

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

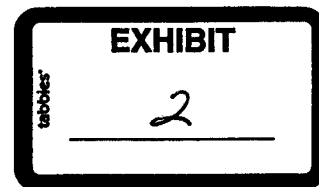
Lynn Leibfried, P.E., being first duly sworn on oath, deposes and says as follows:

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 12th day of January, 2010.

Lynn Leibfried

Lynn Leibfried

Subscribed and sworn to before me this
12th day of January, 2010.

Rosemary C. Wielenberg
Notary Public

My Commission Expires: 1/31/2012

