

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF OLYMPIA

Complainant,

v.

UNION PACIFIC RAILROAD  
COMPANY,

Respondent.

DOCKET TR-240783 and TR-240793  
(*Consolidated*)

ORDER 03

GRANTING MOTION TO  
WITHDRAW OPPOSITION;  
TRANSFERRING DOCKET  
SUBJECT TO CONDITION

**BACKGROUND**

- 1 On October 21, 2024, the City of Olympia filed with the Washington Utilities and Transportation Commission (Commission) a petition to modify a highway-rail grade crossing, USDOT Crossing Number 807857V. The matter was filed under Docket TR-240783. On October 23, 2024, the City of Olympia filed with the Commission a petition to modify a highway-rail grade crossing, USDOT Crossing Number 807853T. The matter was filed under Docket TR-240793. On November 12, 2024, Union Pacific Railroad Company (UPRR) filed with the Commission two letters opposing the petitions filed in Dockets TR-240783 and TR-240793.
- 2 The Commission convened a virtual prehearing conference on February 25, 2025, before Administrative Law Judge Harry Fukano. On March 17, 2025, The Commission issued Order 02 Prehearing Conference Order; Notice of Hearing, which among other things, established a procedural schedule and set an evidentiary hearing for Wednesday, June 11, 2025.
- 3 On June 10, 2025, the Commission issued a notice cancelling the hearing and suspending the procedural schedule in order to afford the parties additional time to negotiate a potential settlement and requiring the parties to file either a settlement or a status update by July 11, 2025. On July 10, 2025, the City and UPRR filed a status update regarding settlement. On July 17, 2025, the Commission further continued the deadline for filing a settlement or status update to August 11, 2025.

- 4 On August 11, 2025, UPRR filed a Stipulated Motion to Withdraw Opposition (Stipulated Motion).<sup>1</sup> UPRR's Stipulated Motion requests that the Commission allow UPRR to withdraw its opposition to the two petitions filed by the City based upon an agreement between the City and UPRR.<sup>2</sup>
- 5 On September 18, 2025, the Commission held a hearing regarding the Stipulated Motion. At the hearing, the City and UPRR agreed to file additional materials regarding the agreement discussed in the Stipulated Motion by October 17, 2025. The parties agreed that the update would include amended petitions to reflect the actions that have been taken since the initiation of these proceedings, an updated waiver of hearing, updated settlement, a discussion of allocation of maintenance costs, and a proposal regarding how the Commission should proceed to resolve this matter. Additionally, Commission staff (Staff) suggested that the matter could be resolved through the Commission's delegated order process if the City filed updated petitions and UPRR was willing to waive its right to a hearing on the petitions.<sup>3</sup>
- 6 On October 10, 2025, the Commission issued a notice establishing a deadline to file additional materials or a status update by October 17, 2025. On October 16, 2025, the City and UPRR filed a status report, requesting that the Commission continue the deadline to file additional materials or a status report to November 17, 2025. On November 4, 2025, the Commission filed a notice extending the deadline to file additional materials or a status update to November 17, 2025.
- 7 On November 17, 2025, the City and UPRR filed a Stipulated Response. As part of the Stipulated Response, the City and UPRR filed updated versions of the two petitions originally filed by the City regarding crossings USDOT 807857V and USDOT 807853T.<sup>4</sup> The Stipulated Response also includes a settlement agreement between the City and UPRR regarding the crossings that are the subject of the City's petitions, as well as minutes from a diagnostic meeting held pursuant to that agreement.<sup>5</sup> The Stipulated Response further provides that UPRR waives its right to a hearing to contest the petitions filed by the City pursuant to the terms and conditions set forth in other documents

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<sup>1</sup> On August 15, 2025, UPRR filed a revised version of the Stipulated Motion to Withdraw that included an Exhibit A that was originally omitted from the filing August 11, 2025.

<sup>2</sup> Stipulated Motion at 1.

<sup>3</sup> Young, TR 10:13 – 11:17.

<sup>4</sup> Stipulated Response at 1, 4-21.

<sup>5</sup> Stipulated Response at 33-37.

submitted in the Stipulated Response and requests that the Commission accept the City and UPRR's stipulated approval of the amended petitions.<sup>6</sup>

### DISCUSSION AND DECISION

8 While the Stipulated Response is somewhat ambiguous as to the ultimate relief requested, the discussion at the September 18, 2025, hearing supports an inference that the City and UPRR are requesting that the amended petitions be reviewed by the executive director pursuant to the Commission's delegated order process.<sup>7</sup> Both the City and UPRR confirmed at the hearing that they had essentially resolved their disputes regarding the two warning device modifications that are the subjects of the City's petitions, and neither objected to Staff's suggestion that this matter could be resolved via the delegated order process.<sup>8</sup> The Stipulated Response further provides that UPRR has waived its right to a hearing on the petitions, and the Commission interprets UPRR's statement that its waiver is "pursuant to the terms and conditions set forth in other documents submitted herewith" as referring to the information contained in the amended petitions and the agreement for UPRR to accept maintenance costs.<sup>9</sup> This inference is further supported by UPRR's request to withdraw its opposition to the City's two petitions in the Stipulated Motion.<sup>10</sup> Therefore, the Commission will liberally construe the Stipulated Response as updating the Stipulated Motion and requesting that the Commission transfer this matter to the executive secretary for resolution via the delegated order because a contested hearing is no longer necessary in this matter.<sup>11</sup>

9 The Commission finds that, based on the agreement of the parties that a contested adjudication is not necessary for the Commission to rule on the amended petitions, the amended petitions may be transferred to the executive secretary for resolution as part of the Commission's delegated order process. However, while the Stipulated Response indicates that the City and UPRR have reached an agreement concerning cost apportionment, and UPRR has waived its right to a hearing, the Commission notes that

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<sup>6</sup> Stipulated Response at 1-2.

<sup>7</sup> Young, TR 10:13 – 11:17. *See also In re Matter of the Delegation of Certain Commission Powers and Duties to Designated Commission Personnel*, Docket A-180762, Order 01 at 2 ¶ 7 (Sept. 27, 2018).

<sup>8</sup> Fukano, TR 7:2-11. *See also* Stipulated Response at 33-34.

<sup>9</sup> Stipulated Response at 1-2, 4-21.

<sup>10</sup> Stipulated Motion at 1.

<sup>11</sup> WAC 480-07-395(4).

the amended petitions do not have signatures for section 12 concerning cost apportionment or section 13 concerning waiver of hearing.<sup>12</sup> The Commission also observes that the petition regarding crossing USDOT 807857V does not have a signature for section 1 related to the petitioner's information.<sup>13</sup> In the interest of promoting a clear record for the executive director's review of these petitions, the Commission conditions its granting of the updated Stipulated Motion on the requirement that UPRR and the City file further amendments to both petitions regarding sections 12 and 13 to reflect the positions expressed in the Stipulated Response and an amendment to section 1 of the petition concerning crossing USDOT 807857V. Specifically, the Commission requires that the City and UPRR file updated signatures for each petition regarding the agreement on apportionment costs and the waiver of hearing, consistent with their representations in the Stipulated Response, as well as the petitioner's signature for section 1 of the petition concerning crossing USDOT 807857V.

### FINDINGS AND CONCLUSIONS

- 10 (1) The Commission is an agency of the state of Washington having jurisdiction over public highway-rail grade crossing within the state of Washington.
- 11 (2) The grade crossing identified as USDOT 807857V is a public highway-rail grade crossing within the state of Washington.
- 12 (3) The grade crossing identified as USDOT 807853T is a public highway-rail grade crossing within the state of Washington.
- 13 (4) The City and UPRR have reached an agreement concerning the City's petitions regarding modifications to warning devices and the apportionment of maintenance costs for crossings USDOT 807857V and USDOT 807853T.
- 14 (5) UPRR has waived its right to a hearing concerning the proposed modifications to warning devices for crossings USDOT 807857V and USDOT 807853T as described in the amended petitions filed on November 17, 2025.
- 15 (6) The Commission determines that, based on the agreement of the City and UPRR, further contested adjudicative proceeding are no longer necessary to resolve the

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<sup>12</sup> Stipulated Response at 10-11, 19-20.

<sup>13</sup> Stipulated Response at 4.

amended petitions, and that the petitions may be resolved by the executive secretary pursuant to the Commission's delegated order process.

- 16 (7) The Commission determines that it is appropriate to close this adjudication and transfer this matter to the executive secretary for further review, subject to the condition that the City and UPRR file further amendments to the petitions to reflect the parties' agreement concerning the apportionment of maintenance costs (section 12) and UPRR's waiver of a right to a hearing (section 13) for each petition, as well as adding a signature to the petitioner's information (section 1) of the petition concerning crossing USDOT 807857V, within 30 days of the effective date of this Order.
- 17 (8) The Commission should grant the Stipulated Motion, as updated by the Stipulated Response, subject to the condition described in paragraphs 9 and 16 above.

### ORDER

- 18 (1) The Commission grants the Stipulated Motion to Withdraw Opposition, as updated by the Stipulated Response, and transfers this matter for resolution by the executive director pursuant to the delegated order process, subject to the condition that the City of Olympia and Union Pacific Railroad Company file further amendments to the amended petitions concerning crossings USDOT 807857V and USDOT 807853T to reflect the parties' agreement concerning the apportionment of costs and UPRR's waiver of hearing, as well as the petitioner's signature for section 1 of the petition concerning crossing USDOT 807857V, within 30 days from the effective date of this Order.
- 19 (2) The Commission retains jurisdiction over this matter to effectuate the terms of this Order.

DATED at Lacey, Washington, February 19, 2026.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Harry Fukano*

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HARRY FUKANO

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)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

WAC 480-07-830 provides that before the Commission enters 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. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

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).