

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK,	)	
	)	DOCKET NO. TR-040664
Petitioner,	)	
	)	ORDER NO. 05
v.	)	
	)	PREHEARING CONFERENCE
UNION PACIFIC RAILROAD,	)	ORDER; ORDER OF
	)	CONSOLIDATION
Respondent.	)	
.....	)	
	)	
CITY OF KENNEWICK,	)	DOCKET NO. TR-050967
	)	
Petitioner,	)	ORDER NO. 01
v.	)	
	)	PREHEARING CONFERENCE
PORT OF BENTON and TRI-CITY &	)	ORDER; ORDER OF
OLYMPIA RAILROAD,	)	CONSOLIDATION
	)	
Respondent.	)	
.....	)	

1     **Proceedings:** Docket No. TR-040664 is a petition by the City of Kennewick for approval of a proposed silent, at-grade crossing of Center Parkway with the Union Pacific Railroad's (UPRR) dead end spur west of Richland Junction (MP 18.8).

2     Docket No. TR-050967 is a petition by the City of Kennewick for approval of a proposed silent, at-grade crossing of Center Parkway over the Port of Benton Hanford Industrial Branch west of Richland Junction (MP 18.8).

- 3     **Procedural History – Docket No. TR-040664.** On April 9, 2004, the City of Kennewick filed its at-grade crossing petition of Center Parkway over the Union Pacific Railroad’s dead end spur west of Richland Junction (UPRR petition). On June 16, 2004, the Commission issued a notice of prehearing conference in the UPRR petition for June 28, 2004. This conference was continued three times at the parties’ request in order to provide the parties an opportunity to attempt to resolve the matter. The Commission convened a prehearing conference on October 19, 2004, before Administrative Law Judge C. Robert Wallis and entered Order No. 01 setting a procedural schedule, and a hearing date of May 9, 2005.
- 4     On November 23, 2004, the Commission modified the procedural schedule at the parties’ request in order to accommodate schedule conflicts. Under the modified schedule, the evidentiary hearing was scheduled for June 6, 2005. On February 24, 2005, the Commission entered Order No. 02, suspending the procedural schedule on the parties’ representation that they had reached a tentative settlement agreement contingent on two conditions being met by April 1, 2005.
- 5     On April 26, 2005, the Commission entered Order No. 03, extending the deadline to June 1, 2005, for reporting in writing with an agreed settlement or recommendations for further process, and setting a prehearing conference for June 2, 2005, to discuss the status of the docket.
- 6     On June 2, 2005, the Commission convened a prehearing conference before Administrative Law Judge Karen M. Caillé, acknowledged the parties’ efforts to settle the matter, and set a new procedural schedule that would allow time for UPRR to finalize terms with BNSF Railway Company (BNSF), if the proposal remained viable. Order No. 04 set forth the new schedule with a prehearing

conference to be held on January 6, 2006, and an evidentiary hearing on January 19, 2006.

7 **Procedural History – Docket No. TR-050967.** On June 27, 2005, the City of Kennewick filed its at-grade crossing petition of Center Parkway over the Port of Benton Industrial Branch west of Richland Junction(Port of Benton petition). By letter dated July 19, 2005, the City of Kennewick requested that the Commission take no action on the petition pending negotiations in a related petition in Docket No. TR-040664.

8 On November 7, 2005, UPRR filed a Motion to Consolidate the UPRR petition with the Port of Benton petition. Commission Staff filed an answer to UPRR's Motion to Consolidate, agreeing with UPRR that the Tri-City & Olympia Railroad and the Port of Benton are necessary parties to the UPRR adjudication since the proposed roadway would cross both UPRR and Tri-City/Port of Benton tracks.

9 On December 19, 2005, the City of Kennewick requested the Commission move the Port of Benton petition to an adjudicative status. The Commission docketed the Port of Benton petition as Docket No. TR-050967, and noticed the matter for prehearing conference on January 6, 2006. The Commission noticed the parties in Docket No. TR-040664 of a simultaneous prehearing conference in Docket No. TR-050967, and informed all parties that consolidation of Docket Nos. TR-040664 and TR-050967 would be one of the issues discussed at the prehearing conference.

10 **Conference.** The Commission convened a prehearing conference in Docket Nos. TR-040664 and TR-050967 at Olympia, Washington on January 6, 2006, before Administrative Law Judge Karen M. Caillé. At the conference the parties agreed to consolidate the two dockets with the understanding that the parties in Docket

No. TR-050967 would be given adequate time to review the filings, conduct discovery, and prepare written testimony.<sup>1</sup> The parties agreed to a new procedural schedule to accommodate Docket No. TR-050967.

- 11 **Appearances.** John Ziobro, City Attorney, represents the City of Kennewick. Carolyn Larson, Kilmer, Voorhees & Laurick, Portland, OR, represents respondent Union Pacific Railroad. Jonathan Thompson, Assistant Attorney General, Olympia, represents the Commission Staff. Tom Cowan, Cowan Moore Stam & Luke, P.S., Richland, represents the Port of Benton. Brandon L. Johnson, Miller Mertens & Spanner, PLLC, Kennewick, represents the Tri-City and Olympia Railroad. Kevin MacDougall, Montgomery Scarp, Seattle, represents BNSF. Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.
- 12 **Consolidation.** The UPRR filed a Motion to Consolidate the UPRR petition with the Port of Benton petition. Commission Staff agrees with UPRR that the Tri-City & Olympia Railroad and the Port of Benton are necessary parties to the UPRR petition since the proposed roadway would cross both the UP and Tri-City/Port of Benton tracks. The City of Kennewick does not object to the consolidation, nor do the Tri-City & Olympia Railroad, the Port of Benton, or BNSF, as long as they are given adequate time to conduct discovery and prepare for hearing. Docket Nos. TR-040664 and TR-050967 involve common questions of fact and law. Accordingly, the Commission determines that they should be consolidated for hearing and determination.

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<sup>1</sup> In Docket No. TR-040664, the City of Kennewick filed prefiled testimony on September 26, 2005, and the UPRR filed prefiled testimony on November 10, 2005.

- 13 **IT IS HEREBY ORDERED** That Docket Nos. TR-040664 and TR-050967 are consolidated for hearing and determination, with the Commission reserving the right to hold such separate hearings and to issue separate orders in the individual dockets as it may deem appropriate.
- 14 **Petitions for Intervention.** The Commission received no requests for intervention.
- 15 **Discovery.** The parties agreed to conduct discovery informally, and to share information that was the subject of discovery in Docket No. TR-040664 with the parties in Docket No. TR-050967 in order to streamline the discovery process. The parties agreed that it was not necessary to invoke the discovery rule, and further agreed to approach the administrative law judge in the event that circumstances appear to require application of the Commission's discovery regulations, WAC 480-07-400 through 425.
- 16 **Protective Order.** The parties agreed that at this time they did not see a need for a protective order to facilitate the exchange of confidential information. The parties agreed to approach the administrative law judge should they find that they need a protective order.
- 17 **Procedural schedule.** The parties agreed to the procedural schedule that is attached to this Order as Appendix B, which is incorporated into the body of this Order by this reference. The procedural schedule for Docket No. TR-040664 is cancelled and replaced with the schedule in the consolidated dockets, TR-040664 and TR-050967, set forth in Appendix B.

- 18 **Notice of Prehearing Conference.** The Commission gives notice of a prehearing conference in this matter, to mark exhibits and to resolve objections and process issues. The conference will be held in Room 206, the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, on **Thursday, October 5, 2006, beginning at 1:30 p.m.**
- 19 **Notice of Hearing.** The Commission gives notice of a hearing in this matter on **October 12 and 13, 2006, beginning at 9:30 a.m.,** in Room 108, First Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington
- 20 **Document preparation and process issues.** Parties must file with the Commission an original plus 3 copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 21 All filings must be mailed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Secretary at the Commission's Records Center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

- 22 An electronic copy of all filings must be provided by e-mail delivery to <[records@wutc.wa.gov](mailto:records@wutc.wa.gov)>. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 23 **Alternate dispute resolution.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at (360) 664-1142.
- 24 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 19th day of January, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ  
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES  
DOCKET NO. TR-040664 and TR-050967, consolidated

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
City of Kennewick	John S. Ziobro City of Attorney 210 West Sixth Avenue Kennewick, WA 99336	(509) 585-4272	(509) 585-4424	<a href="mailto:John.ziobro@ci.kennewick.wa.us">John.ziobro@ci.kennewick.wa.us</a>
Union Pacific Railroad	Carolyn L. Larson Kilmer, Voorhees & Laurick 732 Northwest 19 <sup>th</sup> Avenue Portland, OR 97209	(503) 224-0055	(503) 222-5290	<a href="mailto:clarson@kilmerlaw.com">clarson@kilmerlaw.com</a>
Commission Staff	Jonathan Thompson Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	(360) 664-1225	(360) 586-5522	<a href="mailto:jthomps@wutc.wa.gov">jthomps@wutc.wa.gov</a>
Port of Benton	Tom A. Cowan Cowan Moore Stam & Luke 503 Knight Street, Suite A P.O. Box 927 Richland, WA 99352	(509) 943-2676	(509) 946-4257	<a href="mailto:tcowan@cowanmoore.com">tcowan@cowanmoore.com</a>
Tri-City & Olympia Railroad	Brandon L. Johnson Miller, Mertens & Spanner 1020 North Center Parkway, Suite B Kennewick, WA 99336	(509) 374-4200	(509) 374-4229	<a href="mailto:bjohnson@mmslegal.com">bjohnson@mmslegal.com</a>
BNSF Railway Co.	Kevin MacDougall Montgomery Scarp 1218 3 <sup>rd</sup> Avenue Seattle, WA. 98101	(206) 625-1801	(206) 625-1807	<a href="mailto:kevin@montgomeryscarp.com">kevin@montgomeryscarp.com</a>



**APPENDIX B**  
**PROCEDURAL SCHEDULE**  
**DOCKET NOS. TR-040664 & TR-050967**

EVENT	DATE
City of Kennewick files amended petition	January 13, 2006
Port of Benton files jurisdictional objections, if any	February 14, 2006
Responses, if any, to any objections	February 28, 2006
Informal discovery ends	May 10, 2006 <sup>2</sup>
City of Kennewick files testimony and exhibits	June 12, 2006
Port of Benton, Tri-City & Olympia RR and Commission Staff file testimony and exhibits	July 12, 2006
Dispositive motions, if any	August 14, 2006
Answers, if any, to any dispositive motions	August 28, 2006
Prehearing conference to mark exhibits and resolve objections and process issues	October 5, 2006 @ 1:30 p.m.
Hearing	October 12-13, 2006
Briefing or oral arguments	T/B/D

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<sup>2</sup> The parties agreed that this date may be flexible to accommodate experts without impacting the filing date for the City's prefiled testimony.