

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF KENNEWICK,)	
)	DOCKET NO. TR-040664
Petitioner,)	
)	ORDER NO. 01
v.)	
)	
UNION PACIFIC RAILROAD,)	PREHEARING CONFERENCE
)	ORDER; NOTICE OF HEARING
Respondent.)	(Set for May 9, 2005)
)	
.....)	

1 **Proceeding:** Docket No. TR-040664 is a petition by the City of Kennewick for approval of a proposed silent, at-grade crossing of Center Parkway with the Union Pacific Railroad's dead end spur west of Richland Junction (MP 18.8).

2 **Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on October 19, 2004, before Administrative Law Judge C. Robert Wallis. This conference was delayed from the initial setting several times at the parties' request; while the parties acknowledged that they had not reached agreement on the issues, they pledged to continue discussions in furtherance of settlement and to approach the Commission if settlement were reached.

3 **Appearances.** John Ziobro, city attorney, represented the City of Kennewick. Carolyn Larson, attorney, Portland, OR, represented respondent Union Pacific railroad. Sally Johnston, assistant attorney general, Olympia, represents the Commission Staff; Jonathan Thompson is also counsel on this matter. Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

- 4 **Petitions for Intervention.** The Commission received no requests for intervention.
- 5 **Discovery.** Parties desire to engage in discovery of information in the proceeding. The parties agreed, however, that each would be responsive voluntarily to request from the others, that the volume of discovery would be small, and that it appeared to be unnecessary to invoke the discovery rule. The parties agreed to approach the administrative law judge in the event that circumstances appear to require application of the Commission's discovery regulations, WAC 480-07-400 through 425.
- 6 **Hearing schedule.** The parties agreed upon some general time frames for scheduling the hearing in this matter, from which the following schedule has been derived. The parties did agree that the filing of written testimony would provide them with an optimal opportunity to prepare for the hearing and would reduce the necessary time in hearing, so they requested a schedule that included provision for prefiled testimony.

Time for informal discovery ends ¹	December 19, 2004
City of Kennewick files testimony	February 17, 2005
Commission Staff files testimony	March 10, 2005
Railroad files evidence	March 31, 2005
Dispositive motions, if any	April 11, 2005

¹ This deadline does not foreclose discovery after this point (particularly inquiries that follow upon material provided in response to prior requests), but the parties committed to do their best to conclude their inquiries by the stated date.

Answers, if any, to any dispositive motions April 18, 2005

Prehearing conference (if necessary) to mark exhibits and to resolve objections and process issues April 28, 2005

Hearing begins² May 9, 2005

The need for closing argument or briefs will be determined at a later time. In the absence of further notice, we anticipate that parties will present brief closing arguments at the conclusion of the evidentiary hearing. No hearing for members of the public was requested.

7 **Notice of Prehearing Conference.** The Commission convenes a prehearing conference in this matter, to mark exhibits and to resolve objections and process issues. The conference will be held in Room 206 of the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, on **Thursday, April 28, 2005, at 9:30 a.m.**

8 **Notice of Hearing.** The Commission convenes a hearing in this matter on **Monday, May 9, 2005, beginning at 9:30 a.m.**, in the auditorium of the Benton County PUD, 2721 W. Tenth Avenue, Kennewick, Washington.

9 **Document preparation and process issues.** Parties must file with the Commission an original plus 3 copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460,

² The parties estimate that no more than one day of hearing will be required. Parties are requested to inform the Commission immediately if parties anticipate that an additional day will be required.

and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

- 10 All filings must be mailed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Secretary at the Commission's Records Center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 11 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 12 **Alternate dispute resolution.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at (360) 664-1142.
- 13 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 15th day of November, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
DOCKET NO. TR-040664

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
City of Kennewick	John S. Ziobro City of Attorney 210 West Sixth Avenue Kennewick, WA 99336	(509) 585-4272	(509) 585-4424	John.ziobro@ci.kennewick.wa.us
Union Pacific Railroad	Carolyn L. Larson Kilmer, Voorhees & Laurick 732 Northwest 19 th Avenue Portland, OR 97209	(503) 224-0055	(503) 222-5290	clarson@kilmerlaw.com
Commission Staff	Sally G. Johnston Senior AAG 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	(360) 664-1193	(360) 586-5522	sjohnsto@wutc.wa.gov
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