

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

WASHINGTON STATE	)	DOCKETS TR-100127, TR-100128
DEPARTMENT OF	)	and TR-100129 ( <i>Consolidated</i> )
TRANSPORTATION,	)	
	)	ORDER 02
Petitioner,	)	
	)	
v.	)	PREHEARING CONFERENCE
	)	ORDER
CENTRAL PUGET SOUND	)	
REGIONAL TRANSPORTATION	)	NOTICE OF HEARING
AUTHORITY AND THE CITY OF	)	<b>(Set for June 7-8, 2010, at 9:00 a.m.)</b>
LAKWOOD,	)	
	)	NOTICE OF PUBLIC COMMENT
Respondents.	)	HEARING
	)	<b>(Set for June 7, 2010, at 6:30 p.m.)</b>
.....	)	

**1 NATURE OF PROCEEDINGS.** These consolidated dockets involve petitions filed on January 19, 2010, by the Washington State Department of Transportation (WSDOT) to modify three existing highway-rail grade crossings in the City of Lakewood, Pierce County, Washington, as follows:

- Docket TR-100127 Clover Creek Drive SW, City of Lakewood  
USDOT Crossing Number 085822W
- Docket TR-100128 Berkeley Street SW, City of Lakewood  
USDOT Crossing Number 085829U
- Docket TR-100129 North Thorne Lane SW, City of Lakewood  
USDOT Crossing Number 085828M

As permitted by Revised Code of Washington (RCW) 81.53.060, WSDOT seeks to upgrade various roadway and safety features at these crossings in preparation for the permanent re-routing of passenger rail service to this rail line as part of the Point Defiance Bypass Project.

2     **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) issued an Order of Consolidation and Notice of Prehearing Conference on Tuesday, March 2, 2010. In accordance with that Order, the Commission convened a prehearing conference in this docket at Olympia, Washington, on Tuesday, March 16, 2010, before Administrative Law Judge (ALJ) Adam E. Torem.

3     **APPEARANCES.** L. Scott Lockwood, Assistant Attorney General, Olympia, Washington, represents WSDOT. Heidi Wachter, City Attorney, Lakewood, Washington, represents the City of Lakewood. Fronda Woods, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).<sup>1</sup> Contact information provided at the conference for the parties’ representatives is attached as Appendix A to this Order.

4     **INTERVENTION.** RCW 34.05.443 permits a presiding officer to grant a petition to intervene at any time, upon a determination that the petitioner qualifies to intervene under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings. Washington Administrative Code (WAC) 480-07-355(3) allows the presiding officer to grant petitions to intervene that disclose a substantial interest in the subject matter of the hearing or show that the petitioner’s participation is in the public interest.

5     The City of Dupont attended the prehearing conference as an observer but did not formally request status as an intervenor. However, the City of Dupont may later determine the need to intervene in this matter or request that Docket TR-100131 be consolidated with this case.<sup>2</sup> At this time, the City of Dupont will be considered an “interested person” on these dockets in accordance with WAC 480-07-660(3).

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<sup>1</sup> 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.*

<sup>2</sup> Docket TR-100131 is currently scheduled for a prehearing conference on April 1, 2010.

- 6 **ISSUES RAISED BY PETITIONS; BURDEN OF PROOF.** As required by WAC 480-62-150, WSDOT filed its petitions seeking Commission approval under RCW 81.53.020, RCW 81.53.060, and RCW 81.53.261 for the construction of supplemental safety measures and the modification and upgrading of warning signals and devices at the subject grade crossings. As petitioner, WSDOT carries the burden of proving, by a preponderance of the evidence, that public safety requires the requested modifications.
- 7 Prior Commission proceedings demonstrate that in evaluating public safety requirements, the Commission may consider the character and use of the crossing. In petitions seeking closure of a crossing, the Commission has entertained evidence on these topics through presentation and analysis of criteria established by the Federal Railroad Administration (FRA) and by railway company policies (e.g., Burlington Northern Santa Fe (BNSF) Railway) to evaluate the need for a crossing.<sup>3</sup> The Commission has also referenced the U.S. Department of Transportation's Railroad-Highway Grade Crossing Handbook and the factors it sets out as relevant for grade crossing safety.
- 8 WSDOT does not seek closure of the subject crossings, but extensive upgrades to passive and active safety devices in order to protect the public from any potential hazards to be introduced by more frequent and higher speed rail traffic at these crossings. WSDOT safety upgrade plans include rebuilding of tracks, creating concrete crossing surfaces, installation of gates and overhead flashing lights, interties between train detection systems and traffic signals, installation of wayside horns, expansions of roadway widths and turning radii, and installation of roadway median barriers.

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<sup>3</sup> For illustrative purposes, the FRA-recommended criteria for closure include 1) redundancy of crossings (more than four crossings per mile in urban areas, more than one per mile in rural areas); 2) ability of vehicular traffic to be re-routed safely and efficiently to an adjacent crossing; 3) a high number of collisions at a crossing; and 4) poor visibility. See BNSF v. City of Sprague, TR-010684, Third Supplemental Order, 21 October 2002, at ¶ 12, and Fourth Supplemental Order, 10 January 2003, at ¶ 43. The BNSF criteria for closure are 1) redundancy; 2) whether the crossing is a designated emergency route; 3) whether it has low traffic volumes. *Id.*, Third Supplemental Order at ¶ 13 and Fourth Supplemental Order at ¶ 45.

9 As discussed at the prehearing conference, the governing statutes mandate that the main focus of the evidentiary hearing shall be on the requirements of public safety at the subject crossings when higher speed passenger rail service is introduced. In addition, the hearing will consider the convenience and necessity of those using the crossings,<sup>4</sup> as well as alternative safety measures to those requested in the WSDOT petitions. In accordance with RCW 81.53.020, the practicability of grade separation may also be raised at hearing. The parties may, within the scope of these issues, introduce evidence addressing safety criteria established by the FRA or described in the above-referenced Handbook.

10 **PROTECTIVE ORDER.** At this time, no protective order will be entered in this docket. If the parties later determine the need for a protective order, they may file an appropriate request with the Commission in accordance with RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and WAC 480-07-423 to protect the confidentiality of any proprietary information.

11 **DISCOVERY.** The parties anticipate that informal discovery should be sufficient to meet the majority of their information exchange needs. However, to minimize any delays, the parties agreed on the propriety of invoking WAC 480-07-400(2)(b), the Commission's rule on discovery, for this proceeding. Formal discovery will proceed in accordance with Commission's rules: WAC 480-07-400 – 425.

12 **PROCEDURAL SCHEDULE.** The parties agreed upon a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B, and incorporated into the body of this Order by this reference.

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<sup>4</sup> WSDOT will present the anticipated rail schedule for the corridor and has already collected some data on traffic counts and patterns; WSDOT will share this information with the other parties who may choose to conduct their own traffic studies. Parties may also present evidence regarding the various categories of users of the crossings and their individual concerns and requirements: local residents, emergency responders, commuters seeking access to Interstate 5, military personnel and commercial vehicles seeking access to Joint Base Lewis-McChord, etc.

- 13 **NOTICE OF HEARING.** The Commission will hold evidentiary hearings in this matter beginning **Monday, June 7, 2010, at 9:00 a.m.**, in the City of Lakewood's Council Chambers, 6000 Main Street SW, Lakewood, Washington. As necessary, the evidentiary hearing will conclude the following day, Tuesday, June 8, 2010.
- 14 **NOTICE OF PUBLIC COMMENT HEARING.** The Commission will hold a public comment hearing in this matter on **Monday, June 7, 2010, at 6:30 p.m.**, in Lakewood, Washington. A separate notice with an exact location will be issued when a facility has been secured.
- 15 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an **original plus ten (10) paper copies** of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials 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.
- 16 All filings must be mailed or delivered to the Commission's Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 17 **ELECTRONIC SUBMISSION OF DOCUMENTS – FORMAT.** An electronic copy of all filings must be provided through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail delivery to [records@utc.wa.gov](mailto:records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 18 **ELECTRONIC SUBMISSION OF DOCUMENTS – TIMING.** Electronic submission of documents to the Commission on the filing deadline is permitted to expedite the filing process, so long as the Commission physically receives the original

and required number of copies by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). In this matter, parties must submit documents through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov), and file an **original plus ten (10) paper copies** of the documents with the Commission by the following business day. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge identified on Appendix A to this Order as well as to the parties to the proceeding.

- 19 **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 Ann E. Rendahl, Director, Administrative Law Division, at (360) 664-1144. The parties may also wish to consider utilization of another mediation service available outside the Commission.
- 20 **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 March 19, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

**APPENDIX A**

**PARTIES' REPRESENTATIVES**  
**DOCKETS TR-100127 / TR-100128 / TR-100129**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>WSDOT</b>	<b>L. SCOTT LOCKWOOD</b> Asst. Attorney General 7141 Cleanwater Dr SW P.O. Box 40113 Olympia, WA 98504-0113	360-753-1620	360-586-6847	<a href="mailto:scottL@atg.wa.gov">scottL@atg.wa.gov</a>
<b>CITY OF LAKEWOOD</b>	<b>HEIDI WACHTER</b> City Attorney Lakewood City Hall 6000 Main Street SW, 3 <sup>rd</sup> Floor Lakewood, WA 98499-5027	253-589-2489	253-589-3774	<a href="mailto:hwachter@cityoflakewood.us">hwachter@cityoflakewood.us</a>
<b>COMMISSION STAFF</b>	<b>FRONDA WOODS</b> Asst. Attorney General 1400 S Evergreen Park Dr SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	<a href="mailto:fwoods@utc.wa.gov">fwoods@utc.wa.gov</a>
<b>Admin. Law Judge</b>	<b>ADAM E. TOREM</b> 1300 S Evergreen Park Dr SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1138	360-664-2654 <i>[ALD fax only –not for filing]</i>	<a href="mailto:atorem@utc.wa.gov">atorem@utc.wa.gov</a>
<b>CITY OF DUPONT (Interested Person Status)</b>	<b>PETER ZAHN</b> Public Works Director 1700 Civic Drive Dupont, WA 98327	253-912-5380	253-964-1455	<a href="mailto:pzahn@ci.dupont.wa.us">pzahn@ci.dupont.wa.us</a>  <a href="mailto:steve@kenyondisend.com">steve@kenyondisend.com</a>

APPENDIX B

PROCEDURAL SCHEDULE

DOCKETS TR-100127 / TR-100128 / TR-100129

EVENT	DATE	INTERVAL
Prehearing Conference	Tuesday, March 16, 2010	—
WSDOT – Prefiled Testimony and Exhibits	Friday, April 16, 2010	31 days
City of Lakewood & Comm’n Staff – Prefiled Testimony and Exhibits	Friday, May 7, 2010	21 days
All Parties –Cross-Answering and Rebuttal Testimony	Monday, May 24, 2010	17 days
Evidentiary Hearing <sup>5</sup>	Monday, June 7, 2010 and Tuesday, June 8, 2010	14 days
Public Comment Hearing	Monday, June 7, 2010	—
Post-Hearing Briefs	Friday, June 25, 2010	17 days
Commission’s Initial Order	Friday, July 23, 2010	28 days

<sup>5</sup> The parties have agreed to also hold open Monday, June 14, 2010, and Tuesday, June 15, 2010, as alternate dates for the evidentiary hearing in these dockets.