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November 22, 2006

VIA U.S. MAIL

Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

RE: WUTC DOCKET NO. TR-061442
WUTC Crossing No.: 2A1673.50U
USDOT Crossing No.: 084493W

Dear Ms. Washburn:

Enclosed please find the original and 8 copies of *BNSF's Answer and Affirmative Defenses to Petition for Alteration and Relocation of a Highway-Rail Under-Crossing* in the above-referenced matter.

Please do not hesitate to call should you have any questions or comments.

Very truly yours,

Montgomery Scarp MacDougall, PLLC



Amy Paden
Paralegal

Enclosures

1 2. In response to paragraph 2 of the Petition, BNSF admits that the crossing at issue
2 intersects the roadway known as the "Chumstick Highway" at the approximate milepost and
3 location referenced in the Petition.

4 3. In response to paragraph 3 of the Petition, BNSF admits that the rail line includes
5 a main line used by both passenger and freight trains at the estimated speeds and volumes stated
6 in the Petition. BNSF does not admit or deny the remaining allegations but reserves the right to
7 amend its Answer pending further investigation or discovery of the facts.

8 4. In response to paragraph 4 of the Petition, BNSF lacks sufficient information to
9 respond affirmatively and as such does not admit or deny the allegations but reserves the right to
10 amend its Answer pending further investigation or discovery of the facts.

11 5. In response to paragraph 5 of the Petition, BNSF lacks sufficient information
12 respond affirmatively and as such does not admit or deny the allegations but reserves the right to
13 amend its Answer pending further investigation or discovery of the facts.

14 6. In response to paragraph 6 of the Petition, BNSF admits that the Chumstick
15 Highway passes under the railroad trestle in question. BNSF does not admit or deny the
16 remaining allegations but reserves the right to amend its Answer pending further investigation
17 or discovery of the facts.

18 7. In response to paragraph 7 of the Petition, BNSF admits that Chelan County has
19 proposed altering and relocating the crossing and that County officials and BNSF have met to
20 discuss the issues involved. BNSF does not admit or deny the remaining allegations but reserves
21 the right to amend its Answer pending further investigation or discovery of the facts.

22 8. In response to paragraph 8 of the Petition, BNSF does not admit or deny the
23 allegations but reserves the right to amend its Answer pending further investigation or discovery
24 of the facts.

25 9. In response to paragraph 9 of the Petition, BNSF does not admit or deny the
26 allegations but reserves the right to amend its Answer pending further investigation or discovery
27 of the facts.

1 BNSF reserves the right to supplement its Affirmative Defenses as additional information
2 is obtained.

3 **Prayer For Relief**

4 1. BNSF requests a preliminary hearing on the issues raised in this Answer.

5 2. BNSF requests a stay of proceedings due to lack of jurisdiction or any other
6 affirmative defenses raised.

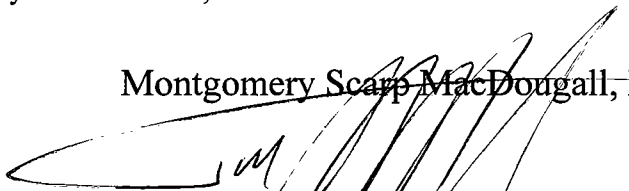
7 3. BNSF requests a stay of any proceedings by the Commission on this matter unless
8 and until it has been brought before and adjudicated by the STB.

9 4. BNSF acknowledges that the parties have been in communication regarding the
10 proposal set forth in the Petition and believes that further discussions are warranted. BNSF
11 believes that the parties will benefit from further direct communications regarding the Petition,
12 or in the alternative a mediation proceeding.

13 Certification: I certify under penalty of perjury that the foregoing is true and correct based
14 on my knowledge and information of the matters set forth herein.

15 DATED this 22nd day of November, 2006.

16 **Montgomery Scarp MacDougall, PLLC**



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18 Bradley Scarp, WA. Bar No. 21453

19 Leslie Fleming, WA. Bar No. 32368

20 Of Attorney for Defendant

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CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp MacDougall, PLLC, whose address is 1218 Third Avenue, Suite 2700, Seattle, Washington, 98101.

I hereby certify that true and complete copies of defendant's *BNSF's Answer and Affirmative Defenses to Petition* has been sent via U.S. Mail to the following interested parties:

Carole J. Washburn, Executive Secretary (Original and 8 copies)
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
Fax: (360) 586-1150

Gary A. Riesen (one copy)
Chelan County Prosecuting Attorney
Louis N. Chernak
Chelan County Prosecuting Attorney's Office
401 Washington Street, 5th Floor
P.O. Box 2596
Wenatchee, WA 98807
Fax: (509) 667-6490

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

DATED this 22nd day of November, 2006 at Seattle, Washington.


Amy Paden, Legal Assistant