

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

CITY OF MARYSVILLE,

Petitioner,

To Construct a Public Railroad-
Highway Grade Crossing.

DOCKET TR-111147

ORDER 02

RESCINDING ORDER 01
IN DOCKET TR-111147

BACKGROUND

- 1 On June 22, 2011, the City of Marysville (the City) filed a Petition to Construct or Reconstruct a Highway-Rail Grade Crossing and Install an Inter-Tie Between Highway Signal & a Railroad Crossing Signal System (Petition to Construct) with the Washington Utilities and Transportation Commission (Commission).¹
- 2 On August 5, 2011, the Commission filed Order 01 in this docket, granting the City's Petition to Construct.²
- 3 On November 7, 2024, Commission staff (Staff) filed a Petition for Recission of Order 01 (Petition for Recission) in this docket.³ In Staff's Petition for Recission, Staff claims that in the 13 years since Order 01 was entered, the City has not begun construction on the on the project and has no plans to do so in the immediate future.⁴ Further, Staff believes that the approved Petition to Construct may be stale as design work may be outdated or obsolete.⁵

¹ *In re Petition of City of Marysville*, Docket TR-111147, Pet. to Construct or Reconstruct a Highway-Rail Grade Crossing & Install an Inter-Tie Between a Highway Signal & a Railroad Crossing Signal System (June 22, 2011).

² *In re Petition of City of Marysville*, Docket TR-111147, Order 01 (Aug. 5, 2011).

³ *In re Petition of City of Marysville*, Docket TR-111147, Commission Staff's Petition for Recission of Order 01 (Nov. 7, 2024) (hereinafter Petition for Recission).

⁴ Petition for Recission, at ¶ 2 *citing* Turcott Decl. at ¶¶ 4, 6.

⁵ Petition for Recission, at ¶ 2 *citing* Turcott Decl. at ¶ 5.

- 4 Staff argues that the Commission allows parties to petition for the rescission of an order and that such petitions must comply with WAC 480-07-870.⁶ Staff argues that good and sufficient cause exists to grant its Petition for Recission, as more than 13 years have passed since Order 01 was issued, and the City has no immediate plans to begin construction.⁷ Staff argues the delay is problematic due to changes to technology, the regulatory environment, industry standards, and growth and development in the project area.⁸
- 5 Staff argues that the City may petition the Commission with a new and updated design when it is ready to proceed with construction.⁹
- 6 On April 14, 2025, the City filed a Response to the Petition for Recission (Response). In its Response, the City states it “does not object to the entry of an order rescinding Order 01 provided the City is not prejudiced in bringing a new petition for the same crossing in the future.”¹⁰

DISCUSSION

- 7 The Commission allows parties to petition for rescission of an order pursuant to WAC 480-07-875. Any petition for rescission must comply with the requirements of WAC 480-07-870. WAC 480-07-870 requires petitioners to (1) “set forth sufficient grounds for rehearing the Commission order” and (2) “include substantial evidence or an offer of proof in support of the requested relief.”
- 8 As Staff correctly provides, one ground for rehearing – and therefore rescission – is “any good and sufficient cause that the commission did not consider or determine in the order.”¹¹
- 9 The Commission agrees with Staff that good and sufficient cause exists to rescind Order 01 in this docket. It is true that the Commission did not contemplate that the project would not have begun construction more than 13 years after entering Order 01. It is also

⁶ WAC 480-07-875.

⁷ Petition for Recission, at ¶ 5.

⁸ Petition for Recission, at ¶ 6.

⁹ Petition for Recission, at ¶ 6.

¹⁰ *In re Petition of City of Marysville*, Docket TR-111147, City’s Response to Petition for Recission of Order 01 (Apr. 14, 2025).

¹¹ Petition for Recission, at ¶ 4 *citing* WAC 480-07-870(1)(d).

true that the Commission now requires that construction begin within five years of an order approving such petitions. Accordingly, we agree with Staff's position, which is not opposed by the City, and rescind Order 01 in this docket.

- 10 Further, in light of the City's Response, we also find that it is appropriate to note that the City of Marysville will not be prejudiced in bringing a petition for a crossing in the same location in the future. However, we note that such petition should be updated to account for Staff's concerns in its Petition for Recission – with those being that the future petition be updated to reflect changes in technology, industry standards, regulatory requirements, and growth and development in the project area.

FINDINGS AND CONCLUSIONS

- 11 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate and has jurisdiction over public railroad-highway grade crossings within the state of Washington.
- 12 (2) Order 01 in this docket approved the City of Marysville's proposed construction of a crossing involving a public railroad-highway grade crossing.
- 13 (3) More than 13 years have passed since the approval of the project in Order 01 of this docket, and the City has not begun construction on the project.
- 14 (4) WAC 480-07-785(1) allows for parties to petition the Commission for recission of an order and such petitions must meet the requirements of WAC 480-07-870.
- 15 (5) WAC 480-07-870 requires petitioners to (1) set forth sufficient grounds for rehearing the commission order and (2) include substantial evidence or an offer of proof in support of the requested relief.
- 16 (6) Staff has met the requirements of WAC 480-07-870 in showing that good and sufficient cause exists to rescind Order 01 because circumstances exist now that the Commission did not consider or determine in Order 01 and has included substantial evidence or an offer of proof in support of the request.
- 17 (7) The City of Marysville does not object to the Commission rescinding Order 01.
- 18 (8) The City of Marysville should not be prejudiced in bringing a new petition for a crossing in the same or a similar location.

- 19 (9) After considering Staff's Petition for Recission and the City's Response, and for
good cause shown, the Commission GRANTS Staff's Petition.

ORDER

THE COMMISSION ORDERS:

- 20 (1) Commission Staff's November 7, 2024, Petition for Recission of Order 01 in this
docket is GRANTED, and the Commission rescinds Order 01.
- 21 (2) The City of Marysville may file a new petition for approval of construction or
reconstruction for the same or a similar project in the future without prejudice.

DATED at Lacey, Washington, and effective July 22, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Connor Thompson
Connor Thompson
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion. Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).