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IN THE SUPERIOR COURT OF WASHINGTON STATE
IN AND FOR THE COUNTY OF LINCOLN

CITY OF SPRAGUE, a municipal
Corporation of the State of Washington,

Petitioner

Vs.

WASHINGTON UTILITIES &
TRANSPORTATION COMMISSION
BURLINGTON NORTHERN &
SANTA FE RAILROAD COMPANY,
A corporation,

Respondents.

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NO. 03-2-00009-5

FINDING OF FACT
CONCLUSIONS OF LAW
DECISION & ORDER

THIS MATTER having come on regularly before the Court on the City of Sprague's (City) Appeal of the Washington Utilities and Transportation Commission (WUTC) ruling to allow the Burlington Northern/Santa Fe Railroad (BNSF) to close the "D" Street crossing in the City of Sprague, and the Court having read the transcript of the WUTC proceedings, the briefs of counsel for the parties and having heard the argument of counsel, Cynthia E. McMullen, of MCMULLEN LAW OFFICE, P.S. for the City, Jonathan Thompson, Assistant Attorney General for the WUTC, and Kevin MacDougall of GIBSON KINERK, L.L.P. for BNSF, now therefore makes the following:

FINDINGS OF FACT

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FINDINGS OF FACT

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1. The City of Sprague is a noncharter code city located in Lincoln County, with a population of approximately 500.
2. The BNSF owns and operates a railway system which travels through the City of Sprague, Washington. Within the City, there are three tracks: the main line, and two (2) siding tracks.
3. Until 1987, BNSF maintained five (5) at grade railroad crossing in the City. In 1987, two of these crossings were closed ("C" Street and "E" Street), leaving the three current crossings at "B" Street, "D" Street and "F" Street. The closing of these two streets reduced crossings in the City by 40%.
4. BNSF petitioned the WUTC for authorization to close either the "D" Street or the "F" Street crossing in 2001. A two-day hearing, including public testimony, was conducted by an Administrative Law Judge in the City on September 18-19, 2002. The Administrative Law Judge issued an order denying BNSF petition as it related to both "D" and "F" Streets.
5. BNSF petitioned the WUTC for administrative review of the Administrative Law Judge's decision. The WUTC conducted a hearing based upon the record, including submissions after the date of the hearing in Sprague. The WUTC reversed the order of the Administrative Law Judge as it related to the "D" Street crossing, authorizing closure of this crossing, with conditions.
6. The City timely petitioned for judicial review of the decision of the WUTC to this Court.

- 1 7. Each of the three crossing which remain open in the City serves a specific
2 function: the "B" Street crossing is the designated truck route as it connects
3 directly with the highway; the "D" Street crossing has been designated as the
4 emergency route by the City and Lincoln County Fire District #1; the "F" Street
5 crossing is necessary as an access to the Western portion of the City, which has
6 restricted access due to a bridge across Railroad Avenue which has a six (6) ton
7 weight limit.
- 8 8. The BNSF and the WUTC presented statistical data to show that the crossings
9 under consideration herein are inherently dangerous. This data was compiled
10 using facts from across the United States.
- 11 9. The evidence shows no accidents have occurred at either the "D" Street or "F"
12 Street crossings in more than fifty (50) years of use. Further, these crossings are
13 clearly marked by active warning devices including flashing lights, gates, cross
14 buck signs and advance warning signs. There is no evidence in the record to show
15 that either crossing is particularly dangerous, beyond statistical data pertinent to all
16 railroad crossings.
- 17 10. Evidence in the record shows that further development south of the railroad tracks
18 is limited in that the area is designated as a flood plain. The record also shows
19 development has recently occurred in the northern part of the City, where the
20 topography includes a hillside.
- 21 11. One of the two major businesses in the City, the Grange Supply, is located
22 immediately north of the railroad tracks on "D" Street. Substantial testimony
23 exists in the record showing that this business is significant to the economy of the
City. Substantial testimony exists in the record showing the limitations on the

1 traffic flow, particularly of semi trucks, into and out of the Grange Supply if access
2 to "D" Street to the South were restricted.

- 3 12. Substantial testimony exists in the record to show that in certain conditions,
4 particularly when ice or snow is on the roadway, only "D" Street provides
5 adequate access to portions of the City in the north for school buses and
6 emergency vehicles.

7 From the foregoing Findings of Fact, the Court makes the following:

8 CONCLUSIONS OF LAW

- 9 1. This Court has jurisdiction of this Appeal.
10 2. There is a presumption that all railroads are inherently dangerous.
11 3. There is a presumption that all at-grade railroad crossings for which there is not a
12 demonstrated need should be closed.
13 4. There is a clear, demonstrated need for the "F" Street crossing.
14 5. The "B" Street, "D" Street and "F" Street crossings are not redundant in that they
15 each serve as specific, necessary purpose. Any issue of redundancy of crossings
16 was addressed by the 1987 closings of the "C" and "E" Street crossings.
17 6. There was no showing in the record that reducing the number of crossings from
18 three to two reduces the danger to traffic crossing the railroad tracks in the City.
19 7. The "D" Street crossing is not particularly dangerous.
20 8. The evidence does not show that there are adequate alternate emergency routes to
21 "D" Street.
22 9. Closing the "D" Street crossing would cause significant negative economic impact
23 to the Grange Supply and thereby to the City's economy.

- 1 10. The decision of the Administrative Law Judge took into account all the evidence,
2 of all parties, and properly weighed such evidence.
- 3 11. The decision of the WUTC specifically ignored substantial evidence in the record
4 of the designation of "D" Street by the City and the Fire District as an emergency
5 access route.
- 6 12. The decision of the WUTC specifically ignored substantial evidence in the record
7 of the negative economic impact of closure of the "D" Street crossing on a major
8 business in the City, the Grange Supply.
- 9 13. The decision of the WUTC specifically ignored substantial evidence in the record
10 that shows that the "D" Street crossing is not particularly dangerous.
- 11 14. The decision of the WUTC treated the rebuttable presumption that railroad
12 crossings are inherently dangerous as a conclusive presumption; the decision
13 clearly shows that the City was precluded from overcoming the presumption in the
14 eyes of the WUTC.
- 15 15. The evidence in the record is substantial to persuade a fair-minded person that both
16 the "D" Street and "F" Street crossings are necessary to the City and its citizens.
17 There is not substantial evidence in the record to persuade a fair-minded person that
18 the public safety requires the closure of "D" Street.
- 19 16. It is clear to this Court that the WUTC abused its authority in finding, contrary to
20 the substantial evidence in the record, that the "D" Street crossing was redundant,
21 that it was not required by the public convenience and necessity, and that the public
22 safety required the closure of the "D" Street crossing.

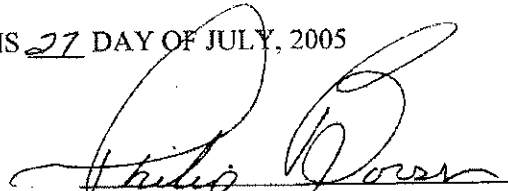
23 Therefore, the Court now enters the following:

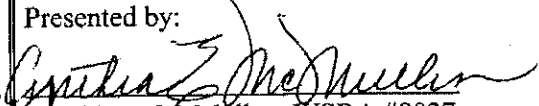
DECISION AND ORDER

1 THE COURT having found that the decision of the WUTC that the public safety
2 requires the closure of "D" Street crossing is not supported by substantial evidence and
3 constitutes a clear abuse of its authority,

4 IT IS HEREBY ORDERED that the decision of the WUTC, entered January 10,
5 2003, authorizing the closing of the "D" Street crossing over the BNSF railroad in the City
6 of Sprague is hereby reversed and the decision of the Administrative Law Judge, entered
7 October 21, 2002, denying the Petition of the BNSF to close said crossing is affirmed.

8 DONE IN OPEN COURT THIS 27 DAY OF JULY, 2005

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10 
11 JUDGE PHILLIP BORST

12
13 Presented by:
14 
15 Cynthia E. McMullen, WSBA #9027
16 McMullen Law Office, P.S.
17 Attorney for Petitioner City of Sprague

18
19 Copy received and Notice of Presentment
20 Waived this ___ day of _____, 2005.

21 _____
22 John Thompson, WSBA #
23 Assistant Attorney General
Attorney for the WUTC

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25 Copy received and Notice of Presentment
26 Waived this ___ day of _____, 2005.

27 _____
28 Kevin MacDougall, WSBA #
29 Kroschel Gibson Kinerk Reeve, L.L.P.
30 Attorney for the BNSF