



Public Service Commission
State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

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Bismarck, North Dakota 58505-0480
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TDD 800-366-6888 or 711

January 28, 2010

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

Re:
BNSF Railway Company
Review of Private RR Crossings
Application
Case No. RR-10-26

BNSF Railway Company
Review of Private RR Crossings
Application
Case No. RR-10-27

Dear Mr. Hoberg:

Enclosed are two requests for an Administrative Law Judge in the two captioned cases. A hearing for case No. RR-10-27 will begin March 1, 2010, at 10:00 a.m. in the Commission Hearing Room, State Capitol, 12th Floor, 600 E. Boulevard Ave., Bismarck, North Dakota. A hearing for case No. RR-10-26 will begin March 1, 2010 at 1:30 p.m. in the Brynhild Haugland Room, ground floor, State Capitol, 600 E. Boulevard Ave., Bismarck, North Dakota.

A copy of the Notice of Hearing is enclosed for each case. The Administrative Law Judge will serve as a procedural law judge and the hearing will be electronically recorded.

If you have any questions, please contact me. Thank you.

Best regards,

Annette Bendish
Legal Counsel

Enclosures
c: w/encl. Stephen W. Plambeck

5 **RR-10-27** Filed: 1/28/2010 Pages: 5
Request for Administrative Law Judge

7 **RR-10-26** Filed: 1/28/2010 Pages: 5
Request for Administrative Law Judge



REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION
 NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS
 SFN 17819 (Rev. 03-2001)

Name of Agency, Board, or Commission
 North Dakota Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the BNSF Railway Company Review of Private RR Crossings - Application

Case No. RR-10-26

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in North Dakota Century Code Chapter 49-11 _____ (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:
 BNSF Railway Company is asking the Commission to review the Fraine Barracks railroad crossing in Bismarck and to issue an order determining whether or not audible devices warning of a train's approach will be sounded at this crossing.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

AGENCY North Dakota Public Service Commission	Address 600 E. Blvd. Ave. Dept. 408 Bismarck, ND 58505	Telephone Number 701-328-2400
Representation Annette Bendish, Legal Counsel	Address Same as above	Telephone Number 701-328-2421
PARTY BNSF Railway Company	Address 801 Main Street, Fargo, ND 58102	Telephone Number 701-280-7215
Representation Stephen W. Plambeck	Address Nilles Law Firm, PO Box 2626, Fargo, ND 58108-2626	Telephone Number 701-237-5544
PARTY	Address	Telephone Number
Representation	Address	Telephone Number

Additional Comments
 A hearing for case No. RR-10-26 will begin March 1, 2010, at 1:30 p.m. in the Brynhild Haugland Room, ground floor, State Capitol, 600 E. Boulevard Ave., Bismarck, North Dakota.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Annette Bendish, Legal Counsel	Date January 28, 2010
Signature of Requesting Person x	Telephone Number 701-328-2421



REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION
NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS
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 Case No. RR-10-27

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in North Dakota Century Code Chapter 49-11 (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:
 BNSF Railway Company is asking the Commission to review two private railroad crossings and to issue an order determining whether or not audible devices warning of a train's approach will be sounded at these crossings.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).
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Additional Comments
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(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Annette Bendish, Legal Counsel	Date January 28, 2010
Signature of Requesting Person x <i>Annette Bendish</i>	Telephone Number 701-328-2421

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**BNSF Railway Company
Review of Private Railroad Crossing
Application**

Case No. RR-10-27

NOTICE OF HEARING

January 27, 2010

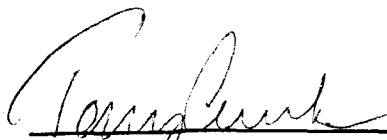
On January 12, 2010, BNSF Railway Company filed an application requesting the Commission review two private railroad crossings near Manvel, North Dakota and asked the Commission to issue an order determining whether audible devices warning of a train's approach will be sounded at these crossings under North Dakota Century Code section 49-11-21.

A **public hearing** on the application is scheduled to begin **March 1, 2010 at 10:00 a.m.** in the **Commission Hearing Room, State Capitol, 12th Floor, 600 E Boulevard Ave, Bismarck, North Dakota.** The issues to be considered are:

1. Whether the railroad should sound a warning device at private crossing, DOT # 062517W near Manvel, based on the safety concerns of the public.
2. Whether the railroad should sound a warning device at private crossing, DOT # 062518D near Manvel, based on the safety concerns of the public.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota, 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION



**Tony Clark
Commissioner**



**Kevin Cramer
Chairman**



**Brian P. Kalk
Commissioner**

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**BNSF Railway Company
Review of Private Railroad Crossing
Application**

Case No. RR-10-26

NOTICE OF HEARING

January 27, 2010

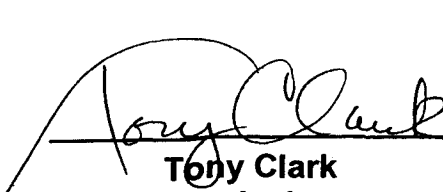
On January 8, 2010, BNSF Railway Company filed an application requesting the Commission review the Fraine Barracks railroad crossing in Bismarck, North Dakota and asked the Commission to issue an order under North Dakota Century Code section 49-10.1-21 determining whether this crossing is a public or private railroad crossing, and if private, if audible devices warning of a train's approach will be sounded at this crossing under North Dakota Century Code section 49-11-21.

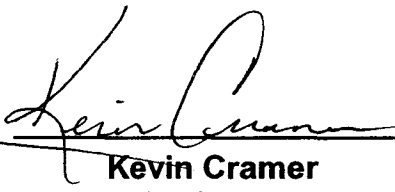
A public hearing on the application is scheduled to begin **March 1, 2010 at 1:30 p.m.** in the **Brynhild Haugland Room, Ground Floor, State Capitol, 600 E Boulevard Ave, Bismarck, North Dakota.** The issues to be considered are:

1. Whether the Fraine Barracks railroad crossing (DOT # 087680P) is a public or private railroad crossing as defined by section 49-11-00.1.
2. If the Fraine Barracks railroad crossing (DOT # 087680P) is a private crossing, whether the railroad should sound a warning device based on the safety concerns of the public.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota, 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

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