

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

WASHINGTON STATE)	DOCKETS TR-100127, TR-100128,
DEPARTMENT OF)	TR-100129, and TR-100131
TRANSPORTATION,)	(Consolidated)
)	
Petitioner,)	
)	ORDER 03
v.)	
)	
CENTRAL PUGET SOUND)	INITIAL ORDER GRANTING
REGIONAL TRANSPORTATION)	MOTION TO
AUTHORITY, THE CITY OF)	WITHDRAW PETITIONS
LAKWOOD, AND THE CITY OF)	
DUPONT,)	
)	
Respondents.)	
)	
.....)	

1 **NATURE OF PROCEEDINGS.** These consolidated dockets involve petitions filed on January 19, 2010, by the Washington State Department of Transportation (WSDOT) to modify four existing highway-rail grade crossings in the cities of Lakewood and DuPont, Pierce County, Washington, as follows:

- Docket TR-100127 Clover Creek Drive SW, City of Lakewood
USDOT Crossing Number 085822W
- Docket TR-100128 Berkeley Street SW, City of Lakewood
USDOT Crossing Number 085829U
- Docket TR-100129 North Thorne Lane SW, City of Lakewood
USDOT Crossing Number 085828M
- Docket TR-100131 Barksdale Avenue, City of DuPont
USDOT Crossing Number 085836E

WSDOT sought to upgrade various roadway and safety features at these crossings in preparation for the permanent re-routing of passenger rail service to this rail line as part of the Point Defiance Bypass Project.

2 **PROCEDURAL SCHEDULE.** Following a prehearing conference held before Administrative Law Judge Adam E. Torem on March 16, 2010, the Commission entered Order 02, adopting a procedural schedule for these consolidated matters. As part of that process, the Commission scheduled two days of evidentiary hearings to begin on Monday, June 7, 2010, at 9:00 a.m., in the City of Lakewood's Council Chambers. The Commission also scheduled a public comment hearing for the evening of Monday, June 7, 2010, at Pierce College's Fort Steilacoom campus.

3 **WSDOT MOTION TO WITHDRAW PETITIONS.** In early May 2010, WSDOT determined that its acceptance of federal funding to achieve the aims set out in the petitions would require additional environmental reviews and assessments. WSDOT estimates that the additional impact evaluations could delay the Point Defiance Bypass project until sometime in 2012, a period of years.

4 On May 17, 2010, WSDOT filed a motion to withdraw its petitions from Commission consideration, without prejudice to re-file at an appropriate time in the future. According to WSDOT, all parties to these dockets agree with WSDOT's position that the petitions should be withdrawn at this time and resubmitted only when WSDOT has accomplished all necessary environmental impact assessments and reviews.

5 **COMMISSION DECISION.** The Commission seeks to adjudicate railway crossing modification petitions only when all required environmental assessment work is complete under the State Environmental Policy Act (SEPA) and, if applicable, under the National Environmental Policy Act (NEPA). WSDOT has now determined that additional environmental review is required and, given the length of time needed to complete the necessary studies, postponement or suspension of the procedural schedule in these dockets is not practical. Under these circumstances, the Commission concurs that withdrawal is the best option for all concerned.

6 Withdrawal of WSDOT's petitions in these dockets at this point in time renders moot the pending WSDOT motion for leave to file the supplemental written testimony of Kevin Jeffers and also occurs with sufficient notice to prevent unnecessary work by

the parties to file rebuttal or cross-answering testimony due next Monday, May 24, 2010, under the governing procedural schedule. The Commission is also afforded sufficient time to cancel without cost the facilities reserved for the evidentiary and public hearings scheduled for early next month.

- 7 In accordance with WAC 480-07-380(3), the Commission concludes that WSDOT's motion to withdraw is in the public interest and should be granted.

ORDER

THE COMMISSION ORDERS:

- 8 (1) The Washington State Department of Transportation's motion to withdraw its petitions, without prejudice to later re-file, is granted.
- 9 (2) The remainder of the procedural schedule in these matters is stricken, to include cancellation of the evidentiary hearings on June 7-8, 2010, and the public comment hearing scheduled for Monday evening, June 7, 2010.

Dated at Olympia, Washington, and effective May 17, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO 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 twenty (20) days after the entry of this Initial Order to file a Petition for Administrative Review. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an Answer to Petition for Review within ten (10) days after the service of the Petition.

WAC 480-07-830 provides that before entry of 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. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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.

One copy of any Petition or Answer must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and nine (9) copies of any Petition or Answer must be filed by mail delivery to:

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