

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

CITY OF MARYSVILLE,

Petitioner,

To Construct a Public Railroad-Highway
Grade Crossing.

DOCKET TR-111147

COMMISSION STAFF'S PETITION
FOR RESCISSION OF ORDER 01

I. INTRODUCTION AND RELIEF REQUESTED

1 In the 13 years since the Commission entered Order 01 in this docket to approve the petition to construct a highway-rail grade crossing filed by the City of Marysville (“the City”), the City has failed to begin construction on the project. Staff recommends rescinding Order 01, which was based on information that has become stale based on that delay in both beginning and completing construction of the grade crossing. Rescinding Order 01 will require the City to submit a new petition when and if it pursues construction of the crossing project, allowing the Commission to evaluate the revived project based on current information.

II. STATEMENT OF FACTS

2 There are effectively only four relevant facts here. They are: (1) the City filed its petition, with then-current information, in the spring of 2011;¹ (2) the Commission issued Order 01 to grant that petition in mid-summer 2011;² (3) the City has not begun construction

¹ *In re Petition of City of Marysville*, Docket TR-111147, Petition to Construct or Reconstruct a Highway-Rail Grade Crossing & Install an Inter-Tie Between a Highway Signal & a Railroad Crossing Signal System (June 22, 2011).

² *In re Petition of City of Marysville*, Docket TR-111147, Order 01 (Aug. 5, 2011); Decl. (Turcott Decl.) at 1 ¶ 4.

on the project in the 13 years since the Commission approved it, and the City has no immediate plans to do so;³ and (4) the approval of a petition may turn stale because “[d]esign work for crossing projects can become outdated or obsolete due to changes in rail crossing technology, industry standards, state and federal regulations, highway and rail traffic levels, and development in project areas.”⁴

III. STATEMENT OF ISSUES

3 Should the Commission rescind Order 01 in this docket due to the City’s failure to proceed with the project in the 13 years since the Commission approved its petition?

IV. ARGUMENT

4 The Commission allows parties to petition for rescission of an order.⁵ Those petitions “must comply with the requirements in WAC 480-07-870 for a petition for rehearing.”⁶ WAC 480-07.870(1) requires petitioners to do two things: (1) “set forth sufficient grounds for rehearing the commission order,” and (2) “include substantial evidence or an offer of proof in support of the requested relief.” One sufficient ground for rehearing (and thus rescission) is “any good and sufficient cause that the commission did not consider or determine in the order.”⁷

5 Good and sufficient cause exists to rescind Order 01, and a finding of that good cause is supported by the Declaration of Mike Turcott, which Staff submits concurrently with this petition. When the Commission approves a petition to construct a highway-rail grade crossing, it almost certainly expects that there will be lag time before the parties

³ Turcott Decl. at 1 ¶ 4, 6.

⁴ Turcott Decl. at 1 ¶ 5.

⁵ WAC 480-07-875(1).

⁶ WAC 480-07-870(1).

⁷ WAC 480-08-870(1)(d).

complete the project, the realities of construction being what they are. But the Commission does not assume the passage of at least four presidential election cycles between when it approves a petition and the project's completion. But that is exactly what happened here: in the 13 years since the Commission entered Order 01, the City has not begun construction of the grade crossing.⁸ Indeed, it has no immediate plans to do so.⁹

6 That delay is problematic. The design work involved with a petition becomes stale with the passage of time for various reasons: technological change, regulatory change, changes in industry standards and practices, and growth and development in the project area.¹⁰ The Commission now addresses that reality by requiring that petitioners complete any grade crossing project within 5 years of the date of approval.¹¹ This project has not been completed despite the passage of a significantly longer period of time, some 13 years. The approval is stale, and the Commission should rescind it. The City may file a new petition with new, updated design work when it is ready to proceed with the project.

V. CONCLUSION

7 The Commission should find good cause to rescind Order 01 due to the delay in completing (indeed, in beginning) construction of the grade crossing approved by the order. The Commission should rescind Order 01 on that basis.

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⁸ Turcott Decl. at Attachment A.

⁹ See Turcott Decl. at Attachment B.

¹⁰ Turcott Decl. at 1 ¶ 5.

¹¹ See, e.g., *In re Petition of City of Renton*, Docket TR-240448, Order 01 (June 27, 2024) (requiring project completion within five years of entry of the order).

DATED this 7th day of November, 2024.

Respectfully submitted,

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