

**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-210281

ORDER 04

AMENDING ORDER 01

BACKGROUND

- 1 On April 6, 2021, CWW LLC (CWW) filed with the Washington Utilities and Transportation Commission (Commission) a petition seeking approval to modify the active warning devices at a highway-rail grade crossing, identified as USDOT 808632U, located at the intersection of State Route 125 and CWW's tracks north of Walla Walla in Walla Walla County. CWW further requested the Commission authorize an expenditure of \$2,578.04 from the Grade Crossing Protective Fund (GCPF) to pay for the modifications.
- 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 State Route 125 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 June 2, 2021, the Commission entered Order 02, extending the deadline for the project to September 30, 2021, and on September 23, 2021, the Commission entered Order 03, further extending the deadline to November 30, 2021.
- 4 On November 23, 2021, Commission staff (Staff) filed a Petition to Amend Order 01 (Petition). In its Petition, Staff states that due to current staffing deficiencies, the

Commission is 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 Petition, 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 Petition.

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 Petition. 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 Petition, and giving due consideration to all relevant matters and for good cause shown, the Commission should grant the Petition.

ORDER

THE COMMISSION ORDERS:

- 10 (1) Staff's Petition 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 29, 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.