

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK,	)	DOCKET NO. TR-050967
	)	
Petitioner,	)	
	)	
v.	)	
	)	NOTICE OF PREHEARING
PORT OF BENTON and TRI-CITY &	)	CONFERENCE
OLYMPIA RAILROAD	)	<b>(Set for Monday, January 9, 2006,</b>
	)	<b>9:30 a.m.)</b>
Respondents.	)	
	)	

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- 1     On June 27, 2005, the City of Kennewick filed with the Commission a Petition for a proposed silent, at-grade crossing of Center Parkway over the Port of Benton Hanford Industrial Branch west of Richland Junction (MP 18.8). The Richland Junction is the point of interchange for railcars among UPRR, BNSF and Tri-City and Olympia Railroad, the short line carrier operating on the Port of Benton branch line.
  
- 2     By letter dated July 19, 2005, the City of Kennewick requested that the Commission take no action in this docket pending negotiations in a related petition in Docket No. TR-040664. On December 19, 2005, the City of Kennewick requested the Commission move this Petition to an adjudicative status.
  
- 3     The Commission will hear this matter pursuant to Part IV of chapter 34.05 RCW pertaining to adjudicative proceedings, including but not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, RCW 34.05.452, RCW 81.04.110, RCW 81.44.010, and RCW 81.53.060. The Commission has jurisdiction over this matter pursuant to Title 81 RCW, having legal authority to regulate alterations in the style or nature of construction of existing grade crossings, and to apportion the expense of such a change between the railroad

and the municipality or county affected pursuant to chapter 81.53 RCW, including without limitation, RCW 81.53.060 and RCW 81.53.110. Statutes involved, in addition to those previously cited, include those within chapters 81.04 RCW, 81.44 RCW, 81.53 RCW, and 480-07 WAC.

4 The ultimate issue involved is whether the public safety requires an order be entered authorizing the modification of a grade crossing surface of the above-described crossing, and if so, how the expense of such a change should be apportioned between the railroad and the county. The complete file in this matter sets forth the issues in more detail and is available for public inspection at the Commission's offices in the Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

5 THE COMMISSION GIVES NOTICE That in accordance with WAC 480-07-440(1)(a), the Commission has determined that good cause exists for this matter to be heard on shortened notice.

6 **THE COMMISSION GIVES NOTICE That a prehearing conference in this matter will be held at 9:30 a.m., on Monday, January 9, 2006, in Room 108, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** Parties may attend the prehearing conference via the Commission's teleconference bridge (360-664-3846). If you appear via teleconference, you must appear five minutes before the time that the conference is scheduled to begin. Good cause exists to shorten the notice for this prehearing conference.

7 The purpose of the prehearing conference is to take interventions, consider consolidation of this docket with Docket No. TR-040664, establish dates for distribution of evidence and work papers and other scheduling matters, consider formulating the issues in the proceeding and to determine other matters to aid in its disposition, as specified in WAC 480-07-430.

8 Petitions to intervene should be made in writing at least three business days prior to the date scheduled for the prehearing conference, as required in WAC 480-07-355(a). The Commission will consider petitions to intervene made orally during the conference, but strongly prefers written petitions to intervene. In addition, party representatives must file notices of appearance with the Commission, as required by WAC 480-07-345(2), no later than the day prior to the conference. If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission. The time and place for any evidentiary hearings will be set at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

9 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default in accordance with RCW 34.05.440. The parties are further advised that the sanction provisions of WAC 480-07-450 are specifically invoked.**

10 The names and mailing addresses of all parties and their known representatives are as follows:

Petitioner: City of Kennewick  
Peter M. Beaudry  
Public Works Director  
210 West 6th Avenue  
P.O. Box 6108  
Kennewick, WA 99336-0108  
(509) 585-4249

Representative: John Ziobro  
City Attorney  
P.O. Box 6108  
210 West 6th Avenue  
Kennewick, WA 99336  
(509) 585-4272

Respondent: Port of Benton

Representative: Daryl D. Jonson  
Cowan Moore Stam & Luke, P.S.  
P.O. Box 927  
503 Knight Street, Suite A  
Richland, Washington 99352  
(509) 943-2676

Respondent: Tri-City and Olympia Railroad

Representative: Brandon L. Johnson  
Miller Mertens & Spanner PLLC  
1020 North Center Parkway, Suite B  
Kennewick, Washington 99336  
(509) 374-4200

Commission Staff: Washington Utilities and  
Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

Representative: Jonathan Thompson  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P.O. Box 40128  
Olympia, WA 98504-0128  
(360) 664-1225

- 11 Administrative Law Judge Karen Caillé, from the Utilities and Transportation  
Commission's Administrative Law Division, will preside during this proceeding.
- 12 Notice of any other procedural phase will be given in writing or on the record, as  
the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective this 30th day of December, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN  
Executive Secretary

Inquiries may be address to:

**Secretary**  
**Washington Utilities and**  
**Transportation Commission**  
**Chandler Plaza Building**  
**1300 S. Evergreen Park Drive S.W.**  
**P.O. Box 47250**  
**Olympia, WA 98504-7250**  
**(360) 664-1160**

Attachment: Notice of Process to  
Perfect Motion to  
Consolidate

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Carole J. Washburn, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket No.: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter:

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be contacted if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: (\_\_\_\_) \_\_\_\_\_

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