

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF WOODINVILLE,) DOCKET TR-143902
) (Consolidated)
 Petitioner,)
) ORDER 03

v.)
)

EASTSIDE COMMUNITY RAIL,)
BALLARD TERMINAL RAIL, PORT)
OF SEATTLE, AND WASHINGTON)
STATE DEPARTMENT OF)
TRANSPORTATION,)
)
 Respondents.)

.....)
)

CITY OF WOODINVILLE,) Docket TR-143903
) (Consolidated)
 Petitioner,)
) ORDER 03

v.)
)

EASTSIDE COMMUNITY RAIL,) INITIAL ORDER APPROVING
KING COUNTY, BALLARD) STIPULATION AGREEMENT
TERMINAL RAIL, AND)
WASHINGTON STATE)
DEPARTMENT OF)
TRANSPORTATION,)
)
 Respondents.)

.....)

BACKGROUND

1 On November 18, 2014, the City of Woodinville (the City) filed petitions seeking approval to modify two at-grade crossings (Petitions) to accommodate the construction of

two additional lanes of traffic on State Route 202.¹ The proposed modifications at both crossings include updated flashers, automatic gates, and signal preemption at nearby parallel intersections, which will prevent traffic from stopping on the tracks.

2 On December 29, 2014, the Commission received a letter from Eastside Community Rail and Ballard Terminal Railroad Company (the Railroads) opposing the Petitions.

3 On March 19, 2015, the Commission convened a prehearing conference in both proceedings, consolidated the dockets, and adopted a procedural schedule. On April 13, 2015, the parties participated in a settlement conference mediated by Administrative Law Judge Dennis Moss.

4 On August 4, 2015, the parties participated in a second mediated settlement conference with Judge Moss. The parties reached agreement on all but one issue, which they agreed to resolve through a summary determination proceeding.

5 On November 16, 2015, the Commission issued Order 02 granting the City's motion for summary determination and requiring the parties to file settlement documents or a status of their negotiations by December 2, 2015. On December 2, the parties contacted the Administrative Law Judge via email and stated that the parties would file a stipulation agreement by December 4.

6 On December 4, 2015, the parties filed a stipulation agreement memorializing the terms of their settlement (Stipulation Agreement). The terms of the parties' agreement are as follows:

- The parties adopt the revised plan prepared by the City's engineering consultant showing the proposed new signal lights and the reduced-length crossing arms.
- The parties agree to the use of asphalt instead of concrete crossing panels for the east crossing, with the City agreeing to maintain the asphalt for 25 years following construction.
- The parties agree that the City will install an illuminated "no right turn" symbol on the signal mast arm for northbound to eastbound right-turning traffic, which will be activated in conjunction with the activation of the west railroad crossing

¹ The petition to reconstruct a highway-rail grade crossing, and install an inter-tie between a highway signal and a railroad crossing signal system at State Route 202 in the City of Woodinville, USDOT Crossing No. 091797E was assigned to Docket TR-143902. The petition to reconstruct a highway-rail grade crossing, and install an inter-tie between a highway signal and a railroad crossing signal system at State Route 202 in the City of Woodinville, USDOT Crossing No. 091797F was assigned to Docket TR-143903.

arms and signals at the intersection of SR 202, 127th Place NE, and Woodinville Drive.

- 7 Greg A. Rubstello, Ogden Murphy Wallace P.L.L.C., Seattle, Washington, represents Petitioner City of Woodinville. Doug Engle, Managing Director, Snohomish, Washington, represents Respondent Eastside Community Rail. Byron Cole, CEO, Seattle, Washington, represents Ballard Terminal Railroad. Ahmer Nizam, Manager – Utilities and Railroad, Olympia, Washington, represents the Washington State Department of Transportation (WSDOT). Isabel Safora, Deputy General Counsel, Seattle, Washington, represents the Port of Seattle. Andrew Marcuse, Senior Deputy Prosecuting Attorney, Seattle, Washington, represents King County. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Staff).²

DISCUSSION AND DECISION

- 8 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

We approve the Stipulation Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by

² In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

the evidence in the record. The parties agree to make substantial safety improvements that effectively mitigate the increased risks posed by the addition of two lanes of traffic at the affected crossings. Accordingly, we find the Stipulation Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS That the Stipulation Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.

Dated at Olympia, Washington, and effective December 7, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the Commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and three copies of your petition or answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250