

[Service Date February 9, 2011]

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

CITY OF FIFE,)	DOCKET TR-100098
)	
Petitioner,)	ORDER 07
)	
v.)	
)	INITIAL ORDER GRANTING
UNION PACIFIC RAILROAD,)	MOTION TO WITHDRAW
)	PETITION, WITHOUT PREJUDICE,
Respondent.)	AND CANCELLING HEARINGS
)	(Cancelling Evidentiary and Public
)	Comment Hearings Scheduled to
)	Convene on February 16, 2011)
.....)	

1 **NATURE OF PROCEEDING:** On January 13, 2010, the City of Fife (City or Fife) filed with the Washington Utilities and Transportation Commission (Commission) a Petition to open a pedestrian-only at-grade crossing at 54th Avenue East in Fife. Union Pacific Railroad (UPRR or Railroad) opposed the proposal.

2 By Order 02, Prehearing Conference Order, entered May 20, 2010, the Commission established a procedural schedule in this matter. The Commission modified the procedural schedule four times upon request by the parties.¹ In its last Order, the Commission scheduled both the evidentiary and public comment hearings to convene on February 16, 2011, and set the public comment hearing to convene in Olympia, Washington.

¹ Order 03 entered September 20, 2010, Order 04 entered September 30, 2010, Order 05 entered October 4, 2010, and Order 06 entered December 1, 2010.

3 **MOTION TO WITHDRAW PETITION:** On February 8, 2011, the City filed a motion to withdraw its petition. The City stated that it did not want to pursue the petition in light of the opposition of both UPRR and the Commission Staff.² The City argued that it was in the public interest to authorize withdrawal of the petition before the Commission and the parties incurred the time and expense of the evidentiary and public comment hearings.

4 According to WAC 480-07-380(3)(b), a party may withdraw from a proceeding only upon permission by the Commission once a matter has been set for hearing. The Commission will grant a motion to withdraw if the withdrawal is in the public interest.

5 The Commission finds that it is in the public interest to grant the City's motion to withdraw its petition. The City no longer wishes to seek Commission approval for a pedestrian-only at-grade crossing at 54th Avenue East in Fife. The other parties to this proceeding oppose the crossing. Accordingly, the petition to withdraw is granted, without prejudice, and the evidentiary and public comment hearings in this matter are cancelled. The City may file a new petition if it wishes the Commission to consider a crossing at this location in the future.

ORDER

THE COMMISSION ORDERS:

6 (1) The motion to withdraw the petition filed by the City of Fife is granted, without prejudice.

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 the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 7 (2) The evidentiary and public comment hearings scheduled to convene on February 16, 2011, are cancelled.

Dated at Olympia, Washington, and effective February 9, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
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 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 a Petition for review within (10) days after 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 filed 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 five (5) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
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