

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

BENTON COUNTY,	)	DOCKET TR-100572
	)	
Petitioner,	)	ORDER 06
	)	
v.	)	
	)	INITIAL ORDER GRANTING
BNSF RAILWAY COMPANY,	)	BENTON COUNTY’S PETITION
	)	FOR AN AT-GRADE RAILROAD
Respondent.	)	CROSSING, SUBJECT TO
	)	CONDITIONS
	)	
.....	)	

1     ***Synopsis:** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission (Commission) or allowed to become effective as described in the notice at the end of this Order. This Order would grant Benton County’s petition for approval of an at-grade railroad crossing in the community of Finley, subject to conditions. The approval is based on determinations that a grade-separated crossing is not practicable considering cost and engineering constraints, and that there is a demonstrated public need for the crossing outweighing its inherent risks, which the record shows to be relatively low considering vehicular and train traffic, and other relevant factors. The Commission’s approval is conditioned on Benton County taking specific actions to promote public safety at the crossing on an ongoing basis, including the installation of lighting and monitoring of traffic, which the County shall report to the Commission annually for ten years.*

**SUMMARY**

2     **PROCEEDINGS:** On April 9, 2010, Benton County (County) filed with the Washington Utilities and Transportation Commission (Commission) four petitions to construct a highway-rail grade crossings at Piert Road, Benton County (Dockets TR-100572 through TR-100575), and a petition for the closure of a highway-rail grade crossing at Cochran Road, Benton County (Docket TR-100576). The affected

railroad companies, BNSF Railway Company (BNSF) and Union Pacific Railroad (Union Pacific) entered appearances and reserved their rights to contest the petitions.

3 On June 16, 2010, the Commission entered Order 01 in Docket TR-100572 and Order 02 in TR-100573, TR-100574, TR-100575 and TR-100576, consolidating the dockets for hearing and determination. In these orders, the Commission also scheduled a prehearing conference for Wednesday, August 11, 2010. The Commission granted the parties' request for a continuance to September 27, 2010, to give them an opportunity to address questions relating to ownership of the southern two proposed railway crossings and to continue settlement negotiations.

4 The parties stated during the prehearing conference on September 27, 2010, that they had resolved the issues related to ownership and had reconfigured the project in such a way as to eliminate their primary points of contention in Dockets TR-100573 – TR-100576. They accordingly proposed to seek severance of those dockets and leave to withdraw the associated petitions, which the County did on October 14, 2010. In Order 04 in Docket TR-100572 and Order 05 in the consolidated dockets, entered on October 15, 2010, the Commission severed Dockets TR-100573, TR-100574, TR-100575 and TR-100576 from Docket TR-100572. The Commission also granted leave to Petitioner Benton County to withdraw its petitions in Dockets TR-100573, TR-100574, TR-100575 and TR-100576, without prejudice.

5 Docket TR-100572 remains contested at this time. The Commission conducted an evidentiary hearing in this proceeding on December 13, 2010, before Administrative Law Judge Dennis J. Moss at the Commission's headquarters in Olympia, Washington.

6 **PARTY REPRESENTATIVES:** Jonathan J. Young, Senior Deputy Prosecuting Attorney and Reid Hay, Deputy Prosecuting Attorney, Benton County Prosecuting Attorney's Office, Kennewick, Washington, represent Benton County. Bradley Scarp and Kelsey E. Endres, Montgomery Scarp MacDougall, PLLC, Seattle, Washington, represent BNSF. Fronda Woods, Assistant Attorney General, Olympia, Washington, represents the Commission's Regulatory Staff (Commission Staff or Staff).<sup>1</sup>

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 7 **COMMISSION DETERMINATION:** The Commission determines in this Initial Order that Benton County's petition should be granted, subject to conditions. The evidence demonstrates that it would not be practicable to build a grade-separated crossing due to cost and engineering constraints. The record shows that the risks of an accident at the crossing are relatively low considering light vehicular and train traffic, flat topography and good lines of sight, and plans for passive warning devices and other safety measures, including ongoing monitoring. The relative low risk is outweighed by the demonstrated public need for the crossing, which is part of a project that will increase public safety by diverting traffic from residential areas and school zones, and improve economic opportunities in Benton County by improving access to approximately 300 acres of underdeveloped industrial property.
- 8 The Commission determines it should condition its approval of the proposed crossing by requiring Benton County to install lighting at the site. In addition, Benton County will be required to monitor vehicular and train traffic at the crossing and report annually to the Commission the levels and types of use for a period of ten years.

## MEMORANDUM

### **I. Background and Procedural History**

- 9 Benton County proposes by its petition in this proceeding to construct a new at-grade crossing at the intersection of a planned extension of Piert Road in Benton County and tracks owned by, and providing access to, Agrium U.S. Inc's Kennewick fertilizer Plant in the community of Finley. The project also involves the closing of an existing at-grade crossing on nearby Game Farm Road, currently the means by which traffic accesses the Agrium facility.<sup>2</sup> The tracks that would cross the Piert Road Extension are known as the Agrium Spur, operated by BNSF Railway Company, which contests the county's petition as a matter of corporate policy.<sup>3</sup> Commission Staff, the only

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<sup>2</sup> TR. 46:10 – 47:10 (Regan).

<sup>3</sup> Exhibit MM-1T (McIntyre) at 2 (question 6). In a related matter, Union Pacific Rail Road (UPRR) has agreed not to oppose the County in constructing an at-grade public crossing with passive warning devices where the Piert Road extension will cross the UPRR tracks. *See* Exhibit KH-1T (Hunter) at 5:12 – 6:5. Considering the petition here and the four other petitions originally filed by Benton County in connection with this public works improvement project in dockets TR-100573, TR-100574, TR-100575 and TR-100576, which were severed from this proceeding by Order 05 and authorized for refiling as uncontested petitions, four private and one

other party to this proceeding, recommends that the County's petition be granted, with four additional safety measures.<sup>4</sup>

10 Mr. Bowie, employed by the Benton County Public Works Department as the Benton County Engineer, testifies that "the Piert Road extension project is the final phase of a project that was first investigated as part of a 1995 report on public needs prepared for the Benton County Commissioners."<sup>5</sup> According to Mr. Bowie, two engineering reports were prepared, allowing the Commission to consider various options for development projects.<sup>6</sup> The County Commission, after holding public hearings, adopted resolutions directing county staff to move forward with the Piert Road extension project.<sup>7</sup>

11 Mr. Thorpe, who works in the Engineering and Construction Section of the Public Works Department as a Project Engineer, testifies that:

The purpose of the road extension is to provide a more direct route for trucks entering and exiting the Finley industrial area on the way to I-82 via State Route 397. It also has the benefit of opening up a large amount of land in the Finley industrial area that is presently difficult to access, and allows for better use and development of that land.<sup>8</sup>

Elaborating on the County's goal to redirect truck traffic, Mr. Thorpe explains that trucks passing from the Finley industrial area on route to I-82 via State Route 397 (SR-397) presently have no option but to navigate through a residential area and past a middle school and high school.<sup>9</sup> This truck traffic includes chemical trucks leaving the Agrium facility, some of which may contain hazardous materials. Mr. Thorpe testifies that:

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public at-grade crossing will be closed. At the same time four public at-grade crossings, including the one contested here, would be opened over various rail spurs, including the Agrium Spur, that provide access to the 300 acre industrial area.

<sup>4</sup> Exhibit KH-1T (Hunter) at 3:20-21.

<sup>5</sup> Exhibit MB-1T (Bowie) at 3:2-5.

<sup>6</sup> *Id.* at 3:6-9.

<sup>7</sup> *Id.*

<sup>8</sup> Exhibit BT-1T (Thorpe) at 2:23 – 3:2.

<sup>9</sup> *Id.* at 2:23 – 3:2.

The completion of the Piert Road extension project, including the petitioned crossing, will provide a more direct route for truck traffic and thus mitigate the problems and dangers of trucks passing through residential areas and school zones.<sup>10</sup>

- 12 Mr. Fyall, who works in the Office of the Benton County Commissioners managing special projects, testifies that in addition to the safety and quality of life factors discussed by Mr. Thorpe, the extension of Piert Road “represents a major piece of the overall multi-modal transportation matrix in the Finley area of eastern Benton County.”<sup>11</sup> He explains that:

The low-lying, near-shore areas of Finley have long been viewed as a potential industrial, shipping, and manufacturing asset for the region; but realizing that potential has proven elusive in large part due to the lack of fluid, efficient overland transportation options into the area. As a result, recruiting the types of targeted operations into the appropriately zoned areas has been difficult.<sup>12</sup>

- 13 Mr. Fyall testifies further that the Piert Road extension project has taken on increased significance in this regard with the completion of SR 397, which sometimes is referred to colloquially as the "Finley Intertie". Mr. Fyall states that the Finley Intertie highway was first envisaged in the 1960s, but only completed in recent years. SR 397 provides access into and out of Finley via a southwestern route to I-82. According to Mr. Fyall, Piert Road, if extended as planned, can serve as a primary local access road for industry in south Finley, and connect into the Intertie.

- 14 Mr. Bowie testifies that an important factor for Benton County is that it secured a \$1.935 million grant from the Washington State Transportation Improvement Board in 2005 to go towards the Piert Road extension.<sup>13</sup> In Mr. Bowie’s opinion, this represents recognition at the state level that there is a need for the Piert Road project. However, Mr. Bowie testifies: “If the Piert Road project is not completed the

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<sup>10</sup> Exhibit BT-1T (Thorpe) at 3:13-18.

<sup>11</sup> Exhibit AF-1T (Fyall) at 2:18-20.

<sup>12</sup> *Id.* at 2:20-28.

<sup>13</sup> Exhibit MB-1T (Bowie) at 3:2-12.

Transportation Improvement Board grant will be lost and prior expenditures billed back to the county.”<sup>14</sup>

15 Mr. Bowie is the County’s principal witness concerning the safety of the proposed at-grade crossing. Indeed, he approved the crossing design for the County and prepared its petition that is the subject of this proceeding.<sup>15</sup> Mr. Bowie testifies that the Piert Road extension is planned to run north to south, crossing an existing private industrial rail spur (*i.e.*, the Agrium Spur) at grade. He describes the area of the crossing as being “a flat open area with very good geometrics and a very low exposure to accidents.”<sup>16</sup> He states in addition that “a separated grade crossing would impracticable.”<sup>17</sup>

16 Focusing first on safety, Mr. Bowie testifies that the primary factors to consider are the volume of traffic along the highway and along the railway, speeds of highway and railway traffic at the crossing point, the geometry and topography of the crossing area, and the sight distances when approaching the crossing.

17 Mr. Bowie testifies that approximately 400 vehicles per day and 1 or 2 BNSF trains per week will pass over the proposed crossing.<sup>18</sup> Vehicles on Piert Road are subject to a speed limit of 35 miles per Hour. Mr. Bowie states that while the rail spur has an authorized speed of 10 miles per hour, “trains at the location of the crossing are observed to travel at an estimated 2 to 5 miles per hour.”<sup>19</sup> Ms. McIntyre, testifying for BNSF, does not dispute Mr. Bowie’s estimate of train speeds, but she contends that: “It must always be expected that a train will be traveling as fast as the federal speed limit allows.”<sup>20</sup>

18 Ms. McIntyre disputes Mr. Bowie concerning the number of trains that use the spur. She states the number of trains is five per week (“one Road Switcher train to (and

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<sup>14</sup> *Id.* at 7:17-22.

<sup>15</sup> *Id.* at 2:24-26.

<sup>16</sup> *Id.* at 3:15-20 (citing Exhibit MB-2, a detailed map of the project site, with photographs).

<sup>17</sup> *Id.* at 4:1-2.

<sup>18</sup> Each daily train trip to the Agrium facility is a round trip thus representing two passages over the proposed crossing. TR. 34:2-13 (Angelos).

<sup>19</sup> *Id.* at 4:23-27.

<sup>20</sup> Exhibit MM-1T (McIntyre) at 3 (question 7).

from) the Agrium facility per day, Monday through Friday”), not 1 or 2 per week.<sup>21</sup> Mr. Angelos, offers identical testimony for BNSF.<sup>22</sup>

- 19 In rebuttal to Ms. McIntyre and Mr. Angelos, Benton County called on Mr. Josh Regan, who manages the fertilizer plant served by the spur and that would be accessed by trucks using the proposed crossing. He also manages another Agrium operation in the same area. Mr. Regan testifies, based on detailed company records, that: “An average of three trains per week arrive and depart our Plant along that spur.”<sup>23</sup>
- 20 At hearing, Mr. Angelos said that he based his assertion in his prefiled testimony that there are five trains per week—one each business day—on the service that is *scheduled*, not the service that actually occurs. He acknowledged that the service BNSF actually provides is sporadic and based on the demands of the customer.<sup>24</sup>
- 21 Mr. Regan agrees that train traffic on the spur is sporadic, varying from one to four or five trains per week. Nevertheless, he states that the average is three trains per week, as shown by his company’s records.<sup>25</sup> Asked about anticipated future use of the Agrium spur, Mr. Regan testifies: “In my position we do forecasting and strategic planning up to five years. At this point in time there would be no indication of any growth or diminishing traffic.”<sup>26</sup>
- 22 Ms. McIntyre also testifies that BNSF has concerns that the County has failed to consider that there may be an increased traffic volume on Piert Road if nearby industrial development increases.<sup>27</sup> Mr. Bowie, however, testifies in rebuttal that the traffic demand model on which the County relies takes growth into account.<sup>28</sup> He states in addition that the County proposes to conduct “ongoing monitoring of the

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<sup>21</sup> *Id.* at 2 (question 4).

<sup>22</sup> Exhibit WA-1T (Angelos) at 1 (question 3).

<sup>23</sup> Exhibit JR-1T (Regan) at 2:21-23. See also *Id.* at 3:11-12; 3:23-25.

<sup>24</sup> TR. 31:14 – 32:7.

<sup>25</sup> TR. 41:17-19.

<sup>26</sup> TR. 41:25 – 42:5 (Regan).

<sup>27</sup> Exhibit MM-1T (McIntyre) at 2 (question 7).

<sup>28</sup> Exhibit MB-8T (Bowie) at 2:4-6.

crossing so that a diagnostic team can meet and revisit the adequacy of the crossing if warranted by future conditions.”<sup>29</sup>

- 23 Concerning the geography and topography of the crossing area and the sight distances from the crossing, which he describes as “very favorable,” Mr. Bowie provided detailed testimony as follows:

The proposed roadway alignment is located approximately 300 feet west of the industrial rail entrance for the Agrium plant, providing a buffer area for both train and truck traffic to freely move between the two facilities. It is not anticipated that any blockages would occur on the crossing as a result of railroad switching operations as any switching would occur within the industrial site or this buffer area. The sight distance for a vehicle approaching the petitioned crossing ranges from 400 feet to nearly 2000 [feet].

Utilizing Railroad Highway Grade Crossing Handbook procedures for identifying necessary sight distances at a crossing, the County has calculated the sight distance along the tracks to allow the vehicle to cross and be clear of the tracks before the train (dt) to be 237 ft. when coupled with the (dh) value of 272 ft. The procedure ensures that no obstruction is within the approach sight triangle for any vehicle approaching from any direction. The roadway is in a 2000 foot radius horizontal curve, and has been designed with a moderate vertical curve with approaching gradient is from .55% to -. 1%. The rail spur has a slight horizontal curvature on an approach grade of 1.9%. Benton County performed a diagnostic regarding sight distances in accordance with The Railroad-Highway Grade Crossing Handbook, Revised Second Edition.

All criteria [were] met for safe approach crossing sight distances as identified in chapter III subsection "c" of the referenced Handbook. The proposed crossing as identified in the petition and submitted in drawings conformed to pavement markings and signage as identified in Figure 8B-2 and 8B-6 of The Manual on Uniform Traffic Control Devices ("MUTCD"). Passive traffic control systems planned include signage as recommended in the MUTCD for Highway-Rail Grade Crossings (Railroad crossing sign, Advance warning sign, Do Not Stop

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<sup>29</sup> Exhibit 8T (Bowie) at 2:8-11.



On Tracks sign) and pavement markings (Railroad crossing marking and no passing markings) on all approaches. Again, the posted speed limit will be 35 MPH for the new road.<sup>30</sup>

Mr. Bowie testifies further that “active warning devices are not called for given the features of the proposed crossing.”<sup>31</sup> He substantiates this testimony with a detailed discussion of the quantitative measures and methods for conducting overall evaluations of crossing safety used by the United States Department of Transportation and its Washington counterpart.<sup>32</sup> Here, according to Mr. Bowie, the various standard measures indicate a very low likelihood for a collision between a train and a vehicle at the proposed crossing, suggesting that passive warning devices, such as those planned, are adequate. As to the future, Benton County plans include active monitoring at the crossing to determine, over time, whether conditions have changed so as to warrant additional safety measures.<sup>33</sup>

24 Ms. Hunter testifies that Staff participated in a diagnostic review of the proposed crossing with representatives of BNSF and the County.<sup>34</sup> Although she questions some of the data upon which Mr. Bowie relied, Ms. Hunter generally agrees with him that the characteristics of the proposed crossing, including traffic flow, amount of train usage, geography and topography, and other factors relevant to assessing safety, support a conclusion that the risk of an accident at the proposed crossing is quite low.<sup>35</sup> She also agrees with Mr. Bowie that passive warning devices would be

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<sup>30</sup> *Id.* at 5:1 – 6:15 (internal references to Exhibits MB-3 and MB-4 removed).

<sup>31</sup> *Id.* at 8:26-27.

<sup>32</sup> *Id.* at 8:27 – 11:14.

<sup>33</sup> *Id.* at 4:16-17; 11:10-14.

<sup>34</sup> Exhibit KH-1T (Hunter) at 6:12-14. Ms. Hunter explained that:

A diagnostic review is when a team of experienced and knowledgeable individuals from interested organizations meet on-site at an existing or proposed crossing to evaluate its operational and physical characteristics, and to determine whether measures can be taken to maintain or improve safety at the crossing. Generally, the team consists of the road authority, UTC staff, and the railroad, though other organizations may also be involved. The team considers a number of factors, including the crossing configuration and physical characteristics, vehicle and train traffic patterns and operations at the crossing, the crossing approach zones, and traffic control devices such as pavement markings and signs or signals. *Id.* at 6:16 – 7:2.

<sup>35</sup> *Id.* at 12:9 - 25:18.

appropriate and adequate at the site.<sup>36</sup> However, Ms. Hunter presents Staff's recommendation for four additional safety measures in addition to those the County proposes. Staff specifically recommends:

- Additional signage.
- Smooth surface treatments at the crossing.
- Additional lighting.
- Monitoring.

25 Mr. Bowie testifies that the County agrees with all of Staff's recommendations, except its proposal that lighting be installed at the crossing.<sup>37</sup> Mr. Bowies states that "Benton County does not presently maintain or operate streetlights."<sup>38</sup> In Mr. Bowie's opinion, it would present a significant burden for the County to be required to install and maintain such lights at the proposed crossing.<sup>39</sup>

Ms. Hunter testifies, however, to her understanding that:

The majority of the BNSF crossings will occur at night, between the hours of 9:00 p.m. and 12:00 a.m. Additionally, train speeds are low—only 10 miles per hour. A motorist might not see a slowly-moving train in the dark. According to page 141 of the "Railroad-Highway Grade Crossing Handbook," "Illumination at a crossing may be effective in reducing nighttime collisions." The handbook also lists a number of conditions under which illumination should be considered, including nighttime train operations and low train speeds.<sup>40</sup>

26 Mr. Bowie focuses on criteria set forth in the U.S. DOT's Manual on Uniform Traffic Control Devices<sup>41</sup> and contends "the specific circumstances of the proposed

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<sup>36</sup> *Id.*

<sup>37</sup> Exhibit MB-8T (Bowie) at 4:1 – 5:19.

<sup>38</sup> *Id.* at 4:13-17.

<sup>39</sup> *Id.*

<sup>40</sup> Exhibit KH-1T at 28:11-19; Exhibit KH-4 (excerpts from the U.S. DOT/FHWA Railroad-Highway Grade Crossing Handbook, August 2007 ed.).

<sup>41</sup> Exhibit MB-10.

crossing . . . do not call for additional lighting.”<sup>42</sup> He states that the Manual suggests that:

Additional lighting should be considered where there is substantial railway traffic at night, where the crossing is blocked for extended periods of time, or where the crash history indicates that road users experience difficulty seeing trains, equipment, or traffic control devices during hours of darkness. The proposed crossing is not anticipated to have any of those difficulties.<sup>43</sup>

However, what Mr. Bowie characterizes as “criteria” actually are no more than several examples of when illumination may be installed at a railroad crossing. They do not establish an exclusive set of circumstances that might indicate a need for lighting at a railroad crossing. Indeed, while, the Railroad-Highway Grade Crossing Handbook on which Ms. Hunter relies includes the examples to which Mr. Bowie refers as conditions under which illumination may be effective, it also identifies the more relevant conditions to which Ms. Hunter refers in her testimony, and six additional conditions that may suggest the need for lighting. The Handbook also states that “Luminaires may provide a low-cost alternative to active traffic control devices on industrial or mine tracks where switching operations are carried out at night.”<sup>44</sup> In a post-hearing response to a bench request, Mr. Bowie states that the capital costs of installing four streetlights at the crossing would be approximately \$40,000, with an annual maintenance expense of approximately \$500.<sup>45</sup>

27 On the question of whether a grade-separated crossing is feasible, Mr. Bowie testifies that it is not, because of cost and engineering considerations. According to Mr. Bowie, Benton County’s consulting engineers on this project have estimated the cost of a separated crossing would more than double the cost of the project, from about \$3 million to \$6.8 million.<sup>46</sup> Even were a grade-separated crossing feasible from a cost perspective, Mr. Bowie testified that it would not be feasible from an engineering

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<sup>42</sup> Exhibit MB-8T (Bowie) at 4:22-27.

<sup>43</sup> *Id.* at 4:28 – 5:7.

<sup>44</sup> Exhibit KH-4 at 15.

<sup>45</sup> Exhibit BR-1.

<sup>46</sup> *Id.* at 7:26 – 8:3.

perspective because the necessary configuration would seriously impede the ability of trucks to access the Agrium facility served by the rail spur.<sup>47</sup>

28 Ms. Hunter, for Staff, testifies that she reviewed the report cited in Mr. Bowie's testimony, which is Exhibit MB-5, a "Grade Separation Evaluation Report" prepared by Travis Marden of J-U-B Engineers, Inc.<sup>48</sup> She states that she agrees with the opinion expressed in the report that, because of the proximity of the UPRR and BNSF tracks at this location, a grade-separated design would need to span both sets of tracks.<sup>49</sup> Ms. Hunter also agrees with Mr. Marden's opinion that an over-crossing would interfere with vehicle access to the Agrium plant and adjacent agricultural lands.<sup>50</sup> For this reason, Ms. Hunter says she agrees with Mr. Bowie's opinion that a grade-separated crossing would be impracticable at this location.<sup>51</sup>

## II. Discussion and Determinations

29 RCW 81.53.020 requires that crossings be grade-separated "when practicable" and provides that:

In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.<sup>52</sup>

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<sup>47</sup> *Id.* at 8:3-10.

<sup>48</sup> Exhibit KH-1T (Hunter) at 9:18-20.

<sup>49</sup> *Id.* at 10:2-4.

<sup>50</sup> *Id.* at 10:4-6.

<sup>51</sup> *Id.* at 10:6-7.

<sup>52</sup> Although the Commission does not ignore BNSF's corporate policy of opposing all proposed at-grade crossings, RCW 81.53.020 contemplates, at least impliedly, that there are circumstances when it is appropriate for the Commission to approve an at-grade crossing proposal. BNSF's corporate policy does not appear to be a circumstance or condition "naturally involved in such an inquiry."

The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:

- A. Whether a grade-separated crossing is practicable considering cost and engineering requirements and constraints.
- B. Whether there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.<sup>53</sup>

**A. Practicability**

30 Mr. Bowie and Ms. Hunter both testify that it is not feasible from an engineering perspective to build a grade-separated crossing at Piert Road that will provide access to the Agrium facility. Mr. Bowie's testimony establishes in addition that, even if technically feasible, it would not be financially practical to construct a grade-separated crossing, which would more than double the cost of the project. Counsel for the County represented in oral argument that funds are not available to the County to finance such a project.<sup>54</sup>

31 There is no evidence in the record disputing either the financial or the engineering infeasibility of constructing a grade-separated crossing on the Piert Road extension that would provide access to the Agrium industrial facility. The Commission determines a grade-separated crossing is not practicable considering cost and engineering requirements and constraints.

**B. Public Need**

32 Malcolm Bowie describes in his testimony the "acute public need" for the proposed crossing.<sup>55</sup> Mr. Thorp addresses in more detail the public benefits that would result from the proposed extension of Piert Road. Adam Fyall further describes the public benefits that would result if the project is completed as planned. These testimonies,

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<sup>53</sup> *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993); *See also Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995).

<sup>54</sup> TR. 98:12-15 (Hay).

<sup>55</sup> Exhibit MB-1T (Bowie) at 6:22.

all discussed in the preceding section of this Order, are undisputed in regard to the question of public need.

33 The record shows two principal public benefits that would result from the proposed project:

- An overall improvement in public safety.
- Improved economic development opportunities.

34 The proposed extension of Piert Road will provide a more direct route for trucks entering and exiting the Finley industrial area on the way to I-82 via SR-397. As Mr. Thorp testifies, trucks currently travelling from the Finley industrial area to I-82 via SR-397 must pass through a residential area and past a middle school and high school. This includes chemical trucks leaving the Agrium fertilizer facility. Completion of the Piert Road extension project, including the petitioned crossing, will provide a more direct route for this truck traffic thus mitigating the risks of trucks passing through residential areas and school zones.<sup>56</sup>

35 When the potential elimination of these existing risks to public safety are measured against the risks of an accident at the proposed crossing, which the record shows to be quite low, it appears there would be at least some improvement in public safety for the residents of Benton County and those traveling in the Finley area if the project is completed. While the record does not include quantitative measures of the relative risks, it is a matter of common sense to recognize that it is a good idea to divert truck traffic away from residential areas and school zones to a route through a lightly traveled industrial area with favorable topography and geography, and good sight distances for a relatively low risk at-grade rail crossing.

36 In addition to producing an overall improvement in public safety for the community, the second advantage of the Piert Road Extension is that it would open up approximately 300 acres of land in the Finley industrial area that is currently difficult to access. This would promote development and job creation in the area.<sup>57</sup>

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<sup>56</sup> Exhibit BT-1T at 3:8-18; Exhibit BT-2 (excerpts from Final Combined SEPA Supplemental Environmental Impact Statement [and] NEPA Revised Environmental Assessment - I-82 to SR 397 Intertie Project, Benton County, Washington).

<sup>57</sup> Exhibit BT-1T at 3:24-4:1; Exhibit BT-3 (excerpts from Draft Report I-82/SR 397 Intertie Project); *see also* Exhibit AF-1T (Fyall) at 2:13 – 3:9.

- 37 Considering both the improvement in public safety in the community and the greater economic development prospects in Benton County that will result from the proposed project, the Commission determines that there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.
- 38 While it follows from the preceding two determinations that the Commission should approve construction of an at-grade crossing on the proposed Piert Road Extension, the Commission's inquiry is not concluded. It is also necessary to address the specific safety measures proposed for the crossing.
- 39 BNSF, as previously stated, would prefer no at-grade crossing at all. Apparently recognizing, however, that the evidence supports approval in this case under the Commission Staff's analysis, the railroad states through counsel its preference for active warnings and controls and for ongoing monitoring.<sup>58</sup> BNSF is particularly interested in continued scrutiny of traffic levels and makeup (*e.g.*, consideration of any hazardous material that may be transported over the crossing) so that any changed circumstances requiring enhanced protection at the crossing will be recognized and addressed.
- 40 Staff also supports ongoing monitoring at the site. Benton County's witness, Mr. Bowie, discusses in his initial testimony the County's intention to conduct such monitoring. Mr. Bowie testifies that "actual traffic counts will be monitored annually."<sup>59</sup> He testifies in addition that:

Benton County is proposing ongoing monitoring of the petitioned passive crossing. Accordingly, if at some future time conditions warrant it, a diagnostic team will meet to revisit the adequacy of the crossing.<sup>60</sup>

In his rebuttal testimony, Mr. Bowie refers to his earlier discussion of the County's commitment to ongoing monitoring and to Ms. Hunter's testimony for Staff, which also recommends monitoring the crossing and specifically sets forth how that

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<sup>58</sup> TR. 102:2 – 103:2 (Endres).

<sup>59</sup> Exhibit MB-1T (Bowie) at 4:16-18.

<sup>60</sup> *Id.* at 11:10-14.

monitoring should be conducted. Mr. Bowie testifies that he is “in complete agreement with Ms. Hunter's recommendations for monitoring.”<sup>61</sup> Ms. Hunter testifies in this connection that:

At the October 18, 2010, diagnostic review (see Exhibit KH-5), we discussed requiring the County, because of the high probability of industrial development in the area, to monitor the crossing after construction for four specific elements: (1) the number of trains over the crossing daily; (2) the number of vehicles over the crossing daily; (3) the number of accidents at the crossing annually; and (4) the number of incidents at the crossing annually. An incident is an occurrence where a train and vehicle do not collide, but where the train crew reports a near hit.<sup>62</sup>

She states further that information concerning two of the four elements, the number of accidents and the number of incidents, are readily available to UTC staff. She recommends that the County be required to monitor activity at the crossing for the other two elements, the number of trains and number of vehicles over the crossing daily. In addition, Ms. Hunter recommends that Benton County “be required to submit a brief report to the UTC once each year, due on the same calendar day as the effective date of the order in this docket, commencing in the same year as the new crossing is operational, for a period of ten years.”<sup>63</sup>

41 Ms. Hunter’s recommendations are well taken and the Commission determines it should condition approval of Benton County’s petition accordingly. The Commission recognizes, too, BNSF’s concerns regarding the composition of the vehicular traffic (*e.g.*, trucks, cars, buses) and the nature of cargo at the crossing (*i.e.*, hazardous versus nonhazardous). The County’s monitoring should include records of the composition of the traffic and the nature of the cargo transported at the site.

42 Benton County is otherwise in agreement with Staff concerning signage and other safety measures that Staff recommends, except for Staff’s recommendation that the County be required to install lighting. The matter essentially boils down to whether lighting should be required now as a condition of approval, or required later if

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<sup>61</sup> Exhibit MB-8T (Bowie) at 2:13-19.

<sup>62</sup> Exhibit KH-1T (Hunter) at 29:10-17.

<sup>63</sup> *Id.* at 29:19 – 30:3.



accident history at the crossing indicates a need for additional illumination. Consistent with the general consideration of competing concerns that are part of the Commission's evaluation of petitions for at-grade crossings, it is appropriate to weigh the cost of the proposed measure against the potential benefit. According to the County's response to the Commission's Bench Request No. 1, the installation cost of four lights that would be required to illuminate both this crossing and the nearby crossing over UPRR's tracks is about \$40,000 with an annual maintenance expense of about \$500. In the context of a \$3 million project cost, this seems a relatively small additional amount. More important, the potential benefit of heightened safety at the crossing, even if it prevents only a single accident, most likely would outweigh this cost, perhaps by a considerable amount if the accident involved personal injury in addition to property damage. It is significant in this context, too, that while Staff proposed this measure in its response testimony, the County did not raise cost as a factor supporting its opposition to the measure in its rebuttal testimony. The fact that the County does not currently operate or maintain any streetlights does not, by itself, support the County's argument that the Commission should not to impose the requirement as a condition of approving an at-grade crossing.

- 43 Although the Commission's determinations in this proceeding necessarily are limited to the single crossing at issue, which would require the installation of only two lights according to Ms. Hunter's testimony, it would be prudent for the County to install the four lights mentioned in response to Bench Request No. 1. Here, the Commission determines it should condition its approval of Benton County's petition by requiring the installation of lights at the subject crossing. The Commission, however, may similarly condition its approval of any renewed petition by the County concerning the nearby UPRR crossing earlier proposed in Docket TR-100573.

#### **FINDINGS OF FACT AND CONCLUSION OF LAW**

- 44 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts and conclusions, incorporating by reference pertinent portions of the preceding detailed discussion:

- 45 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad crossings.
- 46 (2) Benton County is a government entity authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweighs its inherent risks.
- 47 (3) A grade-separated crossing at the proposed project site is not practicable because of cost and engineering constraints.
- 48 (4) The risks of an accident at the proposed crossing are relatively low considering light vehicular and train traffic, flat topography and good lines of sight, and plans for passive warning devices and other safety measures, including ongoing monitoring.
- 49 (5) The inherent risk at the proposed crossing is outweighed by the demonstrated public need for the crossing, which is part of a project that will increase public safety by diverting traffic from residential areas and school zones, and improve economic opportunities in Benton County by improving access to approximately 300 acres of underdeveloped industrial property.
- 50 (6) The Commission should approve Benton County's petition for authority to construct an at-grade crossing at the intersection of the Agrium Spur and the Piert Road Extension, subject to condition that the County install the signage and other safety features to which the County and Staff agree, as discussed in the body of this Order and the evidence of record and, in addition, adequate lighting as proposed by Staff.
- 51 (7) The Commission's approval also should be conditioned by requiring Benton County to monitor vehicular and train traffic at the crossing in terms of the numbers and composition of each, including the nature of the cargo transported at the site, for a period of ten years, with annual reports to the Commission within ten days of the anniversary date of this Order or on such other date as Benton County and Staff agree.

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 52 (1) Benton County's petition to construct an at-grade railroad crossing at the intersection of the Agrium Spur and the Piert Road Extension, as identified in the County's petition and discussed in this Order, is granted, subject to conditions.
- 53 (2) The Commission's grant of authority is conditioned by requiring that Benton County install and maintain in good working order street lighting of a standard or customized design that is subject to prior Staff review and approval. If Benton County and Staff cannot agree to a design, Benton County may petition the Commission to reopen the record in this proceeding for a determination concerning what constitutes an acceptable design.
- 54 (3) The Commission's grant of authority is conditioned by requiring Benton County to monitor and document vehicular and train traffic at the crossing in terms of the numbers and composition of each, including the nature of the cargo transported at the site, for a period of ten years, with Benton County providing this documentation in annual reports filed with the Commission within ten days of the anniversary date of this Order or on such other date as Benton County and Staff agree. Benton County is required to consult with Staff concerning the details of the monitoring program and the contents of the annual report.

Dated at Olympia, Washington, and effective February 15, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge

## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. 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. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(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 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 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.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and eight (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250