

Hearing Date: December 9, 2014  
Hearing Time: 1:30 p.m.

**JOSIE DELVIN**  
BENTON COUNTY CLERK

DEC 09 2014

FILED

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pm

SUPERIOR COURT OF WASHINGTON IN AND FOR BENTON COUNTY

TRI-CITY RAILROAD COMPANY, LLC,  
a Washington corporation,

Petitioner,

v.

STATE OF WASHINGTON, UTILITIES  
AND TRANSPORTATION COMMISSION,

Respondent.

No. 14-2-01894-8

ORDER AFFIRMING THE  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION'S  
ORDERS IN DOCKET TR-130499

THIS MATTER came for hearing before this Court on Tri-City and Olympia Railroad's petition for review of the Washington Utility and Transportation (WUTC) in Docket TR-130499, under the Administrative Procedures Act (Chapter 34.05 RCW). The Court has considered the administrative record and files contained therein, including:

1. The WUTC's Order 03 and 04 in Docket TR-130499, granting the City of Kennewick and the City of Richland authority to construct an at-grade crossing at the proposed extension of the Center Parkway;
2. The record of the WUTC's administrative proceedings, including hearing transcript, exhibits and testimony, briefing and orders; and
3. The briefing before this Court.

In addition to these documents, this Court heard argument of counsel for the parties. The Court is fully advised. Based upon the foregoing, the Court concludes:

ORDER AFFIRMING THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION'S ORDERS  
IN DOCKET TR-130499 - 1

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1           1.    The WUTC Orders 03 and 04 are supported by substantial evidence. ~~Tri-City and~~  
2 ~~Olympia Railroad was afforded full opportunity to contest and rebut the evidence, and to present~~  
3 ~~its own evidence, before and during the WUTC, and brief all issues before the WUTC.~~ *BAS*

4           2.    As found by the WUTC, the public need for the Center Parkway Crossing  
5 outweighs any speculative risk. And, the WUTC committed no error of law in its approval of the  
6 Center Parkway Crossing.

7           3.    This Court rejects Tri-City and Olympia's argument regarding RCW 81.53.261.  
8 New issues cannot be raised on appeal. However, that statute has no application in any event to  
9 a proposal for a new crossing.


10          4.    The WUTC decision does not implicate property rights and this APA appeal is  
11 not the forum for consideration of such issues. See in this regard the pending action in Benton  
12 County Cause No. 14-2-01910-3.

13           IT IS HEREBY ORDERED, as follows:

14          1.    The Washington State Utilities and Transportation Commission's Orders (03 and  
15 04) in Docket TR-130499 are **AFFIRMED**.

16          2.    Costs are awarded to Respondents consistent with Chapter 34.05 RCW and Court  
17 Rule.

18          DATED this <sup>9th</sup>~~8th~~ day of December, 2014.

19  
20   
21 Judge

1 PRESENTED BY:

2 Lisa Beaton  
3 Kennewick City Attorney, WSBA #25305  
4 Heather Kintzley  
5 Richland City Attorney, WSBA #35520

6 

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16 Attorneys for the City of Richland and the City of Kennewick

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ORDER AFFIRMING THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION'S ORDERS  
IN DOCKET TR-130499 - 3

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