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RECEIVED

January 8, 2010

JAN 08 2010

PUBLIC SERVICE COMMISSION

Annette Marie Bendish
Attorney at Law
North Dakota Public Service Commission
600 E Boulevard Ave., Dept 408
Bismarck, ND 58505

Re: BNSF Railway Company - Petition to Review the Fraine Barracks Crossing,
Bismarck, ND - Our File No. 96220.001

Dear Ms. Bendish:

BNSF Railway Company has asked us to submit this petition in the form of a letter request for the Commission to review the Fraine Barracks railroad crossing (DOT # 087680P), in Bismarck, ND. There are some trees and a curve in the track that may restrict the view of motorists and train crews as they approach the crossing. Currently, trains are sounding the whistle at this crossing. The crossing is also currently being used by motorists entering and exiting the National Guard facility, but BNSF has no way to determine the amount of that traffic. The Commission may wish to inquire of the DOT whether or not it has a traffic count for this crossing.

As you know, Section 49-11-21, N.D.C.C., as amended by H.B. No. 1342, now prohibits railroads from sounding warning devices at private railroad crossings; but authorizes the Commission to order railroads to sound warning devices at private railroad crossings "based on the safety concerns of the public." In addition, the Commission has jurisdiction to determine whether or not a particular railroad crossing is "public" or "private."

If the Commission determines that the Fraine Barracks crossing is "public," then under federal regulations, train crews must continue to sound the whistle. If, however, the Commission determines that the Fraine Barracks crossing is "private," then the Commission may also issue an Order directing railroads to sound warning devices at the crossing "based on the safety concerns

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of the public." The Commission could also order the crossing "closed," but it is expected that the Guard would oppose closure.

BNSF has not been able to determine whether the City of Bismarck and/or some other public road authority, including possibly the Guard, is clearing snow or otherwise maintaining the road on either or both sides of the crossing, but that is something the Commission may need to investigate as part of its review. We expect to be forwarding an affidavit and some photographs next week.

Again, we appreciate the Commission's continued assistance in providing direction for the use of horns at private railroad crossings, and thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stephen W. Plambeck". The signature is written in a cursive style with a large, prominent initial "S".

Stephen W. Plambeck

SWP/bjb