11 purposes of settlement, Commission Staff considered whether the incident would be immediately
12 reportable to the federal government. The Commission Staff concluded that under federal law,
13 an incident is immediately reportable only if it occurred “during the course of transportation in
14 commerce.” 49 CFR Part 171.15(b). Here, the Commission Staff concluded the spills at issue
15 would not be immediately reportable under federal law, because the lube oil was released from
16 locomotives and therefore the spills did not occur “during the course of transportation in
17 commerce.”²


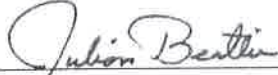
18 Commission Staff further noted that under federal law, **commerce** means “trade or
19 transportation in the jurisdiction of the United States within a single state; between a place in a
20 state and a place outside of the state; that affects trade or transportation between a place in a state
21 and place outside of the state . . .” 49 C.F.R. § 171.8; *see also* 49 U.S.C. § 5102(1).

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23 ¹ This brief does not address any duty or obligation to report under applicable state or federal environmental laws or
regulations.

24 ² There does not appear to be case law specifically addressing this issue. The Commission Staff’s view on 49 CFR
25 Part 171.15(b) is included in this joint response for additional context about why these incidents were considered
26 appropriate for settlement. This UTC proceeding is solely about whether the reporting requirement of WAC 480-
62-310(1)(a) was met for the incidents at issue. This proceeding does not address whether the incidents would be
separately reportable under other state or federal law, and BNSF takes no position on the interpretation of federal
law for purposes of this filing. BNSF promptly reported these incidents in any event.

1 **Transportation** means “the movement of property and loading, unloading, or storage incidental
2 to that movement.” 49 C.F.R. § 171.8; *see also* 49 U.S.C. § 5102(13). **Storage incidental to**
3 **movement** means “storage of a transport vehicle, freight container, or package containing a
4 hazardous material by any person between the time that a carrier takes physical possession of the
5 hazardous material for the purpose of transporting it in commerce until the package containing
6 the hazardous material is physically delivered to the destination . . .” 49 C.F.R. § 171.8. For
7 purposes of settlement, as a matter of statutory interpretation, lube oil released from a locomotive
8 therefore likely is not *property* being moved or stored in *trade or transportation* such that the
9 release occurred “during the course of transportation in commerce.”

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11 DATED this 26th day of October, 2015.
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have this day served the foregoing document upon the persons and
3 entities listed on the Service List below via electronic mail and by depositing a copy of said
4 document in the United States mail, addressed as shown on said Service List, with first class
5 postage prepaid.

6 **For Washington Utilities and
7 Transportation Commission:**

8 Julian Beattie
9 Office of the Attorney General
10 Utilities and Transportation Division
11 1400 S. Evergreen Park Drive SW
12 P.O. Box 40128
13 Olympia, WA 98504-0128

14 Email: jbeattie@utc.wa.gov

15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct.

17 DATED October 26, 2015, at Seattle, Washington.

18 
19 _____
20 Debra A. Samuelson