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5 **BEFORE THE WASHINGTON STATE**
6 **UTILITIES AND TRANSPORTATION COMMISSION HEARINGS BOARD**

7 SPOKANE COUNTY, a political subdivision
8 of the state of Washington,

9 Complainant,

10 v.

11 UNION PACIFIC RAILROAD COMPANY
12 (aka UPRR),

13 Respondent.

DKT NO.

FIRST AMENDED COMPLAINT

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15 **1. VENUE AND JURISDICTION**

16 Venue and jurisdiction are proper before the Washington State Utilities and
17 Transportation Board pursuant to chapter 80 RCW and chapter 81 RCW, et seq. The Board has
18 the authority to rule on this dispute under RCW 81.04.110.

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20 **2. PARTIES**

21 Spokane County is a political subdivision of the state of Washington, organized under the
22 provisions of chapter 36 RCW, et seq. Contact person for Spokane County is Michael Nelson,
23 1115 W. Broadway Avenue, Spokane, Washington 99260; (509) 477-2889,
24 mnelsonr@spokanecounty.org.

1 The Union Pacific Railroad is a company engaged in transportation, doing business in
2 Spokane County, State of Washington. Contact person is Mary R. Schroll, 457 Atkisson Street,
3 Roseville, California 95747; (916) 789-6111, mrschrol@up.com.

4 5 3. FACTS

6 On April 12, 2017, Terrel A. Anderson of Union Pacific Railroad (UPRR) suggested an
7 upgrade, modifying warning devices to a highway grade crossing at Wellesley Avenue in
8 Spokane County, specifically USDOT #662535B. The crossing has historically been maintained
9 by UPRR. The upgrade was intended to be partially paid with Section 130 funds from a Federal
10 Grant and County funds. Union Pacific was not expected to provide any funds related to the
11 upgrade of the crossing.

12 Union Pacific Railroad Company subsequently indicated that Spokane County should
13 prospectively assume the costs of maintenance in the amount of \$6,630.00 per annum, and would
14 not participate in the upgrade without agreement from Spokane County to assume those costs.

15 The position taken by the Union Pacific Railroad is contrary to the custom and practice
16 between the railroad and Spokane County regarding crossing maintenance, and is contrary to
17 Washington law, as provided in RCW 81.53.295. The delay in effectuating the upgrade is harmful
18 to the interests of public safety.

19 A chronological List of the Exhibits, including an email chain which is provided in a
20 complete form to preserve context, are as follows:

21 **Exhibit 1:** April 12, 2017: Union Pacific Railroad correspondence to Spokane County
22 regarding a crossing upgrade on Wellesley Avenue DOT #662535B (*Exhibit 1*).

1 **Exhibit 2:** July 16, 2020: Ellis Mays, UPRR's contract engineer, sends an email to
2 Spokane County project engineer Chariti Zlateff explaining UPRR's authority for annual
3 maintenance costs to be shifted to the County, as 23 U.S.C. 130(b) (*Exhibit 2, email 4 of 5*). This
4 Exhibit consists of 5 emails between the dates of July 4, 2020, through September 23, 2020. The
5 relevant email is the 4th exchange of 5, dated July 16, 2020; relevant portions of which are
6 highlighted on page 1.

7 **Exhibit 3:** August 24, 2020: Ellis Mays emails a proposed Agreement to Spokane County
8 for Crossing Upgrade, which includes a clause for Spokane County to agree to annual
9 maintenance costs for the crossing (*Exhibit 3, page 8, section 17*). The agreement provided that
10 Spokane County would pay an amount of \$6,630.00 to the UPRR per annum as reimbursement
11 for maintenance expenditures.

12 **Exhibit 4:** September 2, 2020: Agreement is returned to Ellis Mays by the County striking
13 out the maintenance clause objecting on the basis of state law. RCW 81.53.295 (Section 17)
14 (*Exhibit 4, page 7, email 4 of 15*). This Exhibit consists of 15 emails exchanged between August
15 10, 2020, and September 15, 2020. The relevant email is the 4th exchange, dated September 2,
16 2020, and is highlighted on page 7.

17 **Exhibit 5:** September 23, 2020: Internal email from County Project Engineer (Zlateff)
18 indicating the UPRR will not move forward on the upgrade without agreement on the
19 maintenance costs; and that the County and UPRR are at an impasse. (*Exhibit 5*) This Exhibit is
20 1 email and the relevant portion is highlighted.


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4. RELIEF REQUESTED

The Petitioner Spokane County respectfully requests the Hearings Board enter a declaratory ruling holding that the maintenance costs herein at issue will prospectively be born solely by the Union Pacific Railroad as it has historically, and as provided in state law, and that the County is not responsible for maintenance costs. In addition, since the delay of the upgrade affects public health and safety, the Petitioner respectfully requests the Board establish a deadline for the requested upgrade, pursuant to RCW 81.53.140.

DATED this 20th day of April 2021.

LAWRENCE HASKELL
Spokane County Prosecuting Attorney

By: 
MICHAEL A. NELSON, WSBA No. 13789
Deputy Prosecuting Attorney
Attorneys for Spokane County

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 20th day of April 2021, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Washington Utilities & Transportation Commission	<input checked="" type="checkbox"/> efileing.utc.wa.gov/form
Mary R. Schroll 457 Atkisson Street Roseville, CA 95747 (916) 789-6111 mrschrol@up.com (Contact for Union Pacific Railroad)	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: mrschrol@up.com <input type="checkbox"/> Via Hand Delivery

Dated this 20th day of April 2021, in Spokane, Washington.



Ashley E. Musick