

Binek, William W.

From: Binek, William W.
Sent: Monday, April 14, 2008 12:26 PM
To: -Grp-PSC Commissioners
Cc: -Grp-PSC Legal; olsonpc@midconetwork.com; Jangula, Esther A.; chapmanlaw@btinet.net
Subject: Memo to Commissioners, Application of David Wisdom for a Railroad Crossing, Case No. RR-08-131



Memo to
Commissioners.

Commissioners: Attached is a memorandum concerning the application filed by David Wisdom for construction of a railroad crossing for access to property he owns on both sides of the BNSF right-of-way. This item will be on the Commission's administrative agenda for discussion at the Commission's regular meeting on April 23, 2008.

3 **RR-08-131** Filed: 4/14/2008 Pages: 3
Email and Attached Memorandum to Commission
re: Application filed by David Wisdom

MEMORANDUM

TO: Commissioners Wefald, Cramer and Clark

FROM: Bill Binek

DATE: April 14, 2008

RE: Application of David Wisdom for a Railroad Crossing, Case No. RR-08-131.

On March 24, 2008, the North Dakota Public Service Commission ("Commission") received an application from David Wisdom ("Applicant") for a railroad crossing pursuant to the provisions of N.D.C.C. § 49-11-17. The law provides:

49-11-17. Railroad crossing over land owned on both sides by one person - Penalty for failure to provide. When any person owns land on both sides of any railroad and contiguous to the railway, the corporation or individual owning or operating such railway shall make and keep in good repair a proper cattle guard and causeway or other adequate means of crossing such railway at such reasonable place as may be designated by the landowner or the landowner's agent, upon at least ten days' written notice by the commission to the railroad corporation provided an adequate crossing is not otherwise accessible. The type of all cattle guards required by law to be constructed in this state before being installed shall be approved by the commission. The owner or person in possession of the land through which the railroad passes may recover twenty-five dollars for every thirty days of default on the part of the person or corporation operating the railroad after at least a ten-day notice served on an officer, roadmaster, or section foreman of the operating company has designated the place for the erection of the cattle-guarded crossings or the road crossing, requested and a like penalty for failure to keep such cattle guards or road crossings in good repair after at least a ten-day written notice has been served upon the operating company that such repairs are necessary.

The Applicant states that he owns land on both sides of and contiguous to the BNSF Railway ("BNSF") right-of-way in Sections 1 and 2, Township 138 North, Range 83 West, Morton County, North Dakota. Applicant states that the railroad right-of-way separates the lands owned by the Applicant with the result that Applicant does not have access to an adequate crossing across the railroad right-of-way between his land located south of the right-of-way and his land located north of the right-of-way. Applicant states that the nearest crossing lies to the east of his properties, but that crossing is not accessible to him either by public road or by recorded easement.

Applicant states that he has communicated with BNSF personnel regarding his request for placement of an adequate railroad crossing, and that he has designated a reasonable place for the crossing. He has indicated his willingness to accept an alternate location for the crossing as suggest by a BNSF representative. Applicant further states that he has expressed a willingness to help with his own equipment in the construction of a railroad crossing.

I arranged for an on-site visit to view the property. I also notified John Olson, attorney for BNSF of the visit so that Mr. Olson or representatives of BNSF could attend if they chose to do so. Mr. Wisdom and his attorney, Casey Chapman, drove me around the property and showed me the locations of the property in question, the location of crossings as suggested by Mr. Wisdom and an alternative location that a BNSF representative suggested as a possible location of a potential crossing. Mr. Wisdom also showed me the location of the crossing he has been required to use.

Mr. Wisdom's farmstead is located in Section 2. He said that in order to access his property located across the railroad right-of-way in Section 1 from his farmstead in Section 2 by motor vehicle or with farm machinery requires him to travel close to eight miles to an existing crossing located further east. In order to access the property, he must travel west of his property to a public road, then travel south on that road to another public road, then east on a public road to the location of the first accessible crossing. Then, after crossing the railroad tracks, he must travel west across either railroad right-of-way or property owned by others in order to reach this property in Section 1.

On April 11, 2008, the Applicant filed additional information including maps showing the location of the applicable land, the location of the railroad right-of-way and suggestions for location of a crossing.

Based on the information provided by the Applicant and my on-site view of the property, location of roads and accessible crossings, it is my recommendation that there is no adequate crossing across BNSF's right-of-way for the Applicant to access his lands on either side of BNSF's right-of-way, and that the Commission should issue a ten day notice to BNSF pursuant to N.D.C.C. §49-11-17 to construct a crossing between Mr. Wisdom's lands located in Sections 1 and 2,. Township 138 North, Range 83 West, Morton County, North Dakota.