



December 2, 2011

VIA E-MAIL records@utc.wa.gov
AND FIRST CLASS MAIL

Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Re: *Puget Sound & Pacific Railroad v. Grays Harbor County*
Docket TR-110157 and TR-110162
Puget Sound & Pacific Railroad v. City of Elma
Docket TR-110159, TR-110160, and TR-110161

To whom it may concern:

Enclosed for filing is an original and seven copies of Petitioner's Motion to Withdraw Petitions.

Very truly yours,

Laura T.Z. Montgomery
montgomery@gleaveslaw.com

LTM/ks
Enclosures

cc: James G. Baker
Daniel O. Glenn
Frona Woods and Michael Fassio
Client

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in Washington

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**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

PUGET SOUND & PACIFIC RAILROAD,

Petitioner,

v.

GRAYS HARBOR COUNTY,

Respondent.

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PUGET SOUND & PACIFIC RAILROAD,

Petitioner,

v.

CITY OF ELMA,

Respondent.

DOCKET TR-110157

DOCKET TR-110162

PETITIONER'S MOTION TO
WITHDRAW PETITIONS

DOCKET TR-110159

DOCKET TR-110160

DOCKET TR-110161

1. Pursuant to WAC 480-07-380(3), Puget Sound & Pacific Railroad ("PSAP") hereby moves to withdraw its petitions filed in TR-110157, TR-110162, TR-110159, TR-110160, and TR-110161, without prejudice. For the reasons set forth below, withdrawal of the petitions are in the public interest.

2. On January 19, 2011, PSAP filed with the Washington Utilities and Transportation Commission ("WUTC") five petitions for approval to close highway-rail crossings in the City of Elma and Grays Harbor County, as follows:

- Docket TR-110157 Hewitt Road, Grays Harbor County
USDOT Crossing Number 096649C
- Docket TR-110159 N. 2nd Street, City of Elma
USDOT Crossing Number 096525J

- Docket TR-110160 N. 5th Street, City of Elma
USDOT Crossing Number 096635U
- Docket TR-110161 N. 10th Street, City of Elma
USDOT Crossing Number 096638P
- Docket TR-110162 N. 17th Street, Grays Harbor County
USDOT Crossing Number 096641X

3. On January 26, 2011, in Dockets TR-110159, TR-110160, TR-110161, and TR-110162, the WUTC sent a letter to the City of Elma (“Elma”) and its attorney Mr. Dan Glenn notifying them of the petitions and requesting they respond within twenty days indicating whether they support the petitions.

4. On February 10, 2011, PSAP filed revised petitions for the Hewitt Road (Docket TR-110157) and North 17th Street (TR-110162) proposals, clarifying that these two crossings are not within the city limits of Elma.

5. On February 11, 2011, in Dockets TR-110157 and TR-110162, WUTC sent a letter to Grays Harbor County (“GHC”) notifying them of the petitions and requesting they respond within twenty days indicating whether they support the petitions.

6. On February 14, 2011, Elma filed a letter opposing four of the petitions (Dockets TR-110159, TR-110160, TR-110161, and TR-110162). Elma notes that TR-110162 was not technically within its city limits.

7. On February 16, 2011, GHC filed a letter opposing two of the petitions (Dockets TR-110157 and TR-110162).

8. On April 12, 2011, PSAP filed a letter in Dockets TR-110159, TR-110160, TR-110161, and TR-110162, and on April 19 PSAP filed a letter in Docket TR-110157, requesting a 60-day extension of time to continue settlement negotiations among the parties.

9. On April 20, 2011, WUTC granted PSAP's request for an extension. In addition, WUTC set a deadline of June 10, 2011, to file a joint update on the settlement negotiations.

10. On June 10, 2011, WUTC staff filed a status report stating that no formal substantive settlement discussions have occurred. Staff also recommended WUTC initiate a formal adjudicative proceeding under RCW 34.05 to address the closure petitions.

11. On June 15, 2011, WUTC staff submitted a proposed order for consolidation of all the above matters for purposes of hearing and determination.

12. On July 18, 2011, all parties attended a pre-hearing conference during which PSAP proposed and all parties agreed to participate in mediation.

13. On July 19, 2011, the consolidation order was signed designating a new procedural schedule, setting a two day public hearing commencing January 10, 2012, and ordering mediation be scheduled.

14. On August 15, 2011, a notice was entered canceling mediation set for August 16, 2011.

15. On September 15, 2011, PSAP submitted its prehearing testimony and exhibits.

16. On November 10, 2011, GHC, Elma, and WUTC staff all submitted their response testimony and exhibits.

17. December 9, 2011 is the deadline for all parties to file any rebuttal/cross-answer testimony and exhibits.

18. PSAP has been working with GHC, Elma, and WUTC staff to address all concerns regarding the proposed closures and believes that an alternate proposal may work

for all parties which will look at and address a system-wide rail plan covering the PSAP rail corridor in Grays Harbor County and the City of Elma. However, PSAP needs time to work with all parties in order to coordinate this system-wide rail corridor plan.

19. Pursuant to WAC 480-07-380(3), when the Commission has issued a hearing notice or otherwise commenced an adjudicative proceeding, a party may not withdraw from a proceeding without the Commission's permission. The Commission will grant a party's motion to withdraw from a proceeding when the party's withdrawal is in the public interest.

20. PSAP does not wish to pursue its petitions at this time in light of the fact that the parties have agreed to work together collaboratively to pursue a broader system-wide plan along the rail corridor in Grays Harbor County and the City of Elma and the parties' time and effort can be better spent working to resolve the issues around this plan. This alternative proposal is in the public interest.

21. Counsel for PSAP has consulted with counsel for GHC, Elma, and WUTC staff and GHC and Elma do not oppose this motion to withdraw. In fact, both GHC and WUTC staff support the alternative plan and believe it is in the public interest. Dan Glenn, attorney for Elma, has indicated that the Mayor agrees with this and believes the City Council will as well, but cannot confirm the City's agreement until a formal council meeting is convened on Monday, December 5, 2011. However, Elma has sent a letter indicating its support. Attached as Exhibits A, B, and C are letters from GHC, Elma, and WUTC staff indicating their support for this plan.

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22. For the reasons set forth above, PSAP respectfully requests that the Commission issue an order granting its Motion to Withdraw Petitions.

DATED this 2nd day of December, 2011.

GLEAVES SWEARINGEN POTTER & SCOTT, LLP

By: 

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GRAYS HARBOR COUNTY
STATE OF WASHINGTON

November 29, 2011

Rail America Operations
Attn: Patrick Kerr
4462 Calumet Way
Eugene, OR 97404

RE: Docket TR-110162 – North 17th Street Crossing Closure Petition
Docket TR-110157 – Hewitt Road Crossing Closure Petition

Dear Mr. Kerr,

Thank you for your visit today. Grays Harbor County requests that the railroad withdraw its petitions to close the 17th Street and Hewitt Road Crossings. We believe this is appropriate in view of Kathy Hunter's written testimony and other testimony in this case.

County Staff will continue working with the railroad and WUTC to improve the safety of the railroad crossings.

Very Truly Yours,

Russell D. Esses
County Engineer

Cc: Jim Baker



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

November 30, 2011

Laura T.Z. Montgomery
Gleaves Swearingen Potter & Scott LLP
975 Oak Street, Suite 800
Eugene, OR 97401-3156

Re: *Puget Sound & Pacific Railroad v. Grays Harbor County & City of Elma*
WUTC Dockets TR-110157, TR-110159, TR-110160, TR-110161, TR-110162

Dear Ms. Montgomery:

As you know, the Washington Utilities and Transportation Commission (WUTC) has commenced an adjudicative proceeding concerning the above-listed petitions for closures of grade crossings. As we discussed earlier today, the Puget Sound and Pacific Railroad (PSAP) would like to withdraw the petitions in favor of pursuing an alternative course of action. I understand that PSAP would like to work collaboratively with Grays Harbor County, the City of Elma, and WUTC Staff to develop a plan for improving safety along the PSAP rail corridor in Grays Harbor County.

WUTC Staff supports PSAP's proposal to withdraw the pending petitions and to work with the parties, including WUTC Staff, to implement the shared goal of safety along the rail corridor. WUTC Staff believes it is in the public interest for the parties to work together to evaluate the corridor as a whole rather than to litigate the pending petitions in their current form.

Sincerely,

FRONDA WOODS
Assistant Attorney General
(360) 664-1225



City of Elma

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November 29, 2011

Patrick Kerr
Rail America
Director- Government Affairs West
4462 Calumet Way
Eugene, OR 97404

Re: PSAP RR Crossing Closure Petitions: Elma, WA

Dear Mr. Kerr,

Rather than continue the current formal petition process of the proposed grade crossing closures, the City of Elma would like to present an offer to engage Puget Sound & Pacific (PSAP) in a more mutually cooperative, and long range partnership addressing the impacts of rail operation and associated traffic safety and mobility along the common corridors existing here in Elma.

If this scenario would be acceptable to PSAP, the City of Elma would respectfully request withdrawal of the petitions that the Puget Sound & Pacific Railroad has on file with the Washington State Utilities and Trade Commission; specifically, WUTC Docket #'s 110159, 110160 and 110161.

I would also like to extend an invitation to you to attend the January 3, 2012, Elma City Council meeting where we could discuss the formation of a group to work towards how best meet the safety and mobility needs of all concerned. An update of current and future PSAP rail operations would also be welcomed.

Please call me at Elma City Hall (360)482-2212, and let me know your thoughts on this proposal.

Sincerely,



Mayor David C. Osgood

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2011, I served a true copy of
PETITIONER'S MOTION TO WITHDRAW PETITIONS, by first class mail, postage
prepaid, and by e-mail addressed to the following:

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Senior Deputy Prosecuting Attorney
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Commission Staff

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By: 

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