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FILED IN Bismarck, ND  
JAN 19 2010

**PUBLIC SERVICE COMMISSION**

January 8, 2010

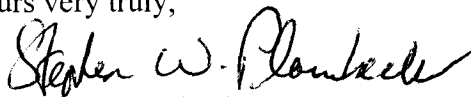
Annette Marie Bendish  
Attorney at Law  
North Dakota Public Service Commission  
600 E Boulevard Ave., Dept 408  
Bismarck, ND 58505

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

Dear Ms. Bendish:

Pursuant to our letter petition dated January 8, 2010, please find enclosed an original and seven copies of Lynn Leibfried's Affidavit, along with photographs attached to her Affidavit as Exhibit 1.

Yours very truly,

  
Stephen W. Plambeck

SWP/bjb  
Enc.

2 RR-10-26 Filed: 1/19/2010 Pages: 15  
Affidavit of Lynn Leibfried

BNSF Railway Company  
Stephen Plambeck - Nilles Law Firm

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**BNSF Railway Company**  
**Review of Fraine Barracks Crossing DOT #087680P**

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF ANOKA        )

Lynn Leibfried, P.E., being first duly sworn on oath, deposes and says as follows:

1. I am a registered professional engineer; and I am employed by BNSF Railway Company as Manager Public Projects.

2. In the process of removing whistle posts at private railroad crossings in response to the new legislation in North Dakota, a question arose concerning the Fraine Barracks Crossing in Bismarck, ND. That crossing is identified as DOT #087680P, and is located at Mile Post 196.09 on Line Segment 38.

3. BNSF Railway Company has been unable to determine whether or not the Fraine Barracks Crossing is "public" or "private." BNSF Railway Company does not have access to records pertaining to the construction of the crossing, and does not know if public funds were used to create the crossing. The crossing provides access to and from a National Guard facility.

4. BNSF Railway Company also lacks access to records regarding snow removal and other maintenance activities for the road on either side of the railroad tracks at the Fraine Barracks Crossing. It is unknown to BNSF Railway Company whether or not the City of Bismarck or any other public road authority, including possibly

the National Guard, is clearing snow or otherwise maintaining the road on one or both sides of the Fraine Barracks Crossing.

5. If the Fraine Barracks Crossing is being maintained by a public road authority, then it is probably a "public" railroad crossing for which federal regulations mandate audible warnings.

6. Even if the Fraine Barracks Crossing is a "private" railroad crossing, an audible warning of a train's approach may be appropriate as a matter of public safety. Attached hereto as Exhibit 1 are photographs of the Fraine Barracks Crossing. The photographs depict a curve in the track, some trees and other vegetation which may restrict the view of motorists and train crews as they approach the crossing. On one side of the tracks, it appears from the photographs that the trees are not located on railroad right-of-way, but are located inside a fence that appears to be off the right-of-way.

7. If the Fraine Barracks Crossing is found to be a "private" railroad crossing, then the adjacent landowner(s) will also need to enter into an agreement with BNSF for the use and maintenance of the crossing.

8. BNSF Railway Company is bringing this crossing to the Commission's attention to ask that the Commission review the crossing and issue an Order determining whether or not the crossing is "public" or "private" and if "private," further determining whether or not any audible devices warning of a train's approach will be sounded at the crossing.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 12<sup>th</sup> day of January, 2010.

*Lynn Leibfried*

Lynn Leibfried

Subscribed and sworn to before me this  
12<sup>th</sup> day of January, 2010.

*Rosemary C. Wielenberg*

Notary Public

My Commission Expires: 1/31/2012



Dot 087680P  
MP 196.089  
LS 38

2005 12 23

EXHIBIT  
1



















Photograph showing the gravel road leading to the power substation. The gravel road is in the foreground and the power substation is in the background. A car is parked on the right side of the road near a stop sign. The photograph was taken on 12/23/2005.

