

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Docket No. PI-228
Public Service Commission, on)
its own motion, seeking to)
investigate the blocking of) ORDER CLOSING INVESTIGATION
railroad crossings in Hall)
County, Nebraska.)
) ENTERED: June 30, 2020

BY THE COMMISSION:

On December 17, 2020, the Nebraska Public Service Commission (Commission) opened the above-captioned docket on its own motion to investigate complaints regarding blocked railroad crossings in Hall County, Nebraska, with specific focus complaints received from residents in the city of Grand Island.

Commission staff received complaints from the public alleging hours-long blocking of several crossings in the following areas:

1. Rail track that runs adjacent to Nebraska Highway 2 from at least Engleman Road North to at least Broadwell Avenue North: BNSF Railway Company (BNSF) is alleged to block several crossings and allow trains to idle for several hours despite receiving complaints from nearby residents. The blockages also trigger the safety arm and signal, including lights and warning bells, for the duration that the train is parked in the crossing(s).
2. Section of track between Saint Paul Road and Sky Park Road, Airport Road East to past 4th Street East: Nebraska Central Railroad (NCR) southbound trains block crossings at 4th Street East, 7th Street East, and Capital Avenue East while entering the Union Pacific Railroad (UPRR) line south of 4th Street East.

Each area raises safety concerns, as schools are nearby and block the crossings that children use to walk to and from school. Additionally, crossings have been blocked when first responders were called to residences that needed assistance. Finding alternate routes around blockages may add several extra minutes to response time.

A hearing was held on February 5, 2020, in the Hall County Board Room in Grand Island, Nebraska. Ms. Jamie Reyes and Mr. Dillon Keiffer-Johnson appeared on behalf of Commission staff;

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Ms. Nichole Bogen appeared on behalf of Nebraska Central Railroad Company and BNSF Railway Company; and Ms. Sarah Carstensen on behalf of Hall County.

E V I D E N C E

First, the Commission received testimony from Ms. Shaun Shepardson. Ms. Shepardson has been a resident at 3110 North Road, Grand Island, for nineteen years.¹ Next to her residence is a railroad crossing equipped with crossing arms and signals.² Ms. Shepardson stated that she first noticed the blocking of this crossing on August 3, 2010. On that day, her mother had passed away and due to the crossing blockages at North Road and Engleman Road, she was forced to take a more indirect route than necessary to get to her mother's residence.³ Shortly thereafter, she noticed articles in the local newspaper describing possible construction of double-tracks through the city of Grand Island. However, Ms. Shepardson testified that those plans were not completed but the railroad did redesign the portion of track that runs between North Road and Webb Road. She explained that since the redesign the issues with the blocked crossings have gotten progressively worse.⁴

Ms. Shepardson noted that it is more than just the blocked crossings that are the problem, but also the noises from the trains while stopping and starting.⁵ She noted specifically that trains coming to the North Road crossing will begin to use their horn approximately a quarter of a mile prior to reaching the crossing and will continue to blow the horn as they pass through the crossing. Ms. Shepardson indicated that she has tried calling the railroad to remedy these noise related issues, but in her experience reaching out to the railroad is a waste of time.⁶ She testified that in the past she had resorted to calling 9-1-1 on some occasions to complain about the railroad, but that seemed to only provide a temporary solution so she has subsequently stopped using 9-1-1 as a resource.⁷ Later, when discussing the various videos entered into the record as exhibit

¹ Hearing Transcript (TR) 12:22 - 13:2.

² TR 13:11 - 14:6.

³ TR 14:10 - 16:21.

⁴ TR 16:22 - 18:4.

⁵ TR 18:6 - 18:8.

⁶ TR 19:13 - 20:23.

⁷ TR 20:25 - 21:10.

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8, Ms. Shepardson described the intolerable noise created when the trains travel through the North Road crossing, trains not completely going through a crossing and preventing the crossing bells from silencing, and when the trains idle.⁸

Ms. Shepardson testified that not a day goes by where there is not a train stopped at the North Road and Highway 2 crossing. She added that blockages occur day or night, but that the blockages that occur during the day are for no less than two hours per occurrence.⁹ Ms. Shepardson further explained that trains have recently proceeded through the crossings at a very slow pace, making it appear as though the train will soon be through the crossing. However, the trains then abruptly stop, forcing waiting cars to turn around in her driveway and to another way.¹⁰ Ms. Shepardson noted that on or around January of 2019 she had conversations with Burlington Northern about the blockages at North Road and Highway 2, and was told that actions were going to be taken to try to silence the bell.¹¹ She also indicated that she has had conversations with the local Sheriff's Department, and in those conversations, she was told that the relevant ordinances on the books are unenforceable and there is nothing they can do.¹²

Ms. Shepardson testified that she first contacted Hall County about the issue at a Hall County Board meeting on January 22, 2019, where she presented the Board with documentation detailing over 57 ½ hours of blockages at the North Road crossing during daytime hours of the weekend following Christmas 2018, including a train that was stopped for approximately 28 hours straight.¹³ She explained she tracked this data with a security camera that faces her driveway and the railroad tracks.¹⁴ Ms. Shepardson indicated that there was a break in the amount of blockages due to the flooding in the spring of 2019.¹⁵

⁸ TR 34:5 - 40:12.

⁹ TR 22:2 - 22:15.

¹⁰ TR 23:6 - 23:17.

¹¹ TR 23:18: 25:9.

¹² TR 25:15 - 25:23.

¹³ TR 27:9 - 28:16.

¹⁴ TR 29:9 - 29:17.

¹⁵ TR 30:9 - 30:22.

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In her discussion of the hour log summary, received into evidence as exhibit 9, Ms. Shepardson explained that she kept records of how long the North Road crossing was blocked on several occasions going back to December 2018. She noted that if she could not continuously track blockages, she would go back through her security camera and manually search for the time period she was away.¹⁶ Ms. Shepardson further explained that after her first meeting with Hall County and as the issues worsened, she decided to keep more detailed notes of the blockages and that the Hall County Board and Sarah Carstensen, the Hall County attorney, have been her points of contact for lodging her complaints.¹⁷ Ms. Shepardson noted that she tried to file a noise complaint with the Sheriff's department, but nothing came to fruition from that complaint.¹⁸

In response to Commissioner questions, Ms. Shepardson clarified that the crossing that impacts her the most is owned by Burlington Northern Santa Fe ("BNSF"). She further explained that the blocked crossing and noise really only became a problem approximately five years ago when BNSF had a plan to double track all the way through town.¹⁹ Commissioner Ridder questioned Ms. Shepardson on whether she drives up to the crossing when a train is stopped on the crossing to wait for it to clear, or if she just looks out to see if the crossing is blocked. Ms. Shepardson explained that hearing the bell and seeing the crossing from her backdoor make it unnecessary for her to actually go to the crossing and wait for it to clear.²⁰

Commissioner Watermeier asked the witness to clarify her outreach efforts to BNSF and to describe the responses she received. Ms. Shepardson clarified that she first attempted to contact BNSF around noon on December 28, 2018 by calling the 800 number listed by the crossing. She explained that the train was not moved till around 6:30 p.m. that night. She further noted that she was given the contact information for Mr. Andy Williams with BNSF. She attempted to call and left messages for Mr. Williams over the course of the next several days but did not receive a response. She mentioned that when she finally did

¹⁶ TR 40:18 - 43:17.

¹⁷ TR 44:23 - 46:14.

¹⁸ TR 46:23 - 47:8.

¹⁹ TR 47:25 - 48:21.

²⁰ TR 49:17 - 51:2.

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speak to a representative of BNSF she was only told the reasons why the train was there.²¹ She further clarified that she began calling BNSF on December 28, 2019 and stopped calling BNSF on or around January 3, 2019.²² Ms. Shepardson further detailed a series of events that transpired in August 2019 which resulted in a noise complaint she filed with the Sheriff's Department after a train was stopped for approximately 9 hours and twelve minutes.²³

Upon questioning by Ms. Carstensen, Ms. Shepardson testified that she installed new triple-pane windows in her home to lessen the sound of the ringing bell from the crossing within her home.²⁴ When discussing the photos in exhibit 10, Ms. Shepardson also discussed witnessing kids crawling through the stopped trains while they wait on a ride to come pick them up. She further explained that the North Road crossing was blocked from 6:30 am to at least 8:00 am every day before school during the beginning of this past school year. She also described how her land has been damaged numerous times because individuals have to turn around because the crossing is blocked. In addition, Ms. Shepardson testified that in the last five years, no less than twenty semi-trucks have to back down all of North Road, in the opposite direction of the crossing, after waiting for hours in order to continue their route because the crossing is blocked.²⁵ Later, Ms. Shepardson described a picture from exhibit 9 that shows a semi-truck full of cattle stopped at the North Road crossing. She stated that the semi-truck had sat at the crossing for 45 minutes due to the blockage.

When discussing Map 1 in exhibit 10, Ms. Shepardson described that the western most part of the trains will be stopped from the Dubbs' house and typically are one continuous train all the way down to the intersection west of Webb Road.²⁶ Ms. Shepardson also explained that during inclement weather the Hall County snowplows have difficulty plowing when the crossing is blocked, and that snowplows must back up to Airport Road and go east until they can find a crossing that is no longer

²¹ TR 52:16 - 55:11.

²² TR 55:12 - 56:3.

²³ TR 56:12 - 57:7.

²⁴ TR 58:19 - 58:25.

²⁵ TR 61:4 - 66:14.

²⁶ TR 66:15 - 68:10.

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blocked.²⁷ Moreover, because the city is responsible for plowing Highway 2, the south side of the North Road crossing is covered in a snowdrift because the snowplows cannot fully clear the crossing.²⁸

Ms. Shepardson testified that she was told by Mr. Williams with BNSF that he would look into getting the bell silenced at the North Road crossing but this solution was never pursued because of liability issues.²⁹ Ms. Shepardson concluded her testimony by discussing the documents included in exhibit 11, which details the different responses she has received from the railroad regarding the North Road crossing as well as the numerous noise issues related to the blocked crossings.³⁰

Next, Ms. Kristi Lee Dubbs testified. Ms. Dubbs has been a resident at 4185 West Airport Road in Grand Island for the last five years.³¹ Ms. Dubbs testified that her residence is west of Ms. Shepardson's home. She explained that in each instance Ms. Shepardson detailed in her testimony, the tail end of the train was stopped in Ms. Dubbs' backyard and she hears the sounds of the engine at the rear of the train.³² Ms. Dubbs stated that she and her husband were aware of the possibility of trains near their home when they moved there, but they were not aware that "it was going to be a parking lot, that [the trains] were going to park there for hours."³³ She further noted that the stopped trains have been an issue only within the last four years.³⁴ Later, Ms. Dubbs testified that the crossing near her residence is blocked every day for multiple hours at a time.³⁵

Ms. Dubbs testified that she attended the Hall County Board meeting that Ms. Shepardson mentioned in her testimony. Ms. Dubbs and her husband have both spoken to Mr. Andy Williams with BNSF. She stated that Mr. Williams told them that they should not have moved out there.³⁶ Ms. Dubbs stated that Mr. Williams

²⁷ TR 70:6 - 71:4.

²⁸ TR 71:3 - 74:18.

²⁹ TR 78:22 - 80:7.

³⁰ TR 82:14 - 84:19.

³¹ TR 88:4 - 88:18.

³² TR 90:14 - 91:11.

³³ TR 91:15 - 91:20.

³⁴ TR 91:21 - 92:4.

³⁵ TR 94:12 - 94:20.

³⁶ TR 92:10 - 92:22.

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will not return her calls and she has not spoken to anyone else with BNSF.³⁷ Ms. Dubbs stated that she did not attend the meeting between BNSF and Hall County officials regarding the blocked crossings.³⁸

Ms. Dubbs further testified that there have been times where she has gone to the crossing at North Road and Highway 2 and has waited approximately 10 to 15 minutes before the train has come to a stop after slow-rolling through the crossing. When this happens, Ms. Dubbs uses Ms. Shepardson's driveway to turn around.³⁹ Ms. Dubbs also noted that this experience would not be reflective of what happens at the Engleman road crossing because that crossing is "pretty much always open."⁴⁰

Responding to Commissioner questions, Ms. Dubbs stated that when she contacted the railroad she was given the same reasons for the crossing blockages as Ms. Shepardson stated.⁴¹ Ms. Dubbs further explained that the easiest way for her to go to Grand Island is by traversing the North Road crossing. She detailed that they go towards North Road and stop to see if the crossing is blocked and takes Webb Road if North Road is blocked.⁴² Ms. Dubbs affirmed that all of the pertinent crossings discussed in this proceeding have signal gate crossings.⁴³ On further questioning, Ms. Dubbs explained that even if the North Road crossing were closed, issues would remain relating to the length of times the trains remained parked there; mainly the effect on emergency services.⁴⁴

Next, the Commission received testimony from Mr. Richard Dubbs, husband of the previous testifier. Mr. Dubbs stated that their residence is 200 yards from the pertinent BNSF track.⁴⁵ Mr. Dubbs explained that he and his wife have lived within a mile of this track the entirety of their 45 years living in Grand Island and was never aware of this train problem. He stated that if he knew then what he knows now, he would not have

³⁷ TR 93:2 - 93:16.

³⁸ TR 93:22 - 94:11.

³⁹ TR 94:23 - 95:24.

⁴⁰ TR 95:25 - 96:5.

⁴¹ TR 96:17 - 96:23.

⁴² TR 97:24 - 98:20.

⁴³ TR 100:23 - 101:22.

⁴⁴ TR 102:23 - 104:2.

⁴⁵ TR 105:3 - 105:19.

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purchased his residence.⁴⁶ Mr. Dubbs stated that he has spoken to the Hall County Board, Mr. Gary Quandt, and Mr. Andy Williams about the issues.⁴⁷ Mr. Dubbs stated that he has witnessed a stopped train every day for the last six months, and the shortest time he has witnessed was 15 minutes. He noted that he started to document but stopped when he and Ms. Shepardson began discussing the train issues, and sent his documentation to her.⁴⁸

In his discussion of exhibit 12, Mr. Dubbs described the train depicted in the video as not moving and having been parked for approximately 15 minutes.⁴⁹ Mr. Dubbs also noted that he has personally waited at the North Road crossing for a train to clear the crossing. He further explained that his wait depends upon how quickly the trains advance. He stated he believes the trains that block the North Road crossing are waiting on the tracks to clear ahead of them, so if they are not changing crews, they are slow-rolling through the crossing rather than making a complete stop.⁵⁰ Mr. Dubbs also explained that the Engleman Road crossing is clear a lot of the time, but a train tends to be staged at the Engleman Road crossing and it sits just far enough back so the cross arms do not raise.⁵¹

In response to Commissioner questions, Mr. Dubbs indicated that in his conversations with BNSF he has suggested staging the trains in less populated areas rather than at the crossings in question in this proceeding. Mr. Dubbs testified that he was told that BNSF had looked into that but the conversations did not go any further.⁵²

The next witness was Ms. Tonya Baker. Ms. Baker has lived at 1119 East Sixth Street, one block off of the train tracks, for the last twenty-three years. Her parents also lived in the area when she was younger. The two closest crossings to Ms. Baker are at Fifth Street and Seventh Street, each approximately two blocks away.⁵³ Ms. Baker testified that she has always had

⁴⁶ TR 105:21 - 106:24.

⁴⁷ TR 106:25 - 108:18.

⁴⁸ TR 108:19 - 109:20.

⁴⁹ TR 111:22 - 114:13.

⁵⁰ TR 114:22 - 115:25.

⁵¹ TR 116:1 - 116:25.

⁵² TR 117:13 - 118:5.

⁵³ TR 119:13 - 120:23.

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an issues with these particular crossings. Later, Ms. Baker noted that the trains at issue in this area are owned by Western Nebraska Railroad.⁵⁴

She testified that anytime she would have a complaint about the crossings, she would call Mr. Gary Quandt, who would tell her he would make a call. She noted that even though she lives less than a mile from her place of employment, several times she is forced to go around six to 10 miles out of her way just to get to work because the crossings are blocked.⁵⁵

Ms. Baker reiterated that she has only communicated with Mr. Quandt, who would then contact the railroad company.⁵⁶ She noted that she previously would call 9-1-1 to see if they could move the train, but for the last 18 years she has just called Mr. Quandt.⁵⁷ Ms. Baker explained that she would contact Mr. Quandt when a train sits at a crossing anywhere from 10 minutes to a couple of hours. Ms. Baker explained that there are children who walk to school every day and at times she sees them crawl either completely under the train, or through the train, noting that she used to do the same thing as a child.⁵⁸ Ms. Baker explained that she could not tell a difference in the blockages after she reached out to Mr. Quandt. She noted that the blockages are not daily and these crossings do not have the arms or bells like the crossings complained of by Ms. Shepardson and The Dubbs. Ms. Baker described the crossing as having no arms, but having the round sign stating that it is a railroad crossing.⁵⁹

Ms. Baker explained if she notices a train blocking the Fifth Street crossing, she would go across Fourth Street, but if there was a train at that crossing as well, she would turn around and go to Sky Park Road and take it to Capital Road. She would then look again to see if a train was coming and then continue east until Shady Bend road and take that to Highway 30 back into town. She noted it adds about 15 minutes to her trip

⁵⁴ TR 122:7 - 122:12. We should note that the railroads in question in this area are Nebraska Central Railroad and Union Pacific Railroad.

⁵⁵ TR 120:24 - 122:6.

⁵⁶ TR 122:13 - 122:23.

⁵⁷ TR 122:24 - 123:3.

⁵⁸ TR 123:4 - 123:24.

⁵⁹ TR 124:3 - 124:11.

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if she has to take this alternative route. She further explained that even taking this route exposes her to the possibility of getting stopped by another train at the Shady Bend crossing.⁶⁰

Ms. Baker explained that in the last six months she has noticed a train blocking the crossings about seven to eight times.⁶¹ She testified that if she is home, the crossing can be blocked from anywhere between one to two hours. However, she is unable to know how long it is blocked if she is not at home.⁶² Ms. Baker testified that when she hears a train coming she drops whatever she is doing and leaves. Ms. Baker explained that living less than one mile from work should not require her to leave half an hour to 45 minutes before she must be there.

Currently, Ms. Baker works for the Hall County Clerk. Ms. Baker stated that when she first started working with Hall County, the state employee's driver exam for CDL license testing was by the airport. One particular instance, the administrator for the test as well as the test taker got stuck in a semi-truck on Fourth Street and could not get across due to a blocked crossing. Ms. Baker recalled they sat there for over an hour.⁶³ In response to questions from Commission staff, Ms. Baker testified that she waits 15 minutes for a stopped train to move and if it does not move, she goes around and gives Gary Quandt a call while she is waiting.⁶⁴ Ms. Baker concluded her testimony by asking for just one of the intersections to remain open.⁶⁵

Dr. Jeffrey Edwards testified next. Dr. Edwards is the superintendent of Northwest Public Schools in Grand Island. Dr. Edwards stated that student-athletes in the cross-country and track teams run on the gravel roads heading north of North Road and cannot return on North Road due to a train. Coaches would then need to leave the students at the crossing, obtain a van from the school, and come back to pick up the students. Dr. Edwards noted that Grand Island Northwest High School is just south of the railroad crossing at Highway 2 and North Road, with

⁶⁰ TR 124:18 - 125:13.

⁶¹ TR 125:14 - 125:20.

⁶² TR 125:23 - 126:9.

⁶³ TR 126:11 - 128:3.

⁶⁴ TR 129:9 - 129:22.

⁶⁵ TR 132:13 - 132:23.

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three total railroad crossings near the school.⁶⁶ Dr. Edwards also stated that a train blocked the railroad tracks near the school from about 4:30 p.m. to at least 8:45 p.m. the day before the hearing.⁶⁷

Next, the Commission heard testimony from Mr. Jon Rosenlund, Director of Emergency Management and Communications for the City of Grand Island and Hall County. Mr. Rosenlund stated that the 911 center will note any calls received about a blocked crossing as a railroad incident, noting that the center recorded 101 railroad incidents in 2019. Of the 101 railroad incidents, Mr. Rosenlund explained that about 35 incident calls were due to blocked railroad crossings.⁶⁸ In response to Commissioner questions, Mr. Rosenlund discussed 911 response to blocked crossings. Mr. Rosenlund stated that he had no statistical data regarding the effect of blocked crossings on 911 response but noted that a blocked crossing would create a delay.⁶⁹ Mr. Rosenlund also noted that when calls come in, dispatchers reach out to the railroad in question to report the issue to be resolved.⁷⁰ When dispatchers know that a railroad crossing is blocked, Mr. Rosenlund stated that dispatchers will notify responding units of the blockage.⁷¹

Next, the Commission received testimony from Gary Quandt, Hall County Commissioner for District 6 north and east of Grand Island. Commissioner Quandt testified to his awareness of issues with blocked railroad crossings in Grand Island and other areas of Hall County. Commissioner Quandt stated that he became aware of issues related to NCRP about 12 years ago near Lincoln Elementary School in Grand Island.⁷² Commissioner Quandt explained that when trains are parked at the railroad crossings from 7th to 4th Streets, he receives calls from residents about kids climbing under or through trains to get through to the other side.⁷³ In response to these calls, Commissioner Quandt reached out to NCRP about seven or eight years ago about the parked trains, and the situation improved but the number of

⁶⁶ TR at 134:22 - 136:1.

⁶⁷ TR at 136:7 - 15.

⁶⁸ TR at 140:3 - 141: 8.

⁶⁹ TR at 144: 11 - 22.

⁷⁰ TR at 145:3 - 21.

⁷¹ TR at 145:24 - 146:17.

⁷² TR at 150:5 - 23.

⁷³ TR at 152:22 - 154:16.

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parked trains has increased again.⁷⁴ Commissioner Quandt stated that he had not contacted NCCR recently about issues and instead Hall County decided to assist residents with bringing their issues to the Public Service Commission.⁷⁵ Later, Commissioner Quandt offered the possible solution that NCCR and UP could stage the trains on the backside of Airport Road for crew change so that the parked trains do not block multiple railroad crossing roads.⁷⁶

When asked about blocked crossing issues with BNSF, Commissioner Quandt testified that he became aware of the issues either January or February of the previous year after Ms. Shepardson and her neighbors contacted the Board of Commissioners. Commissioner Quandt stated that community leaders then met with BNSF representatives, in which BNSF offered to set the crossing warning bells to only ring for a certain period of time then stop. However, Commissioner Quandt believed that some liability would transfer to the county if that plan was adopted. He also noted that BNSF offered to break trains that were parked at the specific crossings for a certain period of time but that course of action has not happened.⁷⁷ Commissioner Quandt went on to note that he spoke with Mr. Andy Williams with BNSF once prior to the Hall County Board of Commissioners deciding to assist residents with bringing the issue to the Public Service Commission.⁷⁸

Responding to Commissioner questions, Commissioner Quandt stated that he receives about one to two calls per month, the most constituent calls regarding the crossings at Fourth, Fifth, Sixth, and Seventh Streets near Lincoln Elementary School. Commissioner Quandt also testified that certain streets in the area would have a lot of traffic, such as Capital Avenue toward Northwest High School and Fourth Street toward the Grand Island Airport.⁷⁹

Next, Mr. Steve Riehle testified. Mr. Riehle has been the Hall County Engineer since February 2011. Mr. Riehle testified

⁷⁴ TR at 154:19 - 155:9.

⁷⁵ TR at 155:21 - 157:7.

⁷⁶ TR at 163:11 - 165:7.

⁷⁷ TR at 158:5 - 159:19.

⁷⁸ TR at 160:9 - 161:10.

⁷⁹ TR at 164:15 - 166:11.

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that he has observed blocked railroad crossings when working, giving a current example of not utilizing a railroad crossing at Monitor Road to travel to a work site on Monitor Road because the Monitor Road crossing is frequently blocked. Monitor Road is two miles west of North Road.⁸⁰ Mr. Riehle also noted an incident on or around December 30th during snow removal where the heavy equipment encountered blocked railroad crossings at North Road and Highway 2 several times, and the equipment operator had to back up and turn around. A job that would typically take 20 minutes took a little over an hour.⁸¹ Mr. Riehle also noted traffic counts from the Department of Roads for some of the streets in question, stating that in 2016 the crossing at Fourth Street counted 2,595 vehicles a day. Mr. Riehle also stated that Capital Avenue east of the railroad crossing counted 4,616 vehicles a day and west of the same crossing counted 5,085 vehicles a day. Mr. Riehle also presented information regarding the Engleman Road and Highway 2 area. Mr. Riehle stated that the average daily traffic for North Road and Highway 2 in 2016 was 150 vehicles per day; in 2017 the average daily vehicle count was 205.⁸² When asked about the possible impact of blockages in these areas, Mr. Riehle stated that he believed that the numbers for North Road are lower than they would be due to motorists using a different road for their trip to avoid a train.⁸³

Next, the Commission heard testimony from Mr. Robert Falldorf, Chief of the Grand Island Police Department. Chief Falldorf spoke to the Commission about the impact that the blocked railroad crossings have had on the Grand Island Police force. Chief Falldorf stated that officers have had to take alternate routes when responding to emergency calls due to routes being blocked for up to two hours, resulting in slower response times.⁸⁴ Chief Falldorf testified that he attended the January 2019 meeting with BNSF that was discussed by Commissioner Quandt and that there were no discussions of possible resolutions that were directly related to his department. Chief Falldorf went on to state that he has not

⁸⁰ TR at 169:12 - 170:2.

⁸¹ TR at 170:3 - 171:23.

⁸² TR at 172:10 - 174:1.

⁸³ TR at 174:8 - 175:16.

⁸⁴ TR at 178:22 - 179:19.

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been part of any additional meetings.⁸⁵ Finally, Chief Falldorf testified that his department is involved in Operation Lifesaver but was unaware if officers have provided any railroad safety education at Lincoln Elementary School.⁸⁶

Finally, the Commission received testimony from Mr. Cory Schmidt, Chief of the Grand Island Fire Department. The Grand Island Fire Department is an all-hazards fire department within Grand Island city limits and also provides EMS service to Hall County. Chief Schmidt stated that the Department must alternate its response to different routes, which may not be the fastest or shortest, if there is a blocked or closed crossing and choose routes with an available underpass or overpass. Chief Schmidt went on to explain that the Department receives blockage alerts from other agencies. He also explained that the ambulance service is uniquely affected in that the ambulance may be delayed going to the address and then from the address to the hospital.⁸⁷

Upon the conclusion of the Commission's witness testimony, Ms. Bogen made a statement on behalf of NCRR and BNSF. First, Ms. Bogen entered Exhibit 15 which included information requested by the Commission, railroad carrier rules addressing blocked crossing procedures, and court decisions related to blocked crossing statutes and ordinances. Ms. Bogen then gave a summary of NCRR's response to the issues presented.

Ms. Bogen stated that NCRR is a wholly-owned subsidiary of Rio Grande Pacific Corporation with its principal place of business in Norfolk, Nebraska. NCRR employs 80 to 90 Nebraskans on average, delivering gran and ethanol trains for UPRR.⁸⁸ NCRR tracks run north-south and then split either east or west into the tracks that roll into the UPRR yard. Trains traveling this area travel about 5 to 10 miles per hour and may affect the roads from Abbott Road and Fourth Street. Those trains traveling west cannot pull directly into the UPRR yard like the east, so trains must be parked in order for the NCRR train crew to have a safety briefing with UPRR train crew and hand off

⁸⁵ TR at 180: 7 - 22.

⁸⁶ TR at 181:10 - 22.

⁸⁷ TR at 184:19 - 186:1.

⁸⁸ TR at 195:8 - 22.

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control of the train to UPRR.⁸⁹ Ms. Bogen went on to explain that an NCCR superintendent instruction bulletin instructs NCCR to hold trains outside of Grand Island and not block Airport Road until they receive notification from UPRR that a train crew is present and ready to take possession of the train.⁹⁰

Ms. Bogen stated that the current management at NCCR were not in management or in this area when the meeting mentioned in Commissioner Quandt's testimony occurred and did not know that there was an issue. However, NCCR reached out to UPRR to discuss moving the crew change location north of Airport Road in order to mitigate the blockages. Negotiations were ongoing as of the date of the hearing.⁹¹ Ms. Bogen also stated that NCCR's safety director sits on the state board for Operation Lifesaver and is willing to talk with elementary school students about the dangers of getting on or crawling under trains.⁹²

Ms. Bogen further explained that NCCR has handed off 25 trains to UPRR since September 2019, but NCCR had no data related to the time that the train was holding on the track once UPRR took possession of the train. However, blockages could occur due to train crew delays or mechanical issues.⁹³

In the case of BNSF, the Commission received Exhibit 16 which included BNSF's responses to Commission data requests, operating rules and safety rules.

Mr. Jeff Davis testified on behalf of BNSF. Mr. Davis explained that BNSF employs more than 3,600 Nebraskans and operate almost 1,500 miles of track in the state. Over several years, BNSF double-tracked almost all of the 400 miles between Alliance and Lincoln, with the exception of a three mile elevated stretch of track through Grand Island. Mr. Davis stated that eastbound trains stop under state Highway 281 overpass, stretching west and blocking North Road but not Engleman Road.⁹⁴ Mr. Davis testified that residents in this area have complained about the bells, idling trains and blocked

⁸⁹ TR at 195:8 - 198:8.

⁹⁰ TR at 199:1 - 22.

⁹¹ TR at 200:7 - 202:1.

⁹² TR at 202:6 - 13.

⁹³ TR at 205:24 - 206:17.

⁹⁴ TR at 212:5 - 213:7.

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crossings, and illustrated two examples in December 2018 where one train stopped for an extended time period due to mechanical failure and another due to a heavy winter storm.⁹⁵

Mr. Davis then discussed the January 2019 meeting between Grand Island and Hall County officials and BNSF to resolve the blocked crossing issues. Mr. Davis testified that two solutions were proposed to Grand Island and Hall County: closing the North Road crossing with BNSF providing a financial incentive to the city, or having circuitry installed that would time the crossing bells off after a certain period of time. Both proposals were rejected by the city and county.⁹⁶ Mr. Davis testified that there are alternatives to North Road, either less than two miles to the east at Webb Road, or less than a mile west to Engleman Road. Mr. Davis then testified that breaking the train would not solve the issue, as the crossing may be blocked longer due to the time it takes to break a train, complete visual inspection, and put the train back together.⁹⁷

In response to Commissioner questions, Mr. Davis stated that he felt the two BNSF proposals were the best options to address the issue.⁹⁸ Mr. Davis went on to testify that staging trains farther outside town may block access crossings in areas where an alternate crossing is more than one or two miles away or that may be landlocked if the crossing is the only ingress or egress.⁹⁹

Mr. Davis was then asked by Ms. Carstensen to further explain the process of breaking a train. Mr. Davis explained that the average coal train on this route is over 6,000 feet and takes a crew about 30 to 45 minutes to break a train. The crew will then need to complete a visual inspection of the train along with certain safety checks before putting the train back together. Mr. Davis estimated that the process can take up to an hour and 45 minutes to complete.¹⁰⁰ Upon further questioning by Ms. Carstensen about why BNSF could not stage its trains further to the west, Mr. Davis stated that BNSF looked at the

⁹⁵ TR at 213:8 - 19.

⁹⁶ TR at 214:2 - 215:10.

⁹⁷ TR at 216:7 - 217:3.

⁹⁸ TR at 218:1 - 15.

⁹⁹ TR at 220:17 - 8; 222:21 - 223:8.

¹⁰⁰ TR at 223:21 - 225:1.

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area and determined that the North Road crossing was the most secure to block due to the lights, gates and bells and that there was a concern of an emergency response time or someone living at a crossing that if blocked would be landlocked. Mr. Davis did not know of anyone that would be landlocked or impacted by staging trains further west.¹⁰¹

Next, Mr. Darren Compton testified on behalf of BNSF. Mr. Compton is the senior trainmaster for the Ravenna subdivision and controls the Bellwood subdivision and Giltner subdivisions east of Grand Island. Mr. Compton described the process of separating a train, stating that the process involves walking to the clearance point, tying down hand brakes for each car being left back, pull the pin and close the angle cock if needed to maintain air pressure on the forward-moving portion of the train. At that point, the engineer moves that portion forward which times out the crossing circuitry and opens the crossing gates. Mr. Compton further explained that when putting the train back together, the conductor must walk back toward the crossing to ensure that the crossing is clear in order to start backward train movement. The conductor will then couple the cars and air hoses, untie hand brakes, set up and test the air brakes and conduct a walking inspection of the railcars. Mr. Compton testified that the tasks and tests are required under federal regulations and BNSF rules.¹⁰²

Mr. Compton then described to Commissioners the area in Grand Island where the single track ends and double track begins. Mr. Compton stated that the double track starts at milepost 94.9 near Stuhr Road when moving east to west, and starts the other direction at milepost 97.6 about 800 feet of Broadwell Street.¹⁰³ According to Mr. Compton, BNSF shortened the amount of time for a meet-pass because the waiting train only needs to wait for the moving train to travel about three miles.¹⁰⁴ When asked about why BNSF does not stage the meet-pass further west, Mr. Compton stated that the area was strategically chosen so that trains would block the minimum number of roads possible based upon train length. He also stated that he was

¹⁰¹ TR at 227:2 - 229:24.

¹⁰² TR at 234:3 - 237:11.

¹⁰³ TR at 238:2 - 15.

¹⁰⁴ TR at 238:23 - 239:9.

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aware of residents in Cairo that have no egress or ingress if trains are parked west outside of Grand Island. In addition, Mr. Compton stated that crossings out in the county only have crossbucks with reflective material as opposed to crossings with the visual or audible warnings.¹⁰⁵

In response to a Commissioner question about train staging further west, Mr. Compton stated that BNSF uses two mile sections in order to move trains quicker through the single track section and to not increase meet-pass time. When asked about the amount of time that it takes to separate a train, Mr. Compton stated that it would take about two and a half to three hours total to separate a train and put it back together. Responding to Commissioner questions regarding the appeal of breaking a train when testimony has been given regarding the purported length of time trains are blocking the pertinent crossings, Mr. Compton stated that to his knowledge the blockages are not as long as earlier testimony may indicate. He explained that in situations where an extended blockage of a crossing is anticipated by the railroad due to a foreseen circumstance, like track maintenance for example; the railroad will preemptively break the train. Further, Mr. Compton testified that based on his knowledge, the blockages are not occurring at the duration and frequency expressed in earlier testimony. He stated that he does not have any evidence to support this because he lacks the dates, times, and engine numbers needed to properly verify stoppages. When asked if the evidence presented in exhibit 9 would suffice, Mr. Compton indicated that the pertinent information is not recorded on a daily basis and that obtaining the requisite information would require extensive time and effort in order to compile the appropriate data.

Ms. Carstensen then asked Mr. Compton whether the trains could be shortened to less than a mile, to which he stated that someone else would decide that and that doing so is an economic consideration. When asked about the wait time and number of trains in the area, Mr. Compton stated that BNSF runs about 60 trains through the area in a 24-hour period, with the average wait per train of 30 to 45 minutes. If trains are stacked, all

¹⁰⁵ TR at 242:14 - 244:19.

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trains waiting to run east will run and vice versa.¹⁰⁶ When questioned about the disconnect between earlier testimony about long blockage times and Mr. Compton's testimony that the blockages are not as long, Mr. Compton testified that he can only speak on his knowledge and that the number of trains moving through the area has gone down over the last five years. Mr. Compton stated that train length has not changed. In response to his testimony, BNSF was requested to provide a late-filed exhibit to give stoppage data as it relates to the blockages listed in earlier exhibits detailing the blockage dates, times and duration.¹⁰⁷ Finally, when asked about the number of combined trains totaling about 200 cars or more, Mr. Compton stated that BNSF does not run those trains with any frequency. When those trains are run they are not parked because they would block two crossings, so the train will either slow roll to make the meet-pass or stop farther west.¹⁰⁸

The Commission then received public comment reiterating experiences with blocked railroad crossings in the affected areas. Comments also described trains holding the train whistle for long periods and a desire for the railroad to make the single track area double track. To accommodate members of the public who were unable to stay until the comment period, the Commission accepted written public comments for a short time at the conclusion of the hearing.¹⁰⁹

Exhibits

The Commission received Exhibits one through 16 during the proceeding with no objection. Subsequent to the hearing, BNSF filed late-filed Exhibits 17 and 18.

O P I N I O N A N D F I N D I N G S

This investigation was opened to gather evidence and statements related to blocked railroad crossings in and near Grand Island, Hall County, Nebraska. The Commission's rule regarding blocked railroad crossings states:

¹⁰⁶ TR at 254:25 - 256:19.

¹⁰⁷ TR at 257:13 - 261:18.

¹⁰⁸ TR at 262:4 - 263:12.

¹⁰⁹ TR at 272:1 - 284:3.

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Standing trains, parked or stored cars, locomotives, equipment and switching movements shall not block a public or private crossing longer than ten (10) minutes after a person appears and wants to cross a crossing, except in case of emergency and except in case where the trains are complying with the provisions of Section 002.08D herein. In a situation where a standing train has an operating crew on that train, and a multiple access crossing that is blocked is visible and accessible from the locomotive, such crossing need not be opened if a vehicle or pedestrian is not present at the expiration of ten (10) minutes. However, it shall be opened or the train must be moving within ten (10) minutes after a pedestrian or vehicle becomes present at that crossing.¹¹⁰

Based on the extensive testimony received at hearing, the Commission has reasonable belief that there have been and continue to be violations of Commission Rule 002.09D in the two areas of concern.

The Commission heard several hours of testimony detailing blockage instances over at least the last two years. Hall County officials and railroad officials met to discuss possible solutions, but to no avail. As a consequence, trains continue to block entries and exits to neighborhoods, schools, and homes. There was testimony stating that school children were seen crawling between and under trains in order to get to school or get home. That is unacceptable. The evidence received details several instances where a train has been observed stopped at a crossing for more than ten minutes, upwards into several hours. BNSF testifiers did not agree with the allegation, and was given opportunity post-hearing to provide data to the Commission related to particular dates and times of observed blockages. However, BNSF notified the Commission in its late-filed exhibit that it does not keep daily train stoppage data and that any attempt to reconstruct such data would be too burdensome. The Commission is left with no other option than to make its decision based upon the evidence and testimony that has been presented.

Another consequence to the stopped trains are the triggered crossing bells, lights, and guard arms, which continue to sound the bell so long as the train remains parked within the trigger

¹¹⁰ Title 291, Chapter 4, Rule 002.09D

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zone. These warning bells are sometimes coupled with noise from an idling train. For those residents who live nearest these crossings, the blockage has the double effect of creating inconvenience to travel but a noise nuisance. Should a train be parked at the crossing for several hours or several periods a day, the noise rises beyond a level of nuisance. The Commission has no rule or oversight of crossing or train noise; however, reducing the instances of blocked railroad crossings in the North Road area should go a long way toward decreasing how much noise the residents must hear on a daily basis.

The Commission gave BNSF additional opportunity to work with the city of Grand Island and Hall County to find a solution, and BNSF expressed no interest in moving from their position. Additionally, the Commission was disappointed that NCRR and Union Pacific Railroad could not reach an agreement regarding the crew changeover that affects the parked trains near Lincoln Elementary School. The Commission prefers that parties reach their own agreements as opposed to the Commission moving forward with more formal action. However, as no solutions have come to fruition the events as discussed require formal action. Therefore, the Commission directs the Transportation Department to immediately file a formal Departmental Complaint against BNSF, NCRR, and UPRR as it relates to this investigation. The Commission reserves the right to open a new investigation docket should future instances of blocked railroad crossings in Grand Island occur.

Based on the above, the Commission finds that this investigation is hereby closed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned investigation be, and is hereby, closed.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 30th day of June, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Hunter
Tom Schram
DeWanna

Mary Keddin

Chair

ATTEST:

Michael S. Hyl
Executive Director