

[Service Date July 18, 2006]

July 18, 2006

NOTICE OF SUBSTITUTION OF PRESIDING OFFICER

NOTICE CONCERNING LATE-FILED TESTIMONY

**NOTICE DIRECTING PARTIES
TO FOLLOW PROCEDURAL RULES**

Re: *City of Kennewick v. Union Pacific Railroad, et al.*
Dockets TR-040664 and TR-050967, consolidated

TO ALL PARTIES OF RECORD:

On July 14, 2006, the Commission reassigned this matter to Administrative Law Judge Dennis J. Moss who will, hereafter, substitute as presiding officer for Administrative Law Judge Karen Caillé, who has left the Commission's employ.

On July 11, 2006, Brandon L. Johnson, counsel for the Tri-City and Olympia Railroad (Tri-City), sent an e-mail to Administrative Law Judge Karen Caillé requesting an extension of the date for his client to file testimony from July 12, 2006, to July 19, 2006. Requests for the continuance of a procedural date must be filed with the Commission in accordance with its procedural rules. Accordingly, Judge Caillé informed Mr. Johnson by return e-mail that he should "file a formal letter directed to Carole Washburn with your request for an extension."

On July 14, 2006, Mr. Johnson again submitted his request for a continuance via e-mail addressing it to Judge Caillé with an "attention" notation naming the Commission's Executive Secretary, Carole Washburn. Although the request states on its face that it also was sent by first class mail, the Commission has not yet received a signed original as required under the Commission's procedural rules for all filings made in adjudicatory proceedings. Thus, from the Commission's perspective, there has been no filing of a formal request. Even had the Commission received a signed original of the request it would have been untimely under WAC 480-07-385. In

addition, the request as submitted would be deficient if filed because it does not include any showing of good cause, as also required by WAC 480-07-385.

The request states that Mr. Johnson informed all counsel of record of his request by e-mail in advance of the request and that counsel for the UP, Port of Benton, and City of Kennewick responded stating no objection to the request. No response was received from counsel for the BN. Mr. Johnson states that he does not anticipate that the extension will impact the remainder of the procedural schedule. We note that informing counsel of a formal request to the Commission via e-mail does not constitute service on other parties unless they have waived other forms of service in accordance with WAC 480-07-150(5).

Although there is no practical option under the circumstances other than to allow the late filing of testimony in this instance, we note that counsel has failed to adhere to the Commission's procedural rules governing requests for continuance (WAC 480-07-385), and the Commission's filing and service requirements (WAC 480-07-145 and WAC 480-07-150, respectively). We require that all party representatives who appear before the Commission be familiar with and adhere to the Commission's procedural rules in WAC 480-07. This is essential to maintain good order and efficiency in the conduct of the Commission's business.

The Commission's procedural rules are available via the Commission's web pages at www.wutc.wa.gov. A copy of the rules will be provided on request directed to the Commission's records center by telephone at 360-664-1234, via e-mail at records@wutc.wa.gov or via mail to Records Center, Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Dr. SW, P.O. Box 47250, Olympia, WA 98504-7250.

NOTICE IS GIVEN that the Commission will accept Tri-City's testimony if filed on or before July 19, 2006. All other procedural dates are unchanged.

Sincerely,

DENNIS J. MOSS
Administrative Law Judge