

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF KENNEWICK,)	DOCKET TR-130499
)	
Petitioner,)	
)	ORDER 02
v.)	
)	
PORT OF BENTON, TRI-CITY &)	INITIAL ORDER DENYING
OLYMPIA RAILROAD COMPANY,)	PETITION TO OPEN AT-GRADE
BNSF RAILWAY COMPANY, AND)	RAILROAD CROSSING
UNION PACIFIC RAILROAD,)	
)	
Respondents.)	
.....)	

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of this petition.

2 On June 4, 2013, the Commission held a prehearing conference in Olympia, Washington, before Administrative Law Judge Adam E. Torem. At that time, the Commission granted intervenor status to the City of Richland and adopted a procedural schedule for this docket.

3 At the prehearing conference, the City of Kennewick indicated compliance with the State Environmental Policy Act (SEPA) by its 2003 completion of a SEPA checklist for the Center Parkway Extension project and subsequent issuance of a Mitigated Determination of NonSignificance (MDNS). On July 26, 2013, the City of Kennewick updated its previous environmental assessment and prepared an Addendum to its SEPA checklist. On August 20, 2013, the City of Kennewick confirmed to the Commission that all SEPA compliance work was complete.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington. Judge Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 *Representatives.*¹ P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent petitioner City of Kennewick and intervenor City of Richland (Cities). Paul J. Petit, Richland, represents respondent Tri-City & Olympia Railroad (TCRY). Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).²

EVIDENCE

A. Center Parkway and Surroundings

6 Center Parkway is a minor arterial roadway in Kennewick. As currently constructed, its northbound traffic moves into a roundabout intersection with Gage Boulevard and cannot proceed further north to Tapteal Drive.³ As part of their comprehensive plans, the Cities intend to connect Tapteal Drive in Richland with Gage Boulevard in Kennewick by extending Center Parkway northward.⁴ In order to accomplish this, Center Parkway would cross two sets of railroad tracks owned by the Port of Benton.⁵

7 Seven years ago, the Commission denied the City of Kennewick's original petition to construct this at-grade crossing.⁶ At that time, extending Center Parkway northward would have required crossing four sets of tracks. However, in 2011, the City of Richland completed negotiations with the Union Pacific Railroad Company (UPRR) and Burlington Northern Santa Fe Railway Company (BNSF) to relocate their switching operations from the area, allowing removal of the two UPRR spur tracks.⁷

¹ The following parties appeared at the prehearing conference but did not participate in any other portion of the proceedings: Thomas A. Cowan, Richland, represents respondent Port of Benton. Tom Montgomery and Kelsey Endres, Seattle, represent respondent Burlington Northern Santa Fe Railway Company (BNSF). Carolyn Larson, Portland, OR, represents respondent Union Pacific Railroad Company (UPRR).

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.

³ Exh. JP-5-X, at 2-3 (overview maps of area).

⁴ Exh. JP-1T, 2:11-24; *see also* Exh. JP-2, Exh. JP-3, and Exh. JP-4.

⁵ *See* Exh. KH-2 (aerial view of surrounding area) and Exh. KH-3 (crossing configuration).

⁶ *See* Docket TR-040664, *City of Kennewick v. Union Pacific Railroad*, Order 06, Initial Order Denying Petition; Docket TR-050967, *City of Kennewick v. Port of Benton and Tri-City & Olympia Railroad*, Order 02, Initial Order Denying Petition (January 26, 2007) (2007 Order).

⁷ Exh. JP-6-X (UPRR) and Exh. JP-7-X (BNSF).

- 8 Commercial and retail properties dominate the area surrounding the proposed crossing. As shown in Figure 1,⁸ the Columbia Center Mall, a major regional shopping center, is located immediately southeast of the proposed crossing, bordered by Center Parkway (west side), Quinault Street (south side), and Columbia Center Boulevard (east side). The Mall's northern boundary abuts Port of Benton and UPRR railroad tracks that connect at Richland Junction, just east of the proposed crossing.

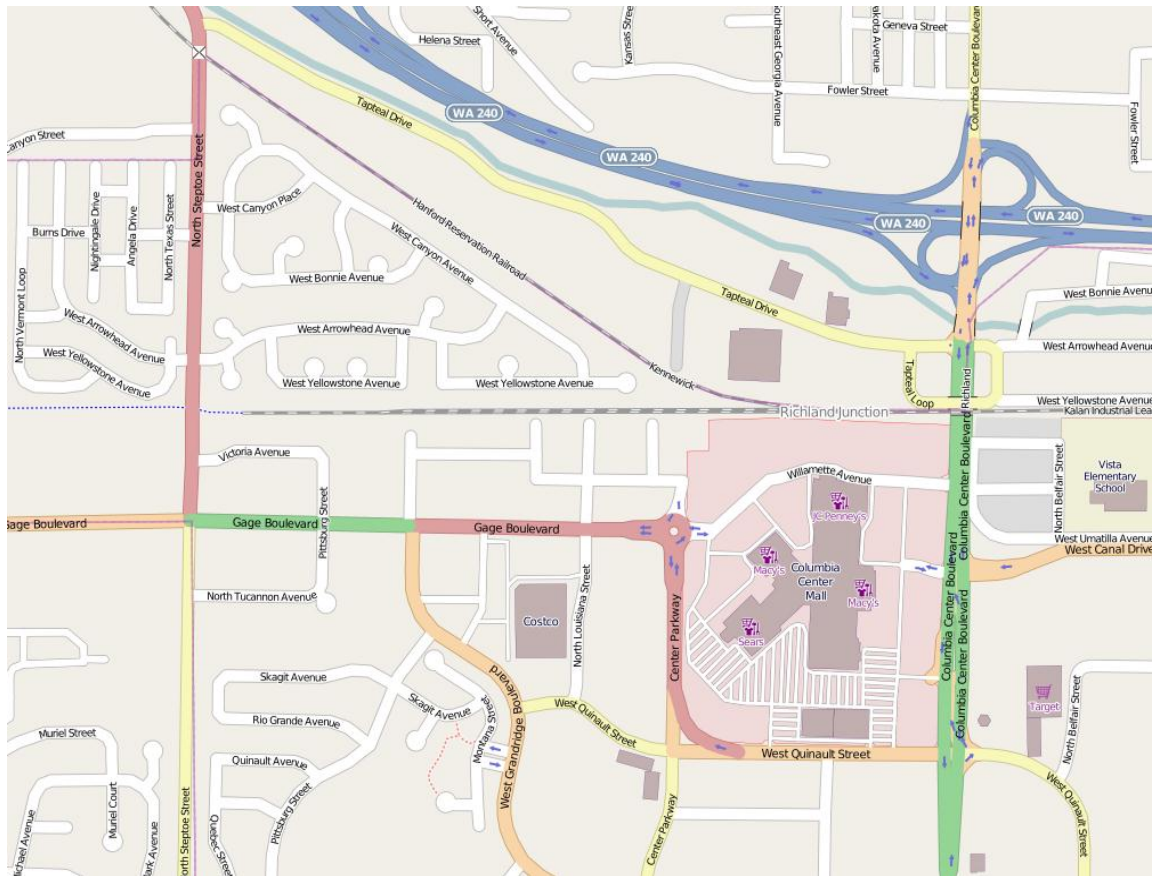


Figure 1. Overview Map of Area (including old UPRR spur track, now removed)

- 9 North of the proposed crossing, Tapteal Drive provides access to a hotel and various retail, commercial and undeveloped properties located in a mile-long pocket of land below Highway 240. The proposed Center Parkway crossing would provide a more direct connection from this area to the Columbia Center Mall.⁹
- 10 Road access between these two areas now exists where Tapteal Drive intersects Columbia Center Boulevard, approximately 0.4 miles east of the proposed crossing.

⁸ Aerial imagery of the area is provided by Exhs. JD-27-X, JD-28-X, JD-29-X, and JD-30-X.

⁹ See Petition at 8; see also Exh. RS-1T, 8:20 – 9:2 and Exh. JD-1T, 3:6 – 4:20.

Columbia Center Boulevard has a grade-separated overpass to cross the UPRR mainline track; however, as this section of the roadway is divided, northbound traffic accessing Tapteal Drive must make a series of right turns to loop up and over the major arterial roadway (Tapteal Loop). Alternatively, Tapteal Drive meets Steptoe Street approximately 0.7 miles west of the proposed crossing. From there, southbound motorists currently pass through a regular at-grade crossing to connect with Gage Boulevard, another major arterial roadway that provides eastbound access to the mall area via the current roundabout intersection with Center Parkway.¹⁰

B. Rail Operations at Richland Junction

11 TCRY is a rail carrier conducting interstate rail operations through Kennewick and Richland. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track. Randolph V. Peterson, Managing Member of TCRY, explained that the second set of tracks immediately west of Richland Junction allows trains to meet and pass when entering or exiting the area. According to Mr. Peterson, this passing track is “absolutely essential” because TCRY makes frequent, if not daily, use of that facility.¹¹ When no passing operations are scheduled, TCRY also uses the second track as a siding to store idle freight cars.¹²

12 Mr. Peterson estimates that TCRY presently operates 10 to 20 freight trains each week on the mainline track that passes through the Richland Junction. BNSF operates another 10 freight trains each week and, on occasion, UPRR operates a “unit train,” a mile-long freight train consisting of approximately 100 to 120 cars all carrying the same cargo. No passenger trains operate on this track. Mr. Peterson testified that the combined annual train traffic through the Richland Junction increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013.¹³ Mr. Peterson expects further

¹⁰ See Exh. JP-5-X, at 2-3. In 2009, the Commission granted the City of Richland’s petition to realign the Tapteal-Steptoe intersection atop the at-grade crossing to create Washington’s first-ever roundabout intersection with a rail line running through the middle. See Exh. GAN-10-X, Docket TR-090912, *City of Kennewick v. Tri-City & Olympia Railroad*, Order 01, Order Granting Petition to Reconstruct the Steptoe Street Highway-Rail Grade Crossing and Modify Active Warning Devices (July 2, 2009). Although the Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan projected this construction to begin in 2012, the City has not yet initiated any construction work. See Exh. RS-4, at 16 (Steptoe Street Phase 3).

¹¹ Peterson, TR. 381:5 – 383:15.

¹² The Cities contend TCRY makes only sparing use of the passing track. See Exh. KJ-13-X, at 2. The Cities argued that several tank cars present on the siding during the evidentiary hearing had not been moved for days or even weeks. Peterson, TR. 405:14 – 410:19; see also Exh. RVP-9-X.

¹³ Exh. RVP-1T at 3-4; see also Exh. RVP-3-X at 1-3. The Cities estimate current train traffic to be appreciably lower, between 3.2 to 5.02 trains per weekday, or 2,310 total railcars moved by TCRY annually. See Exhs. KJ-10T-R, KJ-11, and KJ-12; see also Jeffers, TR. 143:1 – 146:25.

increases in train traffic because of TCRY's continued growth and new commercial developments in the Horn Rapids Industrial Park that will be served by rail.¹⁴

- 13 Gary Ballew, the City of Richland's Economic Development Manager, testified that the Richland City Council recently approved a series of development agreements to construct a rail loop of sufficient size to service unit trains in the Horn Rapids area.¹⁵ Mr. Ballew expects this new rail loop will be operational by summer 2015 and able to process the equivalent of two and a half unit trains per week (approximately one unit train entering or leaving the facility each day).¹⁶ Mr. Ballew also testified that Richland has entered real estate and development agreements with ConAgra Foods to build an automated cold storage warehouse in the Horn Rapids area served by a separate smaller loop track.¹⁷ Mr. Ballew expects an average of 30 rail cars each week will come and go from ConAgra's facility.¹⁸
- 14 All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension.¹⁹ Considering the expected increase train traffic across Richland Junction, TCRY contends that the passing track will become even more essential and perhaps need to be extended to accommodate longer trains.²⁰ Mr. Peterson testified that he opposes the new Center Parkway crossing because rail operations could regularly require freight trains to block the crossing, occasionally for lengthy periods of time.²¹

C. Grade Separation

- 15 Grade separation refers to the method of aligning the junction of two or more surface transportation rights-of-way at different heights (grades) to avoid conflicts or disruption of traffic flows as they cross each other. In the case of highway-rail junctions, underpasses, overpasses, or bridges are the most common forms of grade

¹⁴ Exh. RVP-1T at 5-6; *see also* Exh. GAN-16-X.

¹⁵ Richland's rail loop will be approximately 8400 feet in total length. Ballew, TR. 354:25 – 357:22; *see also* Exhs. JD-37-X, JD-38-X, JD-39-X, KJ-14-X, and King, TR. 334:1 – 336:15 and 337:21 – 340:16.

¹⁶ Ballew, TR. 358:2-12, 364:15 – 365:3, 369:21 – 370:6, 375:4 – 376:24; *see also* Exh. JD-38-X.

¹⁷ Ballew, TR. 342:23 – 345:15; *see also* Exhs. JD-9-X, JD-10-X, and JD-11-X.

¹⁸ Ballew, TR. 345:16 – 346:17 and 373:6-14.

¹⁹ Ballew, TR. 346:22 – 347:8; *see also* Jeffers, TR. 173:10-19.

²⁰ Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 9; *see also* Jeffers, TR. 154:24 – 159:12.

²¹ Peterson, TR. 414:23 –418:5.

separated crossings. The Cities presented evidence contending that grade separation is not warranted at the proposed crossing site because of roadway characteristics, accident prediction models, and cost.

- 16 Rick Simon, Development Services Manager for the City of Richland, testified that constructing a grade-separated crossing at Center Parkway is not feasible due to differences in topography on the north and south sides of the rail line.²² Susan Grabler, a railroad engineer from David Evans and Associates, Inc. (DEA), explained that roadway geometry at Center Parkway and the close proximity of Columbia Center Boulevard make grade separation impracticable.²³ Ms. Grabler pointed out that a grade-separation project would require increasing the steepness of the track approaching the crossing from the existing one percent grade to something greater than two percent, exceeding the operational capabilities of most trains now using that track.²⁴ Kevin Jeffers, a DEA associate working with Ms. Grabler, determined that grade separation would require either replacement of the existing rail bridge over Columbia Center Boulevard (to the east) or elimination of existing access to the hotel immediately north of the crossing due to the depth of the undercrossing.²⁵
- 17 Ms. Grabler also testified that the expected average daily traffic (ADT) on the Center Parkway extension would not justify grade separation. The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook establishes a threshold of 100,000 ADT to require grade separation at an urban crossing.²⁶ The Cities estimate that Center Parkway's traffic will reach only 7,000 ADT by 2033, much lower than the FHWA threshold.²⁷ This low traffic volume contributes to a low predicted accident frequency rate, further reducing justification for grade separation. Using an FHWA model, Mr. Jeffers predicted that the crossing's accident frequency would be 0.145 accidents per year, or 1 accident every 6.9 years.²⁸ Kathy Hunter, testifying for Commission Staff, analyzed a similar crossing in Prosser and forecast an even lower likelihood of accidents at the proposed Center Parkway crossing.²⁹

²² Exh. RS-1T, 6:17-23.

²³ Exh. SKG-1T, 3:13-20; *see also* Grabler, TR. 205:21 – 206:13.

²⁴ Exh. SKG-1T, 6:11-23; *see also* Exh. KJ-1T, 9:7-19.

²⁵ Exh. KJ-1T, 4:12-17.

²⁶ Exh. KJ-2, at 11 (*see* paragraph 6.a.iv).

²⁷ Exh. SKG-1T, 3:21-25; *see also* Exh. KJ-1T, 6:14-20.

²⁸ Exh. KJ-1T, 7:11-20; *see also* Exh. KJ-2 (at 4-8) and Exh. KJ-7 (at 2-3).

²⁹ Exh. KH-1T, 24:21 – 26:22; *see also* Exh. KH-12. Ms. Hunter's calculation predicts 0.018701 collisions per year, or one accident every 53.5 years.

- 18 Jeff Peters, Transportation and Development Manager for the City of Richland, testified that constructing the proposed at-grade crossing would cost approximately \$250,000. Mr. Peters estimated that a grade-separated crossing for Center Parkway would cost between \$15 million and \$200 million.³⁰ Mr. Jeffers identified four different design options for a grade-separated crossing within that price range, each requiring extensive retaining walls due to excavation depths of 20 feet or more for the roadway or, alternatively, fill depths under the tracks in equivalent amounts.³¹
- 19 Commission Staff concurred with the Cities that grade separation is not warranted at this location.³² Noting the low traffic volumes and determining that train crossings would be infrequent, Ms. Hunter endorsed the Cities' proposal to mitigate the dangers of an at-grade crossing through installation of active warning devices, to include advanced signage, flashing lights, audible bell, automatic gates, and a raised median to prevent drivers from going around the gates.³³ Staff believes these measures adequately moderate the dangers presented by the proposed at-grade crossing.³⁴

D. Public Need for Proposed Crossing

- 20 The Cities seek to complete a planned network of roadways and address traffic issues in the area by extending Center Parkway from Tapteal Drive to Gage Boulevard. The Center Parkway extension project has been included in the Cities' comprehensive planning process since 2006.³⁵ The project is also noted for funding in the Benton-Franklin Council of Governments Regional Transportation Plan.³⁶ According to the Cities, extending Center Parkway to Tapteal Drive and constructing the necessary at-grade crossing will decrease emergency vehicle response times, reduce the amount of accidents near the Columbia Center Mall, and improve traffic circulation in an important commercial area.³⁷

³⁰ Exh. JP-1T, 3:1-8.

³¹ Exh. KJ-1T, 10:3-13; *see also* Exhs. KJ-6 and KJ-7 and Jeffers, TR. 195:8 – 201:2.

³² Exh. KH-1T, 8:1 – 12:9.

³³ Exh. KH-1T, 21:15 – 24:19; *see also* Exhs. KH-3 and KH-9.

³⁴ Exh. KH-1T, 27:1-3.

³⁵ Deskins, TR. 58:7-15; *see also* Exhs. RS-2, RS-3, GAN-2-X, GAN-3-X, GAN-4-X, GAN-6-X, GAN-7-X at 2, GAN-13-X, GAN-14-X, and GAN-15-X.

³⁶ *See* Exhs. RS-4, GAN-8-X, and GAN-9-X. The Executive Summary of the Regional Transportation Plan only discusses current congestion on Gage Boulevard in Kennewick being relieved in future years by extension of the Steptoe Street Corridor. The Plan has no specific discussion of anticipated benefits from extending Center Parkway. Exh. RS-4 at 6.

³⁷ Exh. JD-1T, 5:1-21; *see also* Exh. KJ-5.

1. Emergency Response Times

- 21 The Cities’ police and fire departments have each established response time objectives for arriving at emergency incidents or high priority calls. In Richland, the police department has a one-to-five minute average response goal for high priority calls.³⁸ Similarly, Richland’s Fire & Emergency Services first responders seek to arrive at incidents within five minutes or less from time of dispatch, 90 percent of the time.³⁹ Kennewick’s fire response goal is five minutes and the emergency medical response goal is four minutes, each for 90 percent of events.⁴⁰
- 22 The Cities’ emergency response providers support each other and respond to each other’s calls for help.⁴¹ The Cities and three local fire districts signed a Master Interlocal Partnership and Collaboration Agreement in 2010 that includes an “automatic aid agreement” for prioritizing and sequencing certain aid calls.⁴² The Cities’ emergency service providers all agree that extending Center Parkway from Gage Boulevard to Tapteal Drive will improve emergency response times in the area. However, none of these witnesses testified that any of the Cities’ emergency services providers were not routinely meeting their response time objectives.
- 23 Richland Chief of Police Chris Skinner explained that police response times are sometimes difficult to evaluate because officers are often already deployed in the community and can be responding from varied distances.⁴³ Chief Skinner testified that extending Center Parkway would provide better access for his officers, providing them a potentially faster alternative route to choose from when responding to emergency calls.⁴⁴ Kennewick Chief of Police Kenneth Hohenberg testified similarly.⁴⁵ Neither police chief conducted or consulted specific studies to support their claims of faster response times if the proposed crossing was opened.⁴⁶

³⁸ Exh. RS-1T, 5:11-12; *see also* Exh. GAN-4-X.

³⁹ Exh. RS-1T, 5:5-11; *see also* Exh. GAN-3-X.

⁴⁰ Exh. GAN-6-X at 2.

⁴¹ Exh. CS-1T, 3:12-14 and KMH-1T, 2:10-15; *see also* Skinner, TR. 93:19 – 94:5.

⁴² Exh. NH-1T, 2:13-25, and Exh. RGB-1T, 2:18—3:15. *See also* Baynes, TR. 109:4 – 110:15.

⁴³ Skinner, TR. 87:20 – 88:17.

⁴⁴ Exh. CS-1T, 4:1-6.; *see also* TR. Skinner, 95:4-8.

⁴⁵ Exh. KMH-1T, 3:1-21.

⁴⁶ Skinner, TR. 95:4-14; Hohenberg, TR. 138:11-25.

- 24 Kennewick Fire Chief Neil Hines testified that the best emergency response routes for fire and medical units are on “straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate.”⁴⁷ Without a direct connection between Gage Boulevard and Tapteal Drive, Kennewick emergency responders must travel north of the Mall via Columbia Center Boulevard or Steptoe Street, routes that are less direct, occasionally burdened with heavy traffic, and with multiple intersections and numerous turns to negotiate. According to Chief Hines, improving response times by even a few seconds could significantly impact the outcome for a patient in a critical event.⁴⁸ Richland Fire & Emergency Services Director Richard Baynes testified that the Center Parkway extension would provide a viable north-south route for fire and medical units if the primary routes on Steptoe Street or Columbia Center Boulevard were obstructed, growing in value as the Tapteal area continues its development.⁴⁹
- 25 In support of their petition, the Cities submitted a traffic study completed by JUB Engineers, Inc. (JUB Study).⁵⁰ Using the hotel on Tapteal Drive and Center Parkway as an example, the JUB Study claimed that extending Center Parkway northward would reduce the response distance from the City of Kennewick’s fire station to this point by one-third of a mile and reduce the response time from 2 minutes, 48 seconds, down to only 2 minutes. Coming from the Richland Fire Station, the JUB Study found that the response distance would be reduced by almost two-thirds of a mile and reduce response time from 5 minutes, 42 seconds, down to 4 minutes, 18 seconds.⁵¹ Chief Baynes reviewed the response times in the JUB Study against his Department’s records and calculated that “there’s about a minute difference between accessing Tapteal via the proposed crossing versus the traditional routes.”⁵²
- 26 Gary Norris, a traffic engineer hired by TCRY, questioned whether the JUB Study should be relied upon to demonstrate a public need for extending Center Parkway and opening an at-grade crossing. Mr. Norris pointed out that the above-noted 2 minute,

⁴⁷ Exh. NH-1T, 3:15-18.

⁴⁸ *Id.* at 3:18-24.

⁴⁹ Exh. RGB-1T, 4:12-22.

⁵⁰ Exh. KJ-5; *see also* Petition.

⁵¹ Exh. KJ-5, at 9; Exh. JP-5-X, at 1. Exh. KJ-5 provides a vicinity map showing the locations of both fire stations on page 7. Chief Hines stated his agreement with the JUB Study’s response times. *See* Exh. NH-1T, 3:15.

⁵² Baynes, TR. 105:16-18; *see also* Baynes, TR. 107:13-15 and Exh. GAN-18-X. However, Chief Baynes noted that the 2:48 response time could not include the firefighters’ turnout time, as it would only be possible under optimum driving conditions (averaging 28 miles per hour) and probably could not be replicated during heavier daytime traffic. Baynes, TR. 123:4 – 124:13.

48 second response time to the hotel already meets the Cities' goal for response times by a wide margin. Further, Mr. Norris contends that the JUB Study fails to consider that existing or increased future train traffic may make the new roadway unavailable for reliable emergency response.⁵³

27 Acknowledging the possibility of a train blocking the Center Parkway crossing, Chief Baynes explained "the more routes into areas we have, the better" number of alternatives there are for working around such problems.⁵⁴ Even so, Chief Baynes conceded that a unit train could block traffic at both the existing Steptoe Street crossing and the proposed Center Parkway crossing for lengthy periods of time, delaying emergency response times even longer if a fire or medical unit committed to a particular crossing before knowing the train's direction of travel.⁵⁵

28 Mr. Norris presented an alternate response route from the Richland Fire Station to the hotel that avoided the potentially congested intersection of Steptoe Street and Gage Boulevard and would not require crossing a rail line at-grade. Mr. Norris contended that his alternate route over existing streets would take less than four minutes and perhaps be advantageous because it avoided potential delays from traffic and trains.⁵⁶

29 Mr. Norris asserted that the JUB Study does not document an existing lack of reasonable alternate access for public emergency services.⁵⁷ Mr. Simon, Richland's Development Services Manager, conceded that he did not know if there were any areas in the City of Richland where meeting emergency response objectives would be improved by construction of the proposed Center Parkway crossing.⁵⁸

2. Accident Reduction

30 The Cities also contend that opening the Center Parkway crossing would reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that route and also remove the temptation for drivers to use the Mall's ring road as a through-route, endangering pedestrians.⁵⁹ Mr. Deskins likened the new Center

⁵³ Exh. GAN-1T, 5:1 – 6:17.

⁵⁴ Baynes, TR. 108:9 – 109:3 and 119:9-11.

⁵⁵ Baynes, TR. 114:1 – 120:12; *see also* TR. 130:3 – 132:1.

⁵⁶ Norris, TR. 308:7 – 309:19; *see also* Exh. GAN-19-X. Mr. Norris calculated response speed to be approximately 28 miles per hour, the same as that relied upon in the Cities' JUB Study. Norris, TR. 310:8 – 312:16.

⁵⁷ Exh. GAN-1T, 5:1-16.

⁵⁸ Simon, TR. 60:13 – 61:5.

⁵⁹ Exh. JD-1T, 4:1-20 and Exh. JD-2TR, 2:23 – 3:4; *see also* Exh. SM-1TR, 6:9-12.

Parkway crossing to “connecting the parking lots between two popular businesses so that drivers don’t have to enter the busier city street to travel between the two.”⁶⁰

31 Mr. Deskins provided an exhibit listing 12 years of crash data for two Columbia Center Boulevard intersections: Quinault Avenue and Canal Drive.⁶¹ Going back to 2001, the intersection reports show 154 total crashes at Quinault Avenue and 165 total crashes at Canal Drive.⁶² According to Mr. Deskins, opening the Center Parkway crossing on the other side of the Mall would reduce traffic at these intersections and “should ultimately reduce crashes” at these locations.⁶³ Spencer Montgomery, a transportation specialist with JUB Engineers, explained that JUB did not perform a study to support this conclusion because “if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents.”⁶⁴

3. *Mitigation of Traffic Congestion*

32 In compliance with the Growth Management Act (GMA), the Transportation Element of Richland’s Comprehensive Plan adopts standards and threshold levels of service (LOS) for the City’s intersections. The LOS scale goes from A to F, measuring the length of delay a vehicle will experience at a signalized intersection. Richland’s threshold LOS for acceptable delay is LOS D, a delay of 35-55 seconds; any intersection rated worse (E or F) is considered deficient.⁶⁵

33 The Cities presented evidence that Columbia Center Boulevard is one of the busiest roadways in the region and that Steptoe Street could occasionally be congested at peak hours.⁶⁶ Further, the roadways around Columbia Center Mall can become extremely congested during the holiday shopping season in late November and early December.⁶⁷ According to the JUB Study, extending Center Parkway to Tapteal Drive will relieve some of this traffic congestion, but the study provides no further explanation of how the proposed crossing will achieve this result.⁶⁸

⁶⁰ Exh. JD-1T, 4:5-7.

⁶¹ Exh. JD-3.

⁶² *Id.* at 7 and 14.

⁶³ Exh. JD-2TR, 3:8-14.

⁶⁴ Montgomery, TR. 222:14-23.

⁶⁵ Exh. RS-2 at 17-19; *see also* Exh. RS-1T, at 4-5 (generalized explanation of LOS).

⁶⁶ Exh. KJ-5, at 9.

⁶⁷ Exh. JD-1T, 3:6-26.

⁶⁸ Montgomery, TR. 219:2-12 (acknowledging that the JUB Study provides no data or explanation of the methodology used to arrive at its conclusions).

34 JUB's Mr. Montgomery estimated that 7,000 vehicles per day would make use of the new Center Parkway crossing, some coming from Columbia Center Boulevard and some coming from Steptoe Street.⁶⁹ The JUB Study predicts that in 20 years, opening the Center Parkway crossing will decrease the afternoon peak hour volumes on those streets by 210 and 310 vehicles, respectively.⁷⁰ The JUB Study makes no further predictions on how opening Center Parkway would improve LOS ratings at surrounding intersections currently suffering congestion issues.⁷¹

35 Mr. Simon testified that "one way to reduce congestion is to increase the number of access routes between any two points" and contended "the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion."⁷² As to LOS levels, Mr. Simon testified that Tapteal Drive was not currently operating at a deficient level,⁷³ but two other intersections south of the railroad tracks were identified as deficient: Columbia Center Boulevard at Quinault⁷⁴ and Steptoe Street at Gage Boulevard.⁷⁵ When asked to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, Mr. Simon stated "I'm not sure that I can."⁷⁶ Even though he had not seen any data or traffic studies to inform his opinion, Mr. Simon also asserted that a Center Parkway crossing

⁶⁹ Montgomery, TR. 222:24 – 225:6; see also Exh. KJ-5, at 11.

⁷⁰ Exh. KJ-5, at 13, 17, and 19; *see also* Exh. GAN-1T, 7:13-19.

⁷¹ The JUB Study claims that after construction of the proposed crossing, the Center Parkway / Tapteal Drive intersection would operate a LOS C for northbound left turns and LOS B for northbound right turns. Exh. KJ-5, at 14.

⁷² Exh. RS-1T, 5:22-25.

⁷³ Simon, TR. 61:18-22.

⁷⁴ According to information provided to Kevin Jeffers by John Deskins and Spencer Montgomery, the intersection of Columbia Center Boulevard and Quinault Street is deficient because the eastbound left-turn movement is currently LOS E, degrading to LOS F by 2028. The overall intersection is currently LOS C, but expected to degrade to LOS F by 2028. *See* Exh. GAN-17-X.

⁷⁵ According to that same information, the intersection of Steptoe Street and Gage Boulevard is deficient because the southbound left-turn movement is currently LOS F, with three out of four left-turn movements degrading to LOS F by 2028. The overall intersection is currently LOS E and expected to remain at that level in 2028. *See* Exh. GAN-17-X.

⁷⁶ Simon, TR. 67:1-13. Mr. Simon conceded that other than the JUB Study, he had no other evidence to support his opinion. Simon, TR. 62:16 – 63:6 (referring to the intersection of Columbia Center Boulevard and Quinault Street).

could improve the deficient LOS at the Steptoe Street and Gage Boulevard intersection by allowing some traffic to divert to the proposed crossing.⁷⁷

- 36 Mr. Deskins, the City employee most familiar with the City's traffic modeling simulation, conceded that he did not perform an LOS analysis specifically focused on the result of installing the proposed crossing at Center Parkway.⁷⁸ Mr. Deskins also acknowledged that he did not attempt to consider or model potential delays from trains at the proposed crossing or at the existing Steptoe Street crossing.⁷⁹

DISCUSSION AND DETERMINATIONS

A. Res Judicata Does Not Bar the Cities' Petition

- 37 TCRY argues that the Commission's 2007 Order denying the City of Kennewick's request to construct an at-grade crossing at Center Parkway precludes the Cities from pursuing a subsequent petition seeking the same relief.⁸⁰ According to TCRY, the prior and current petitions are "fundamentally identical" in seeking an at-grade crossing at the same location.⁸¹
- 38 The Cities differentiate their current petition from the one put forward in 2005: they followed comprehensive planning update procedures adopted in 2006, completed extensive engineering and design studies, and worked with stakeholders to eliminate two track crossings from the project.⁸² Commission Staff agrees that removal of two track crossings and the related reduction in rail switching operations at the site present a substantial change in circumstances.⁸³
- 39 In administrative proceedings, the doctrine of res judicata limits repeated submissions of applications involving the same subject matter.⁸⁴ In order to apply res judicata, repeat applications must have the same (a) subject matter, (b) cause of action, (c) persons and parties, and (d) quality of the persons for or against whom the claims

⁷⁷ Simon, TR. 67:14 – 69:22.

⁷⁸ Deskins, TR. 78:4-7; *see also* Deskins, TR. 73:4-12.

⁷⁹ Deskins, TR. 79:2 – 81:8. Mr. Deskins stated that because he was focused on specific intersection LOS ratings, the impact of delays from trains at the crossings "didn't concern me."

⁸⁰ Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 3:5 – 6:3.

⁸¹ *Id.* at 5:16-17.

⁸² Petitioners' Post-Hearing Brief at 3-4.

⁸³ Post-Hearing Brief of Commission Staff at 13-14.

⁸⁴ *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

are made.⁸⁵ Second applications that present a substantial change in circumstances or conditions are permitted.⁸⁶

40 There is no dispute that the Center Parkway crossing is proposed for the same site and the same use previously rejected in the 2007 Order. However, the Cities have negotiated with BNSF and UPRR to remove their switching tracks from the area, reducing the number of tracks involved from four down to two. This alone is a significant change from the prior circumstances. Further, the record supporting the current petition is substantially different than that created seven years ago: the Cities presented updated traffic studies, additional detail regarding emergency response needs in the area, and much more detailed information about safety mitigation measures and warning devices to be installed at the proposed crossing. In addition to these substantial factual differences, the 2007 Order suggested that the Commission would consider a second application.⁸⁷

41 The Commission finds that the Cities' current petition presents a substantially different situation from that considered by the Commission seven years ago. The Commission determines that *res judicata* does not bar the Cities' current petition.

B. The Growth Management Act is Not Dispositive

42 The Cities contend that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act.⁸⁸ Therefore, the Cities argue that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for the Cities to achieve their stated LOS for emergency response times and traffic flow at signalized intersections.⁸⁹ According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. Taken to its logical end point, the Cities' argument

⁸⁵ *Id.* at 32, citing *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

⁸⁶ *Id.* at 32-33.

⁸⁷ 2007 Order at 10, ¶ 23 ("...the petitions could be denied without further discussion. However, it may provide some guidance to Kennewick for future filings to consider the second prong of the legal standard.").

⁸⁸ Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to RCW 36.70A.103's mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

⁸⁹ Petitioners' Post-Hearing Brief, at 9-11.

would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.⁹⁰

43 We disagree that a land use planning statute deprives the Commission of its statutory authority to regulate public safety at rail crossings. We do not dispute that the GMA requires cities such as Richland and Kennewick to plan for future growth and make efforts at intergovernmental coordination.⁹¹ However, a jurisdiction's comprehensive planning obligations under the GMA do not substitute for meeting the standards set out in RCW 81.53. The GMA and RCW 81.53 both address transportation safety issues, but from wholly different perspectives on public policy. In order to maintain the integrity of both statutes within the overall statutory scheme, the GMA must be read together and in harmony with RCW 81.53.⁹² We find that the Cities must comply with the requirements of both statutes.

44 The Commission's statutory responsibility to protect the public from the dangers inherent to all at-grade crossings is independent of the Cities' obligation to plan under the GMA. The Commission retains and will exercise its authority to determine whether the proposed crossing satisfies the requirements of RCW 81.53.

C. Standards for Commission Approval of Rail Crossings

45 RCW 81.53.020 prohibits construction of at-grade crossings without prior authorization from the Commission. The statute requires that crossings be grade-separated "when practicable" and provides that:

In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

⁹⁰ *Id.* at 8. In essence, the Cities argue that the GMA invalidated the Commission's ruling in *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*), at least for GMA planning jurisdictions.

⁹¹ RCW 36.70A.070(6)(a)(v) requires the transportation element of a growth management plan to include intergovernmental coordination efforts.

⁹² *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), citing *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.").

If a grade crossing is authorized, RCW 81.53.030 allows the Commission to require installation and maintenance of proper signals or other devices to ensure public safety.

46 The Commission answers three key questions when evaluating a petition to authorize construction of a new at-grade crossing:

- 1) Considering engineering requirements and cost constraints, is grade-separation practicable?
- 2) Have inherent and site-specific hazards been moderated to the extent possible?
- 3) Is there a demonstrated public need for the crossing that outweighs the risks of opening the at-grade crossing?⁹³

The Cities carry the burden of proof for each of these issues. Absent the required showing of impracticability of grade separation, moderation of risks, and a sufficient demonstration of public need, the Commission will not authorize the Cities to open a new at-grade crossing at Center Parkway.

1. Practicability of Grade Separation

47 By its nature, an at-grade crossing poses hazards for motorists, pedestrians, and railroad operators that are not present at grade-separated crossings. Washington courts have deemed at-grade crossings to be inherently dangerous.⁹⁴ In determining whether the Commission will require grade separation, RCW 81.53.020 requires an evaluation of

- the amount and character of travel on the railroad and on the highway;
- the grade and alignment of the railroad and the highway;
- the cost of separating grades;
- the topography of the country; and
- all other circumstances and conditions naturally involved in such an inquiry.

⁹³ See *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*); see also *Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995).

⁹⁴ See *Reines v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104, 104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949).

In addition to these statutory factors, Commission Staff relies on the U.S. Department of Transportation's Federal Railroad Administration Railroad-Highway Grade Crossing Handbook (FRA Handbook) when considering "other circumstances and conditions" for grade separating a roadway from a railroad right-of-way, such as predicted accident frequency and vehicle delay times.⁹⁵

48 Mr. Deskins and Mr. Montgomery testified that Center Parkway is expected to carry up to 7,000 vehicles per day by the year 2033. Mr. Peterson and Mr. Jeffers estimated that rail traffic may grow from the current high of five trains per weekday to perhaps double that amount in the foreseeable future. According to the FRA Handbook, traffic levels this low do not mandate grade separation, even in an urban setting.⁹⁶

49 Mr. Simon, Ms. Grabler, and Mr. Jeffers all testified to the infeasibility of constructing a grade-separated crossing due to roadway alignment, topography, and cost considerations. Further, Mr. Jeffers and Ms. Hunter determined that accidents at the proposed crossing would be uncommon and infrequent. Finally, the JUB Study provided assurances that lowered crossing gates associated with normal rail operations would not result in vehicle queues extending into nearby intersections.

50 The Commission finds that the amount and character of travel on the railroad and on Center Parkway do not justify grade separation. Further, there is no evidence in the record disputing the engineering infeasibility of constructing a grade-separated crossing at Center Parkway. Finally, there is no serious dispute in the record that a grade-separated crossing would be tremendously more expensive than the proposed at-grade crossing. Therefore, considering engineering requirements and cost constraints, the Commission determines that a grade-separated crossing is not practicable at Center Parkway.

2. Moderation of Risk

51 If grade separation is impracticable, the Commission evaluates whether inherent and site-specific hazards at a proposed at-grade crossing have been moderated to the extent possible. As noted above, the risks of an accident at the proposed crossing are relatively low considering current and projected train traffic and predicted levels of

⁹⁵ Exh. KH-7 and Exh. KJ-2 at 11. The FRA Handbook echoes the statute's requirement to consider the levels of train traffic, train speeds, and levels of auto traffic, and posted speed limits. The FRA Handbook also states that "[i]f a new access is proposed to cross a railroad where railroad operation requires temporarily holding trains, only grade separation should be considered." *See* Exh. KH-10.

⁹⁶ *See* Norris, TR. 321:10 – 325:5.

vehicle traffic. However, the existence of a second set of tracks and limited sight distances from some approaches to the crossing present a risk for motorists.

52 The Cities' petition includes crossing design specifications intended to mitigate the dangers of the at-grade crossing with active warning devices. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip designed to prevent drivers from going around lowered gates.

53 Commission Staff performed a diagnostic review of the proposed crossing design configuration and determined that the Cities' planned safety devices specifically address the hazards presented by the proposed Center Parkway at-grade crossing.⁹⁷ There is no evidence in the record disputing Staff on this determination.

54 We concur with Commission Staff that the petition's proposed advance and active warning devices would moderate the risks presented by this crossing to the extent possible at this site, even with motorists crossing two sets of tracks.

3. Demonstration of Public Need

55 The Commission will not approve construction of a new at-grade crossing without a demonstration of public need that outweighs the hazards inherent in the at-grade configuration. Petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.⁹⁸

56 In the City of Kennewick's prior petition to construct an at-grade crossing at this same location, the Commission determined that Kennewick failed to demonstrate "acute public need" and denied the petition.⁹⁹ The 2007 Order concluded that a city's goal to encourage economic development did not rise to the level of an acute public need, noting that economic development was already occurring along Taptal Drive even without the proposed crossing.¹⁰⁰ The 2007 Order also concluded that traffic mitigation might constitute an acute public need, but only if alternate crossings were insufficient to accommodate traffic. The traffic study presented seven years ago

⁹⁷ Exh. KH-5.

⁹⁸ See *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011).

⁹⁹ 2007 Order, ¶¶ 24-26.

¹⁰⁰ *Id.* ¶ 25.

showed only a *de minimis* level of traffic diversion to Center Parkway and did not prove the nearby alternate crossings insufficient to handle the entire traffic flow.¹⁰¹

57 The Cities and Staff argue that the 2007 Order relied upon an outdated and overly stringent “acute public need” standard. They contend that in recent years the Commission has approved opening other at-grade crossings using a balancing test, weighing the need for the crossing against any dangers remaining after installation of safety devices.¹⁰² The Cities and Staff cite several orders approved through the Commission’s open meeting process, none of which presented the complexities involved in this matter.¹⁰³

58 We agree with the Cities and Staff that the statute does not require a showing of “acute public need” to justify opening a new at-grade crossing. Nevertheless, no party petitioned for review of the 2007 Order and, until now, we have not had an opportunity to revisit the Center Parkway crossing. RCW 81.53 does not prohibit the Commission from approving approve new at-grade crossings, but mere convenience or a *de minimis* showing of need will not suffice. As Staff points out, we are obligated to balance public need against the hazards presented by a new crossing.¹⁰⁴ The Cities similarly concede that the Commission must determine “whether there is a

¹⁰¹ *Id.* ¶ 26.

¹⁰² Petitioners’ Post-Hearing Brief at 5-7, n. 20, and Post-Hearing Brief of Commission Staff at 9-12; *see also* Hunter, TR. 273:16 – 277:22. Staff also points out that while the FRA Handbook discourages opening new crossings, it recognizes that consideration of public necessity, convenience, safety, and economics will factor into individual decisions. According to the Handbook, “new grade crossings, particularly on mainline tracks, should not be permitted unless no other alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings.” *See* Exh. KH-10.

¹⁰³ The Cities cited open meeting dockets that were all uncontested and did not benefit from a thoroughly developed evidentiary record. The only case with any persuasive value resulted in a net closure of crossings, trading two existing passively protected private at-grade crossings in the City of Marysville for one new public crossing with active warning devices (Docket TR-111147). None of the other approved new crossings were in urban areas where over 7,000 vehicles per day were expected to cross tracks currently traveled by five or more trains per day (in one case, the Commission approved a new crossing to divert approximately 400 commercial vehicles per day away from residential roadways and across a single set of tracks traveled by up to two trains per day (Docket TR-112127); in two other cases, the Commission approved installing new industrial rail lines across very lightly traveled roadways in order to promote industrial growth (the road in Docket TR-100072 had only 150 vehicles per day and the road in Docket TR-121467 had less than 1600 vehicles per day); and in two other cases, the Commission approved new pedestrian-only crossings across lightly used tracks (Docket TR-100041 had one weekly freight train and Docket TR-110492 had no active railroading operations)).

¹⁰⁴ Post-Hearing Brief of Commission Staff at 12, ¶ 33.

demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.”¹⁰⁵

59 In this case, the Cities attempt to demonstrate public need by arguing improvements to public safety through faster emergency response times, reduced accident rates around the Columbia Center Mall, and relief of traffic congestion at nearby intersections with deficient levels of service. As explained below, the evidence in the record does not support the Cities’ arguments that opening the Center Parkway crossing will create such improvements or alleviate existing traffic problems.

a) Emergency Response Times

60 The Cities contend that the proposed crossing will improve emergency response times. However, the evidence in the record demonstrates that the Cities’ police and fire departments are generally meeting the response time objectives established in their respective comprehensive plans. Although the Cities point out individual statistics where response times have occasionally exceeded these goals,¹⁰⁶ the Cities’ emergency responders are not regularly failing to achieve their established LOS. We recognize that improving emergency medical response times by even a few seconds could significantly impact the outcome for some patients, but the Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety.

61 Even if the Cities’ emergency response time LOS levels were deficient, there is insufficient evidence in the record to demonstrate that opening a crossing at Center Parkway would solve this problem. Richland’s comprehensive planning documents do not focus on building more roadways to solve response time deficiencies. Instead, the capital facilities element of Richland’s GMA documents discuss building additional fire stations closer to areas needing better response times.¹⁰⁷

62 Chief Baynes, Chief Skinner, and Chief Hohenberg all testified that more choices and more alternatives are always better for emergency responders. However, this new access route between Gage Boulevard and Tapteal Drive may prove to be an illusory option if rail traffic increases according to even the most conservative estimates made

¹⁰⁵ Petitioners’ Post-Hearing Brief at 6, citing *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County’s Petition for an At-Grade Railroad Crossing, Subject to Conditions (February 15, 2011) at ¶ 29.

¹⁰⁶ Petitioners’ Post-Hearing Brief at 10, citing to Exhs. GAN-3-X and GAN-18-X. Chief Baynes provided little, if any, context for additional response time data he provided in Exh. GAN-18-X. See Baynes, TR. 103:5 – 105:21, 121:13 – 125:6 and Norris, TR. 295:6 – 297:16.

¹⁰⁷ See Exhs. GAN-3-X and GAN-4-X.

part of the record in this case. The potentially shorter response times that might be possible to a very limited area of south Richland with this new at-grade crossing are not sufficient to demonstrate public need.

b) Reduced Accident Rates

63 The Cities also argued that a public need exists to open the Center Parkway crossing because doing so would reduce traffic accident rates at two Columbia Center Boulevard intersections. However, neither the JUB Study nor the Cities' traffic engineering witnesses provided any data or studies to support this assertion.

64 Mr. Deskins provided raw data on the number of vehicle collisions over a decade's time but analysis on how or why these accidents occurred. Mr. Montgomery offered only unconfirmed notions that reducing traffic levels would reduce accident rates. The record has no persuasive evidence connecting improved traffic safety on Columbia Center Boulevard to opening a new roadway that will regularly be blocked by rail traffic.

c) Relief of Traffic Congestion

65 Similarly, the Cities presented evidence showing that busy intersections in the vicinity of the Mall were approaching deficient LOS levels during peak travel times. Traffic waits for left turn signals at two intersections feeding into the Mall are already one level below the acceptable LOS D. We do not dispute that the Cities must find a way to resolve traffic congestion patterns in this area, but the Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute to this desired result:

- The JUB Study made no specific findings about how a crossing at Center Parkway would impact deficient LOS ratings at congested intersections.
- Mr. Simon was unable to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.
- Mr. Deskins failed to conduct any LOS analysis focused on the installation of a crossing at Center Parkway and never factored train delays into any of the models he did consider.

66 The record does not conclusively link extending Center Parkway to any improvement in traffic flow at congested intersections in the immediate area. At best, the record demonstrates that opening the proposed at-grade crossing will make public travel

more convenient between the Tapteal Drive area and the Columbia Center Mall. It is certainly possible that opening a new roadway will divert traffic away from existing overcrowded intersections, but supposition alone is not sufficient to demonstrate public need. The Cities failed to demonstrate that opening the proposed Center Parkway crossing would reduce traffic congestion around the Mall or at the intersection of Gage Boulevard and Steptoe Street.

4. Balancing of Public Need Against Hazards of At-Grade Crossings

67 The Cities failed to demonstrate public need for the proposed crossing, leaving nothing to balance against the inherent hazards of an at-grade crossing. Even if public convenience were sufficient to demonstrate public need, we find that it does not outweigh the hazards of an at-grade crossing.

68 By its nature, opening a new at-grade crossing at Center Parkway would increase risk to motorists by creating another opportunity to interact with freight trains. Motorists who might deviate from Columbia Center Boulevard's grade-separated crossing in order to access the Tapteal Road area would trade safe and undelayed passage over the UPRR tracks for a potentially faster route that comes with a risk of collision. The active safety measures proposed to be installed at the crossing would mitigate, but would not eliminate, such risk.

69 The Cities' justifications for the crossing do not outweigh the risk. At most, the evidence demonstrates that, on occasion, a police, fire, or ambulance response *might* be faster if the Center Parkway crossing was available and no trains were blocking traffic. Some drivers also would find the option to use Center Parkway more appealing to enter or depart the north side of the Columbia Center Mall than Gage Boulevard, particularly during the busy holiday shopping season. Such slight benefits do not overcome the law's strong disfavor for at-grade crossings. Accordingly, the Commission should deny the Cities' petition for failure to demonstrate a public need for the proposed crossing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

70 Having discussed above in detail the evidence received in this proceeding regarding all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts and conclusions, incorporating by reference pertinent portions of the preceding detailed discussion:

71 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad

crossings, and has jurisdiction over the parties and subject matter of this proceeding.

- 72 (2) The City of Richland and the City of Kennewick are governmental entities authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweigh its inherent risks.
- 73 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.
- 74 (4) Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53.
- 75 (5) A grade-separated crossing at the proposed project site is not practicable because of engineering requirements and cost constraints.
- 76 (6) The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and plans to install active warning devices and other safety measures.
- 77 (7) The Cities' emergency responders are meeting or exceeding the response time objectives established in the Cities' comprehensive plans.
- 78 (8) The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall, but only when trains are not blocking the intersection.
- 79 (9) The Cities did not produce sufficient evidence to demonstrate that the Center Parkway extension would reduce accident rates in the area or improve traffic flow at congested intersections surrounding the Columbia Center Mall.
- 80 (10) The Cities failed to demonstrate sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.
- 81 (11) The Commission should deny the City of Richland's and City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

ORDER

THE COMMISSION ORDERS:

- 82 (1) The petition filed by the City of Kennewick and joined in by the City of
Richland is denied.
- 83 (2) The Commission retains jurisdiction to enforce the terms of this order.

Dated at Olympia, Washington, and effective February 25, 2014.

WASHINGTON 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 a Petition for review within ten (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: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250