

[Service Date October 20, 2006]

October 20, 2006

NOTICE OF POST-HEARING BRIEFING SCHEDULE

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

TO ALL PARTIES OF RECORD:

At hearing October 20, 2006, the presiding officer, Administrative Law Judge Patricia Clark, established two post-hearing briefing schedules after input from all parties.

During testimony adduced at the hearing on October 20, 2006, it became apparent that there is a potential conflict between Washington state law and Federal Railway Administration (FRA) requirements for silent, at-grade crossings. The specific issue is whether, under state law, active warning devices (i.e. crossing gates) must be disengaged during certain switching operations to allow the unimpeded flow of vehicular traffic and, if so, whether that law conflicts with FRA requirements for approval of silent, at-grade crossings that active warning devices be fully engaged during switching operations. By **Monday, November 20, 2006**, the parties shall submit legal briefs addressing the apparent conflict in law and, if there is a conflict, an analysis of which requirement would prevail in this proceeding. Briefing on this issue is mandatory, but the parties are encouraged to work collectively and cooperatively on this issue and submit a joint brief because the issue is not adversarial.

At the conclusion of the hearing, the parties were given the opportunity to submit post-hearing briefing addressing the issue of whether the at-grade crossing at Richland Junction should be approved. Briefing of this issue is discretionary. By **Monday, November 20, 2006**, the City of Kennewick shall file a brief statement indicating whether or not it intends to avail itself of the opportunity for post-hearing briefing. If the City of Kennewick elects to file a post-hearing brief, the deadline for

its submission is **Wednesday, December 20, 2006**, and the deadline for submitting responsive briefing is **January 22, 2007**. If the City of Kennewick elects to forego post-hearing briefing, the matter will be ripe for an initial order by the Administrative Law Judge.

Sincerely,

PATRICIA CLARK
Administrative Law Judge