

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

CITY OF FIFE,	)	DOCKET TR-100098
	)	
Petitioner,	)	ORDER 02
	)	
v.	)	
	)	PREHEARING CONFERENCE
UNION PACIFIC RAILROAD,	)	ORDER ESTABLISHING
	)	PROCEDURAL SCHEDULE AND
Respondent.	)	SCHEDULING HEARING
	)	<b>(Evidentiary Hearing set for</b>
	)	<b>October 26, 2010)</b>
.....	)	

1     **NATURE OF PROCEEDING:** On January 13, 2010, the City of Fife (City or Fife) filed with the Washington Utilities and Transportation Commission (Commission) a Petition to open a pedestrian only at-grade rail crossing at 54<sup>th</sup> Avenue East in Fife. The City asserts that a new crossing is necessary to accommodate the increased pedestrian traffic caused by increased development in the area. On January 25, 2010, the Commission provided Union Pacific Railroad (UPR or Railroad) with notice of the petition and requested that the Railroad respond, within 20 days, with its position on the Petition. On February 12, 2010, UPR filed a letter opposing the proposed crossing modification.

2     By Notice entered March 30, 2010, the Commission scheduled a prehearing conference and appointed Administrative Law Judge Patricia Clark to hear this matter. On April 30, 2010, all parties filed a Joint Motion for Continuance of the Prehearing Conference and requested that it be continued to May 19, 2010, because the parties are engaged in settlement negotiations. On the same date, the Commission entered Order 01, Granting Motion for Continuance and rescheduling the prehearing conference.

3     **CONFERENCE.** The prehearing conference convened, as scheduled, in this proceeding at Olympia, Washington on May 19, 2010, before Judge Clark.

4     **PARTY REPRESENTATIVES:** Loren D. Combs, City Attorney, VSI Law Group, PLLC, Tacoma, Washington, represents the City. Carolyn Larson, Dunn Carney Allen Higgins and Tongue, LLP, Portland, Oregon, represents UPR. Fronda Woods, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).<sup>1</sup> A complete list of party representatives and their contact information is attached to this Order as Appendix A.

5     **APPLICABLE STATUTE.** The Commission evaluates highway-rail crossings according to the applicable statutes in RCW Title 81. According to RCW 81.53.030 and RCW 81.53.110, the Commission has jurisdiction to regulate railroad crossings, determine the style or nature of construction of new at-grade crossings, and to apportion the expense of such a change between the railroad and the municipality or county affected by the modification.

6     **PROCEDURAL SCHEDULE/PROCEDURAL RULES.** During the prehearing conference, the parties advised the Commission that they believe they will be able to resolve the substantive issues in this case to their mutual satisfaction. The parties agreed on a deadline to submit documents resolving those issues as well as on a procedural schedule in the event this matter is disputed and will proceed to evidentiary hearing. The Commission adopts the procedural schedule proposed by the parties. The procedural schedule is set forth in Appendix B to this Order.

7     The Commission's procedural rules at WAC 480-07-100, *et. seq.*, apply to all procedural matters in this case. The parties should familiarize themselves with these rules.

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without first giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

- 8 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter at **10:00 a.m., October 26, 2010, in the Commission’s Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Dr. SE, Olympia, Washington.**
- 9 **PUBLIC COMMENT HEARING.** If the parties are unable to resolve the disputed issues in this matter, the Commission will convene a public comment hearing in this case to afford affected residents the opportunity to present comments to the Commission. A separate notice of public comment hearing will be issued after the Commission has confirmed specific hearing location details. However, the Commission intends to hold the public comment hearing, if necessary, **on October 27, 2010, within the City of Fife.**
- 10 **DISCOVERY.** During the prehearing conference, the presiding officer inquired of the parties whether the Commission should invoke its rules governing discovery. The parties requested that the discovery rules be invoked. This proceeding meets the criteria in WAC 480-07-400(2)(b). Accordingly, the Commission’s discovery rules will be invoked and discovery will be conducted pursuant to WAC 480-07-400 – 425.
- 11 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the original plus **five (5) copies** of the unredacted versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and 1 copy of any redacted version(s). These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials 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.
- 12 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

- 13 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Electronic versions of all documents must be filed in accordance with WAC 480-07-140(6). Specifically, all documents must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc (MS Word, .wpd (WordPerfect), .xls (Excel), or .ppt (Power Point) format.
- 14 A copy of all filings must be provided through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail delivery to <[records@utc.wa.gov](mailto:records@utc.wa.gov)>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 15 According to WAC 480-07-145(6), the parties may electronically submit documents to the Commission provided the electronic submission is received by 3:00 pm on the filing deadline and the Commission receives the original and required number of copies by 12:00 pm on the following business day. Parties must submit documents through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov), and file an original, plus **five (5) paper copies**, of the documents with the Commission by the following business day. Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge at [pclark@utc.wa.gov](mailto:pclark@utc.wa.gov) and to the parties to the proceeding.
- 16 **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 these services, please call the Director, Administrative Law Division, at 360-664-1144.

17 **NOTICE TO PARTIES:** A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective May 20, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK  
Administrative Law Judge

**APPENDIX A**

**Docket TR-100098**

<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>City of Fife</b>	Loren D. Combs City Attorney VSI Law Group, PLLC 3600 Port of Tacoma Road Suite 311 Tacoma, WA 98424	253-922-5464	253-922-5848-	<b>ldc@vsilawgroup.com</b>
<b>Union Pacific Railroad</b>	Carolyn Larson Attorney at Law Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Avenue Suite 1500 Portland, OR 97204	503-417-5462	503-224-7324	<b>cll@dunn-carney.com</b>
<b>Commission Staff</b>	Frona Woods Assistant Attorney General 1400 S. Evergreen Park Dr. SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	<b>Fwoods@utc.wa.gov</b>

**APPENDIX B  
PROCEDURAL SCHEDULE  
DOCKET TR-100098**

<u><b>EVENT</b></u>	<u><b>DATE</b></u>
All parties file a joint document resolving the substantive issues in this proceeding	July 9, 2010
<b>If the parties are unable to resolve the issues, the following procedural schedule will be implemented in this case.</b>	
City of Fife Prefiled Direct Testimony and Exhibits	August 16, 2010
Union Pacific Railroad and Commission Staff Prefiled Responsive Testimony and Exhibits	September 3, 2010
City of Fife Prefiled Rebuttal Testimony and Exhibits and Union Pacific Railroad and Commission Staff Prefiled Cross-answering Testimony and Exhibits	September 24 2010
Evidentiary Hearing	October 26, 2010
Public Comment Hearing	October 27, 2010
Simultaneous Post-hearing Briefs	November 9, 2010