

[Service Date December 30, 2005]

December 30, 2005

**NOTICE OF PROCESS TO PERFECT
MOTION TO CONSOLIDATE**

Re: *City of Kennewick v. Union Pacific Railroad*
Docket No. TR-040664
*City of Kennewick v. Port of Benton & Tri-City
& Olympia Railroad*
Docket No. TR-050967

TO ALL PARTIES OF RECORD:

On November 7, 2005, Union Pacific Railroad (UPRR) filed a Motion to Consolidate this proceeding with another proceeding involving the Tri-City & Olympia Railroad and the Port of Benton (Docket No. TR-050967), on which the City of Kennewick requested the Commission take no action in a letter dated July 19, 2005.

On December 12, 2005, Commission Staff filed an answer to UPRR's Motion to Consolidate. Staff agrees with UPRR that the Tri-City & Olympia Railroad and the Port of Benton are necessary parties to this adjudication since the proposed roadway would cross both the UP and Tri-City/Port of Benton tracks. Staff recommended that the Commission require the City of Kennewick to file its petition for a crossing over the tracks of the Tri-City & Olympia (Port of Benton) so that the petition may be consolidated with the instant case for hearing.

On December 14, 2005, the City of Kennewick sent an email stating, "The City of Kennewick is not agreeing to nor opposing the motion to consolidate." On December 16, 2005, the City of Kennewick sent a letter to the Commission, referencing the July 19, 2005, letter concerning Docket No. TR-050967. The City states in its December 16, 2005, letter that "Union Pacific has filed a motion to

consolidate this matter [Docket No. TR-050967] with matter TR-040664. The City of Kennewick is not contesting that motion.” The City requests that action be taken to move this petition to an adjudicative status.

In order to consider UPRR’s Motion to Consolidate, the Commission must have two open adjudications to determine whether the cases have similar facts and/or issues, and thus would properly be joined. In this instance, the Commission only has one adjudication before it, Docket No. TR-040664. Moreover, all the parties to the cases proposed for consolidation must be served, and given an opportunity to respond to the Motion to Consolidate. In this instance, only one set of parties has been served with the Motion to Consolidate, those associated with Docket No. TR-040664, understandably so, since the other matter is not in adjudicative status.

The Commission will commence an adjudication in Docket No. TR-050967 by issuing a Notice of Prehearing Conference and will notice a simultaneous prehearing conference in Docket No. TR-040664. *RCW 34.05.413, WAC 480-07-305*. The Notices will be served on the parties in both dockets. Consolidation of Docket Nos. TR-050967 and TR-040664 will be one of the issues discussed at the prehearing conference.

Sincerely,

KAREN M. CAILLÉ
Administrative Law Judge