

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNSF Railway Company
Review of Private Railroad Crossings
Application

Case No. RR-09-651

This matter having come on before the Commission on the 1st day of December, 2009, at 10:05 a.m., in the Commission Hearing Room at the State Capitol, 12th Floor, 600 E. Boulevard Ave., in Bismarck, ND, on the letter petition of BNSF Railway Company, ("BNSF"), which requested that the Commission review seven private railroad crossings and issue an order determining whether or not audible devices warning of a train's approach would be sounded at any of those seven crossings, with Administrative Law Judge Bonny M. Fetch presiding at the hearing and with Commissioners Tony Clark and Brian P. Kalk being present, Chairman Kevin Cramer being occupied elsewhere on other Commission business; BNSF having appeared by its attorney, Stephen W. Plambeck of the Nilles Law Firm, Fargo, ND, and Lynn Leibfried, P.E., BNSF's Manager Public Projects, ("Leibfried"); no party having intervened; Marc Halvorson, North Dakota State Legislative Director for Railroad Employees, ("Halvorson"), James Chase, UTU, ("Chase"), and Ron Huff, Brotherhood of Locomotive Engineers, ("Huff"), having appeared to give testimony as protestants; James Olson from the North Dakota State Department of Transportation having appeared to give testimony; BNSF's letter petition with the accompanying photographs having been accepted as Exhibit No. 1; BNSF at the Commission's request having also submitted Exhibit No. 2 with respect to information about the number of private crossings with whistleposts; six photographs from Halvorson having been accepted into the record; testimony having been heard from Leibfried, Halvorson, Chase, Huff and Olson; and the Commission having considered all of the evidence submitted and being fully advised in the premises, now makes the following:

FINDINGS OF FACT

1. BNSF has approximately 517 private grade crossings in North Dakota;
2. In response to the amendments to N.D.C.C. § 49-11-21 effected by passage of H.B. No. 1342, BNSF has been removing whistleposts at private grade crossings in North Dakota;
3. In the process of reviewing 88 private grade crossings for purposes of removing whistleposts, BNSF identified seven railroad crossings the Commission may wish to review to determine whether, as a matter of public

safety, the Commission in the exercise of its jurisdiction may direct that audible warnings of a train's approach be sounded;

4. The seven private grade crossings which BNSF brought to the Commission's attention as part of its letter petition are as follows:

- a. A private grade crossing located at or near Crary, ND, identified as DOT # 086644R at milepost 69.83 on Line Segment 33;
- b. A private grade crossing located at or near Erie, ND, identified as DOT # 093009S at milepost 28.08 on Line Segment 34;
- c. A private grade crossing located at or near Page, ND, identified as DOT # 093032L at milepost 40.17 on Line Segment 34;
- d. A private grade crossing located at or near Heimdahl, ND, identified as DOT # 093533R at milepost 150.20 on Line Segment 34;
- e. A private grade crossing located at or near Williston, ND, identified as DOT # 081545B at milepost 126.87 on Line Segment 35;
- f. A private grade crossing located at or near Mandan, ND, identified as DOT # 087697T at milepost 4.38 on Line Segment 39; and
- g. A private grade crossing located at or near Hebron, ND, identified as DOT # 087513R at milepost 66.24 on Line Segment 39.

5. The accompanying photographs for the private grade crossing located at or near Hebron, ND, showed a sight restriction from a tree located in the area of the crossing; however, since the photograph was taken, that tree has been removed and at BNSF's request and without any objection from anyone, that crossing has been removed from the list being reviewed by the Commission.

6. The photographs which accompanied BNSF's request with respect to the private grade crossing located at or near Crary, ND, show a grain bin and multiple sets of tracks that may restrict the view of oncoming trains for motorists approaching the crossing and may restrict the train crew's view of oncoming motor vehicles or other obstacles on the crossing.

7. The photographs which accompanied BNSF's request with respect to the private grade crossing located at or near Erie, ND, show a line of trees that appear to be part of a shelterbelt that appears to be located off the railroad's right-of-way and may restrict the view that operators of motor vehicles approaching the crossing have of oncoming trains or the view that train crews have of motor vehicles or other obstacles on or near the crossing.

8. The photographs which accompanied BNSF's request with respect to the private grade crossing located at or near Page, ND, show trees and other shrubbery and a change in elevation as the intersecting road approaches the tracks which may restrict the view of motorists or others as they approach the crossing, as well as the train crew's view of motor vehicles or other obstacles on or near the crossing.

9. The photographs which accompanied BNSF's request with respect to the private grade crossing located at or near Heimdahl, ND, show multiple sets of tracks and a change in elevation as the road intersects with the railroad tracks which may restrict the view of oncoming trains for operators of motor vehicles approaching the crossing and may restrict the view that train crews have of motor vehicles or other objects on or near the crossing.

10. The photographs which accompanied BNSF's request with respect to the private grade crossing located at or near Williston, ND, show a hill, a bridge abutment, vegetation and other conditions which may restrict the view that operators of motor vehicles have of oncoming trains, as well as the view that train crews may have of motor vehicles and other objects on or near the crossing.

11. The photographs which accompanied BNSF's request with respect to the private grade crossing located at or near Mandan, ND, show a curve, a change in elevation between the tracks and the road that intersects with the track and other conditions which may restrict the view that operators of motor vehicles approaching the crossing have of oncoming trains and the view that train crews have of motor vehicles or other objects on or near the crossing.

12. The N.D. DOT, because of cost considerations, has not done a traffic count in recent years at any of the six private grade crossings that are the subject of BNSF's petition.

13. The Commission received no evidence in response to the notice of this hearing directly from any of the adjacent landowners or other persons who may use any of the six private grade crossings that are the subject of BNSF's petition.

Based on the foregoing Findings of Fact, the Commission now makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction under N.D.C.C. § 49-11-21, as amended by H.B. No. 1342, to order railroads to sound audible warning devices at private grade crossings based on the safety concerns of the public;

2. The public safety concerns at the private grade crossing located at or near Crary, ND, identified as DOT # 086644R at milepost 69.83 on Line Segment 33 (do/do not) warrant the sounding of audible warnings of a train's approach.

3. The public safety concerns at the private grade crossing located at or near Erie, ND, DOT # 093009S at milepost 28.08 on Line Segment 34 (do/do not) warrant the sounding of audible warnings of a train's approach.

4. The public safety concerns at the private grade crossing located at or near Page, ND, identified as DOT # 093032L at milepost 40.17 on Line Segment 34 (do/do not) warrant the sounding of audible warnings of a train's approach.

5. The public safety concerns at the private grade crossing located at or near Heimdahl, ND, identified as DOT # 093533R at milepost 150.20 on Line Segment 34 (do/do not) warrant the sounding of audible warnings of a train's approach.

6. The public safety concerns at the private grade crossing located at or near Williston, ND, identified as DOT # 081545B at milepost 126.87 on Line Segment 35 (do/do not) warrant the sounding of audible warnings of a train's approach.

7. The public safety concerns at the private grade crossing located at or near Mandan, ND, identified as DOT # 087697T at milepost 4.38 on Line Segment 39 (do/do not) warrant the sounding of audible warnings of a train's approach.

Based on the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **ORDERS** that:

1. An audible warning of a train's approach (not be / be) sounded at the private grade crossing located at or near Crary, ND, identified as DOT # 086644R at milepost 69.83 on Line Segment 33.

2. An audible warning of a train's approach (not be / be) sounded at the private grade crossing located at or near Erie, ND, identified as DOT # 093009S at milepost 28.08 on Line Segment 34.

3. An audible warning of a train's approach (not be / be) sounded at the private grade crossing located at or near Page, ND, identified as DOT # 093032L at milepost 40.17 on Line Segment 34

4. An audible warning of a train's approach (not be / be) sounded at the private grade crossing located at or near Heimdahl, ND, identified as DOT # 093533R at milepost 150.20 on Line Segment 34.

5. An audible warning of a train's approach (not be / be) sounded at the private grade crossing located at or near Williston, ND, identified as DOT # 081545B at milepost 126.87 on Line Segment 35.

6. An audible warning of a train's approach (not be / be) sounded at the private grade crossing located at or near Mandan, ND, identified as DOT # 087697T at milepost 4.38 on Line Segment 39.

Dated this ____ day of December, 2009.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Kevin Cramer
Commissioner

Brian P. Kalk
Commissioner