

June 8, 2011

David Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

RE: UTC Docket Nos. TR-110157, TR-110159, TR-110160, TR-110161
and TR-110162

Dear Mr. Danner:

As requested in your letter of April 20, 2011, the following is the Puget Sound and Pacific Railroad's ("PSAP") status report on settlement negotiations in these closing closure matters to date and in response to assertions that PSAP has not been actively involved in settlement discussions. The PSAP remains ready and willing to discuss and consider any proposals from the City of Elma, the County of Grays Harbor or the WUTC on how to resolve these issues.

Even before the PSAP filed its Petitions to close the five crossings at issue in these matters, the PSAP engaged the City and the County in discussions regarding its safety concerns surrounding the number of at grade crossings in a very short distance along the mainline railroad in this area. Over the past few years the City has increased the housing development north of the railroad and no consideration appears to have been given, despite the expected resulting increased traffic, to providing some safety measures in the form of grade separation, closure of some of the crossings or even improved safety measures at any of the crossings themselves.

The PSAP initially offered to pay the City \$5,000 per crossing closed to contribute towards the City building a new fire station on the north side of the tracks. This offer was rejected even though it was the City who first requested that PSAP help pay for a new fire station.

The railroad also proposed several suggestions to improve safety in the area including moving the baseball fields that are currently located directly on the railroad right of way ("ROW") property line and building a pedestrian overpass to provide a safe means for pedestrians to get over the tracks

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Mr. David Danner

June 8, 2011

Page 2 of 4

without crossing them and risking interaction with the trains. Additionally, at the WUTC's suggestion, the PSAP increased its "No Trespassing" signage in the area and has been working to find other locations for switching its trains so that the crossings are blocked less often and for less time. None of the railroad's proposals were welcomed by the City or the County.

Giving this, the PSAP decided to go forward with filing the Petitions for closure at issue here. Obviously, PSAP remained open, and in fact remains open, to further negotiations and informal resolution of these matters (note that it was the PSAP that originally requested the extension of time (agreed to by all parties) to allow for the parties to attempt to reach resolution). However, it was getting nowhere and needed to address the safety issues sooner rather than later as traffic from the Port of Grays Harbor was increasing and is expected to increase even further in the next year.

After the PSAP filed its Petitions, the City undertook to perform a State Environmental Policy Act determination of the environmental impacts of the proposed closures which essentially concluded that the railroad would be required to pay for over \$2.3 million of infrastructure and road improvements in order for the proposed closures to be "non-significant." The City has not offered to pay for or undertake any of these improvements itself.

Shortly after requesting time to negotiate a settlement the PSAP was approached by the Commissioner for the Port of Grays Harbor who shared a letter from the Fire Chief and the Mayor of Elma that the Commissioner had received in an attempt to get support for the City's desire to build a fire station north of the railroad. The Mayor had asked the Commissioner to facilitate negotiations between PSAP, the County and the City. The Commissioner told Mr. Hefley, the General Manager of PSAP, that he was filling the role of negotiator between the two parties. Mr. Hefley agreed to the Commissioner's proposal and, since that time, all of PSAP's communications attempting to resolve the parties' issues have gone through the Commissioner as the "middle man". PSAP has had numerous phone conversations with the Commissioner on these issues since April. Thus, despite the County's and City's attempts to make it seem as if PSAP is non-responsive, almost every other week Mr. Hefley spoke with the Commissioner who would then speak with the County and the City.

In the third week of April, the Commissioner told Mr. Hefley that he had talked with the County and the City regarding PSAP's idea of coming up with a plan to move the baseball parks by Sixth Street to a county park location. The Commissioner also told Mr. Hefley that he felt something could be worked out and that the Port of Grays Harbor would be willing to come up

with some funding to support a new fire station on the north side of the railroad. The Commissioner also told Mr. Hefley that he believed the City would consider closing two of the at grade crossings.

Additionally, Mr. Hefley attended a meeting around May 5th and talked to Grays Harbor's County Commissioner face to face about the need to close Hewitt Road for safety reasons. They talked about trying to get together for discussion but to date have not done so. Mr. Hefley also sent the County Commissioner an email asking him for a meeting but has not yet received a response.

A couple of weeks later, Mr. Hefley called the Commissioner to ask him how things were going with the City and was told that there was a lot of drama about moving the baseball parks as the locals did not want them moved. The Commissioner then told Mr. Hefley about some internal issues with the Mayor and the City's council and that they were going to have a meeting with the council in the near future and he would report back to Mr. Hefley thereafter. Approximately three weeks later the Commissioner called Mr. Hefley to tell him the council refused to close any of the at grade crossings. The PSAP would still like to see these issues negotiated to a mutually beneficial resolution but has not yet received any proposal from the City and is getting concerned that the City is not giving up on anything given that the Port Commissioner has not been able to get the City to come together to make a decision.

PSAP's position has been and will be further proven in the upcoming proceedings that, while PSAP is willing to help and has and will offer suggestions as to improvements that could be made to make the remaining crossings safer, it cannot be asked under the law to bear the full burden of the City of Elma's suggested infrastructure and road improvements that should have been done by the City when it was developing and improving the neighborhood north of the railroad. There is no legitimate basis for putting this cost entirely on the railroad in order to improve the safety of the citizens of Elma. In the City itself, there are 9 crossings within a 1-2 mile span of railroad, essentially one at each block. The railroad is proposing closing only four crossings that have only passive warning signage (crossbucks only) to reduce the risks of crossing accidents. This leaves five open crossings, with active warning devices (automatic gates and/or lights). This is not a situation of any landlocked areas such that the closure of these five crossings will cut off access to the north development of Elma. In fact, the City's main argument has been that it must have access for emergency vehicles to reach the north development. However, this argument is not supported by the facts when there are many crossings within this one mile

Mr. David Danner

June 8, 2011

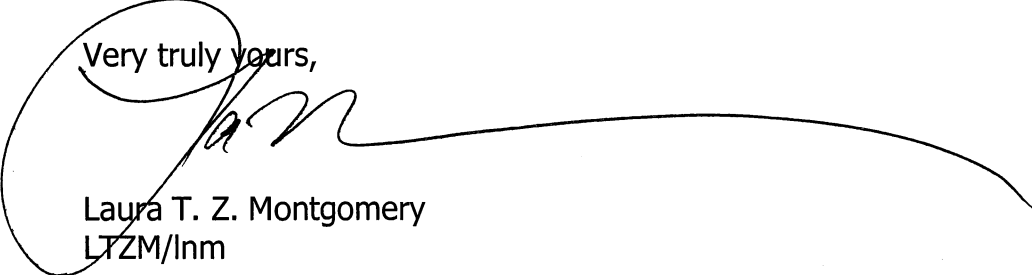
Page 4 of 4

long area. Even if all five closures are approved – which they should be when considering the facts and the law - there will remain open four crossings providing access within a block or two of any closed crossing. The only circumstance under which an emergency vehicle would be blocked from crossing would be if there was a train blocking all of the crossings all along this stretch of railroad. This has as much likelihood of happening now with all 11 crossings open as it would if 5 of them are closed. Thus, the City's argument cannot stand in this proceeding.

Therefore, it behooves all parties to work together to find a long term solution that is safe for all and fair to all. To that end the PSAP is willing to participate in a more formal mediated settlement conference if the City and the County are also willing, and if the WUTC believes a mediation would be worthwhile. However, it is not fair, legal, or appropriate for the City to expect the railroad to shoulder the burden of these improvements and, therefore, the parties should only agree to mediation if they are all prepared to discuss an equitable solution.

PSAP looks forward to hearing from the WUTC or the appointed Administrative Law Judge to either schedule a settlement conference or prehearing conference.

Very truly yours,



Laura T. Z. Montgomery
LTZM/Inm

cc: Client
Kathy Hunter, WUTC
Fronda Woods, WUTC
City of Elma
Grays Harbor County