

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF AUBURN,)	DOCKET TR-120828
)	
Petitioner,)	
)	
v.)	NOTICE OF SECOND
)	PREHEARING CONFERENCE
GATES, GATES, GATES LLC;)	(Set for August 23, 2012,
MOHAWK NORTHERN PLASTICS,)	at 2:30 p.m.)
LLC d/b/a AMPAC; AND BNSF)	
RAILWAY COMPANY,)	
)	
Respondents.)	
)	
.....)	

1 **NATURE OF PROCEEDING.** This proceeding arises out of a petition filed with the Washington Utilities and Transportation Commission (Commission) on June 5, 2012, by the City of Auburn (City or Petitioner) to construct a highway-rail grade crossing at A Street Northwest (NW) in the City of Auburn. The grade crossing will impact the railway operator Burlington Northern Santa Fe (BNSF) and two private companies, Gates, Gates, Gates LLC and Mohawk Northern Plastics, LLC d/b/a AMPAC (collectively Respondents) who currently make use of a private rail spur line at that location.

2 According to the City’s petition, the City plans to convert the nature of the existing roadway (one through lane in either direction and a center left turn lane) from serving as a local access road for two businesses to a minor arterial public roadway that will be connected not only at 3rd Street NW, but also at 14th Street NW. The petition expressed the City’s intention to open this new A Street NW / 14th Street NW access in summer of 2012.

3 The City’s petition asserts “that the existing cross buck assemblies, advance warning signs, and advance pavement markings, combined with the railroad’s standard operating practices when trains operate over the crossing, provide adequate protection for this crossing.” According to the City, active warning devices are unnecessary.

4 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington, on August 22, 2012, before Administrative Law Judge Adam E. Torem.

At that time, the City made the Commission aware of plans to open the A Street NW / 14th Street NW arterial roadway on or about Thursday, August 30, 2012. However, the procedural schedule agreed upon by the parties does not anticipate a hearing on the petition being held until February 12, 2013.

5 **DISCUSSION.** Commission Staff noted the irregularity of opening an at-grade crossing prior to a full hearing on the matter. The parties explained that no agreement had been reached with regard to the need for interim safety precautions to be implemented in the case of the City actually opening this at-grade crossing without benefit of a Commission order.

6 **ANALYSIS.** Public safety concerns may require further action by the City or other parties involved in this matter prior to the City receiving authority to open the roadway and create a public at-grade crossing. The circumstances presented require a further hearing to inquire into the potential public safety impacts of opening A Street NW to through traffic prior to the Commission's evidentiary hearing.

7 The Commission finds there is good cause to hear this matter on shortened notice. *See* WAC 480-07-440(1)(a).

8 **THE COMMISSION GIVES NOTICE That it will hold a second prehearing conference in this matter at 2:30 p.m., on August 23, 2012, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

9 The purpose of this second prehearing conference is to address the public safety implications of the City's announced intention to open the A Street NW crossing prior to the Commission completing this adjudication. The Commission will conduct a fact-finding hearing and expects to hear sworn testimony from the parties as follows:

- City of Auburn – existing conditions at crossing (i.e., passive warning devices, traffic volumes, etc.) and expected changes to status quo that will occur if A Street NW roadway is connected to 14th Street NW on August 30, 2012
- BNSF – existing railway operations at crossing and explanation of safety concerns, if any, if A Street NW roadway is connected to 14th Street NW
- Commission Staff – evaluation of potential impacts to public safety of connecting the existing A Street NW roadway to 14th Street NW

Gates, Gates, Gates LLC and AMPAC may also present testimony if they so choose.

10 Given the short notice for this additional pre-hearing conference, witnesses will be permitted to provide their testimony by telephone through use of the Commission's conference bridge line (360-664-3846).

11 At the conclusion of the fact-finding hearing, the presiding officer anticipates announcing a ruling as to whether the Commission will seek to invoke its authority under Revised Code of Washington (RCW) 81.53.190 to abate an anticipated illegal crossing.¹

12 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the second prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

DATED at Olympia, Washington, and effective August 22, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

¹ RCW 81.53.190 explains that if a grade crossing is about to be constructed, operated, or maintained in violation of Chapter 81.53 RCW, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances through a suit brought by the attorney general or by the county prosecuting attorney.