

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

CWW LLC,

Petitioner,

Seeking Approval to Upgrade Signals  
at a Highway-Rail Grade Crossing and  
Requesting Disbursement from the  
Grade Crossing Protective Fund

DOCKET TR-210226

ORDER 02

AMENDING ORDER 01

**BACKGROUND**

- 1 On April 6, 2021, CWW LLC (CWW) filed with the Washington Utilities and Transportation Commission (Commission) a petition (Petition) seeking approval to modify active warning devices at a highway-rail grade crossing, identified as USDOT 808939F. CWW filed an amended petition on May 14, 2021.
- 2 On September 23, 2021, the Commission entered Order 01, Granting Petition to Modify Active Warning Devices at a Public Highway-Rail Grade Crossing at Prospect Avenue and Authorizing Expenditure from the Grade Crossing Protective Fund (Order 01). Order 01 authorized reimbursement for the costs of the modifications from the Grade Crossing Protective Fund (GCPF) subject to several conditions, including, in pertinent part, “payment will be made upon presentation of claim for reimbursement for materials and verification by Staff that the work has been satisfactorily completed.” Order 01 further stated that “[a]cceptance of the changes is subject to inspection by Staff, who will verify that the crossing is in full compliance with applicable laws, regulations, and the conditions specified herein.”
- 3 On November 15, 2021, Commission staff (Staff) filed a Petition to Amend Order 01 (Motion). We construe Staff’s submission as a motion to amend Order 01.<sup>1</sup>
- 4 In its Motion, Staff states that due to current staffing deficiencies, the Commission would be unable to complete the inspection required by Order 01 in a timely matter. Staff states that the Federal Railroad Administration certified inspectors that the Commission employed at the time Order 01 was entered have left the Commission. In the Motion,

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<sup>1</sup> The Commission liberally construes filings to effect just results. WAC 480-07-395(4).

Staff requests that the Commission modify Order 01 to allow for payment from the GCPF to CWW upon its certification that it has properly completed the work required by Order 01, subject to the condition that CWW refund the payment within 30 days of its refusal to remedy any deficiencies noted in a later inspection. Staff states that CWW does not object to the Motion.

### **DISCUSSION**

5 RCW 81.53.261 requires that the Commission grant approval prior to modifying a public railroad-highway grade crossing within the state of Washington. RCW 81.53.271 authorizes the Commission to disburse funds from the GCPF to pay for improvements to highway-rail grade crossings. The Commission's internal staffing shortage should not interfere with the performance of those duties. We grant Staff's Motion. Staff may reimburse CWW from the GCPF upon CWW's certification that it has properly completed the work as approved by Order 01, subject to the condition detailed in paragraph 4.

### **FINDINGS AND CONCLUSIONS**

- 6 (1) The Commission is an agency of the state of Washington having jurisdiction over public highway-rail grade crossings within the state of Washington, and authority to approve and administer disbursements from the Grade Crossing Protective Fund.
- 7 (2) RCW 81.53.271 allows the Commission to disburse funds from the Grade Crossing Protective Fund to pay for the installation of a grade crossing protective device.
- 8 (3) The Commission is currently unable to perform the inspection required by Order 01 in a timely manner to allow for prompt distribution of funds.
- 9 (4) After reviewing the Motion, and giving due consideration to all relevant matters and for good cause shown, the Commission should grant the Motion.

### **ORDER**

#### **THE COMMISSION ORDERS:**

- 10 (1) Staff's Motion to amend Order 01 is GRANTED.
- 11 (2) The cost of the materials for the upgrade approved by Order 01 shall be paid from the Grade Crossing Protective fund upon certification by CWW LLC that the

modifications were made as required, subject to the condition that CWW LLC will be required to refund the payment within 30 days of its refusal to remedy any deficiencies noted in a later inspection.

12 (3) Staff shall conduct an inspection of the modifications as soon as practicable, and no later than December 31, 2023.

13 The Secretary of the Commission has delegated authority over this matter pursuant to Order 01 in Docket A-180762. The Secretary finds this Order to be consistent with the public interest.

DATED at Lacey, Washington, and effective November 18, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL,  
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904, you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.**