

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of  CITY OF BINGEN  To Construct or Reconstruct a Railroad- Highway Grade Separation (Overcrossing or Undercrossing)	DOCKET TR-230483  ORDER 01  DISMISSING ADJUDICATIVE PROCEEDING
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**BACKGROUND**

- 1 On June 15, 2023, the City of Bingen (City or Petitioner) filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a railroad-highway grade separation at Elm Street in the City of Bingen, Washington (Petition) over railroad tracks belonging to BNSF Railway (BNSF or Respondent).
- 2 On July 10, 2023, the Commission issued a Notice of Prehearing Conference (Notice) scheduling a virtual prehearing conference on August 2, 2023, at 1:30 p.m.
- 3 On July 31, 2023, the Commission issued a Notice Continuing Prehearing Conference that rescheduled the prehearing conference to August 23, 2023, at 10:30 a.m.
- 4 On August 21, 2023, the Commission issued a Notice Continuing Prehearing Conference that rescheduled the prehearing conference to February 15, 2024, at 10:30 a.m.
- 5 On February 13, 2024, the Commission issued a Notice Continuing Prehearing Conference that rescheduled the prehearing conference to June 18, 2024, at 10:30 a.m.
- 6 On June 13, 2024, the parties notified the presiding officer that the City and BNSF had made progress in resolving this matter via settlement, but progress had been delayed as counsel for BNSF had changed. Additionally, the parties were in the process of preparing an amended petition, which would include a waiver of hearing. However, the parties alleged that they would not all agree to sign the waiver of hearing until the Construction & Maintenance Agreement between WSDOT, Bingen, and the railroad was signed first. Consequently, in order to allow for the synergy of these documents and agreement among the parties, the parties requested that the prehearing conference be continued until August 2024 to allow sufficient time to complete this process.

7 July 2, 2024, the parties submitted an amended petition, which included a waiver of hearing, signed and dated June 28, 2024.

### DISCUSSION AND DECISION

8 Based on the series of requests for continuances, which clearly stated the parties' goal to resolve this matter without a hearing before the Commission, we will treat the amended petition and signed waiver as a joint motion to withdraw from the adjudicative proceeding. Washington Administrative Code (WAC) 480-07-380(3) provides that a party may withdraw its complaint only upon permission granted by the Commission in response to a written motion. The motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.<sup>1</sup>

9 In the signed amended petition, the Respondent states that it investigated the conditions at the proposed crossing site and asserts that it is satisfied that the conditions regarding the site are the same as described by the Petitioner indicating agreement and resolution between the parties. Additionally, the Respondent indicates that it consents to a decision by the Commission based on a review of the documents filed in this docket. In light of the filing and facts presented, there remains no dispute before the Commission that requires adjudication in this matter. Accordingly, the Commission finds good cause to grant the parties' joint motion. The adjudication is dismissed, and Docket TR-230483 is now closed.

### ORDER

10 (1) The City of Bingen's Adjudication is DISMISSED.

11 (2) Docket TR-230483 is CLOSED.

DATED at Lacey, Washington, and effective July 18, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ James E. Brown II*  
JAMES E. BROWN II  
Administrative Law Judge

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<sup>1</sup> WAC 480-07-380(3)(a).