

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF SPOKANE VALLEY,	)	DOCKET TR-111033
	)	
Petitioner,	)	ORDER 04
	)	
v.	)	ORDER GRANTING AMENDED
	)	MOTION FOR CONTINUANCE AND
UNION PACIFIC RAILROAD,	)	RESCHEDULING HEARING AND
	)	MOTION FOR LEAVE TO FILE OUT
Respondent.	)	OF TIME
	)	<b>(Evidentiary Hearing rescheduled for</b>
	)	<b>August 8, 2012)</b>
.....	)	

**MEMORANDUM**

1     **NATURE OF PROCEEDING.** On June 6, 2011, the City of Spokane Valley (the City) filed with the Washington Utilities and Transportation Commission (Commission) a petition to modify warning devices and install sidewalks at a highway-rail grade crossing at Pines Rd, Spokane County, Spokane Valley, Washington.<sup>1</sup> On June 21, 2011, the Commission sent a letter to Union Pacific Railroad Company (Union Pacific or the Railroad) notifying the Railroad of the petition and requesting that it respond to the petition within 20 days. On July 13, 2011, Union Pacific notified the Commission that, while it does not have any objection to the petition, it does have concerns about cost allocations for the installations.

2     On September 1, 2011, the Commission entered Order 01 adopting the procedural schedule proposed by the parties.<sup>2</sup> Due to ongoing settlement discussions amongst

---

<sup>1</sup> The City filed a revised page 5 to its original petition on June 30, 2011.

<sup>2</sup> The procedural schedule was subsequently modified in Order 02 – Order Granting Request to Modify Procedural Schedule and Rescheduling Hearing, entered on November 3, 2011.

the parties, the Commission granted an unopposed continuance request on December 21, 2011.<sup>3</sup>

3 **MOTION.** On February 6, 2012, the City filed an Amended Motion for Continuance and to Modify Procedural Schedule and Request for Leave to File Out of Time Motion (Amended Motion).<sup>4</sup> In its Amended Motion, the City requests that the Commission continue all procedural deadlines by eight weeks. The City states that it has reached an agreement with the Railroad “as to the improvements and modifications to be performed at the crossing.”<sup>5</sup> The parties, however, are still negotiating the specifics of how Union Pacific will perform the improvements and then invoice the City. In addition, when a comprehensive agreement is reached, the City contends that it will still have to be approved by the Spokane Valley City Counsel (City Counsel) and that process would require a minimum of three weeks.<sup>6</sup> Neither Union Pacific nor the Commission’s regulatory staff, the other parties to the proceeding, objects to the Amended Motion.<sup>7</sup>

4 **Discussion/Decision.** Pursuant to WAC 480-07-385(3)(c), the Commission may consider continuance requests made out of time for good cause shown. The City does not regularly appear before the Commission and is, therefore, less familiar with the Commission’s rules. That being said, counsel for the City has been apprised of the mandate in WAC 480-07-385(3) for timeliness in filing continuance requests, and the Commission is confident that the City exercise great care in not making this same error in the future. The Commission finds that the City’s request, while out of time, should be considered.

---

<sup>3</sup> See Order 03, Order Granting Motion for Continuance and to Modify Procedural Schedule and Rescheduling Hearing (December 21, 2011).

<sup>4</sup> The City initially filed a Second Motion for Continuance and to Modify Procedural Schedule on February 1, 2012, only two business days prior to the deadline for the City to submit its direct testimony and exhibits. WAC 480-07-385(3)(a) requires that movants file continuance requests at least five business days in advance of the deadline for which modification is being sought. As a result, the City’s subsequent Amended Motion requests leave to file out of time.

<sup>5</sup> Amended Motion at 1.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

- 5 The Commission's review of a continuance request is guided by WAC 480-07-385(2), which provides that an uncontested request will be grant unless it is inconsistent with the public interest or the Commission's administrative needs. Neither exception is applicable here. The requested extension, if granted, allows the parties additional opportunity to reach a full settlement on the contested issues and takes into consideration the time needed for review of any agreement by the City Counsel.
- 6 The Commission's rules also require that a continuance request contain a specific date to which the deadlines are being extended. The City, in requesting an eight week extension of all procedural deadlines, has met this requirement. The Amended Motion is not inconsistent with the public interest or the Commission's administrative needs, and it includes a specific date by which the deadlines should be extended. Thus, the City's Amended Motion should be granted.<sup>8</sup>
- 7 **NOTICE OF HEARING.** The evidentiary hearing, previously set for June 13, 2012, is rescheduled for **August 8, 2012, at 10:00 a.m., in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive SW, Olympia, Washington.**

**ORDER**

- 8 THE COMMISSION ORDERS that the Amended Motion for Continuance and to Modify Procedural Schedule and Request for Leave to File Out of Time Motion, filed by the City of Spokane Valley, is granted.

Dated at Olympia, Washington, and effective February 7, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
Administrative Law Judge

---

<sup>8</sup> The revised procedural schedule is set forth in Appendix A to this Order.

**APPENDIX A  
REVISED PROCEDURAL SCHEDULE  
DOCKET TR-111033**

<b>EVENT</b>	<b>PRIOR DEADLINE</b>	<b>REVISED DEADLINE</b>
City of Spokane Valley Prefiled Direct Testimony and Exhibits	February 3, 2012	March 30, 2012
Union Pacific Railroad and Commission Staff Prefiled Responsive Testimony and Exhibits	April 6, 2012	June 1, 2012
City of Spokane Valley Prefiled Rebuttal Testimony and Exhibits and Union Pacific Railroad and Commission Staff Prefiled Cross-answering Testimony and Exhibits	May 11, 2012	July 6, 2012
Evidentiary Hearing	June 13, 2012	August 8, 2012