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July 13, 2021

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Spokane County v. Union Pacific Railroad*
Docket TR-210257

Dear Mr. Johnson:

The dispute in this docket has its roots in Docket TR-200447, where the Commission in June 2020 granted a petition filed by Spokane County (County). In that petition, the County sought approval to modify the warning devices at the highway-railroad grade crossing at Wellesley Avenue, identified as USDOT 662535B, within the County's borders. The modifications involved the installation of gates, bells, and supporting equipment on the railroad and right-of-way owned by the Union Pacific Railroad Company (UPRR), and the installation of curbing and traffic channelization devices and the refreshing of signage and pavement markings on the County's roadway.

The modifications were to be funded in part by the federal government using highway funds available under 23 U.S.C. § 130. Given that federal funding, state law assigned to UPRR the duty of paying their maintenance costs. RCW 81.53.295.

During the spring, summer, and fall of 2020, the County and UPRR reached an impasse about constructing the improvements called for by the County's petition. As Staff understands events, UPRR would not agree to moving forward with the modifications on its property without the County agreeing to assume annual maintenance costs, and the County refused to do so given RCW 81.53.295's allocation of those costs to UPRR. Staff learned that the impasse threatened the project's continuation and its federal funding. Staff also learned that the impasse could have obligated the County and UPRR to reimburse the federal government for money already disbursed.

Ultimately, the County turned to the Commission to break the impasse. In April 2021, it filed a complaint in this docket seeking a declaration that state law required UPRR to pay the costs of maintenance. The County also asked the Commission to establish a deadline for UPRR to complete the approved project upgrades.

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After several continuances, the parties submitted a stipulation that would dismiss the complaint in early July 2021. The Commission, by notice, authorized Commission Staff (Staff) to review the stipulation and provide comments.

Staff has reviewed the stipulation and recommends that the Commission approve it, which would result in the dismissal of the County's complaint. The parties' stipulation is effectively the ultimate step of a settlement that resolves the County's claims against UPRR, and the Commission should review it as such. The Commission will approve a settlement when it complies with all applicable legal requirements and is consistent with the public interest. WAC 480-07-740. Staff believes that standard is met here.

The parties' resolution of the County's complaint complies with all substantive legal requirements. The applicable requirements here are those present in the stipulation's background, namely the assignment of the duty to pay the maintenance costs at issue in the County's complaint. Staff understands that UPRR has agreed to pay those costs. That is fully consistent with RCW 81.53.295.

The public interest is also well served by dismissing the complaint. The 2014 Marine and Rail Oil Transportation Study, completed by the Washington Department of Ecology and supported by the Commission, identified the Wellesley Avenue crossing and several other crossings as under-protected, high-risk crossings on crude oil routes. The Commission immediately prioritized targeting, outreach, and action for each of these high-risk crossings. Staff has been working with the County and UPRR on improvements to the Wellesley Avenue crossing since 2015. The parties' agreement allows them to devote their resources to making the upgrades approved by the Commission rather than to fighting over the allocation of maintenance costs. That fight necessarily would have delayed the completion of the project and risked its federal funding.

Accordingly, Staff recommends that the Commission approve the parties' stipulation so that they may move forward with the safety improvements needed at the Wellesley crossing.

Sincerely,

/s/ Jeff Roberson, WSBA No. 45550
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cc: Parties