

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

CITY OF KENNEWICK,	)	
	)	DOCKET NO. TR-040664
Petitioner,	)	
	)	ORDER NO. 02
v.	)	
	)	
UNION PACIFIC RAILROAD,	)	ORDER GRANTING
	)	CONTINUANCE; SUSPENDING
Respondent.	)	PROCEDURAL SCHEDULE
	)	
.....	)	

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     **Background.** The Commission convened a prehearing conference in this docket at Olympia, Washington on October 19, 2004, before Administrative Law Judge C. Robert Wallis. At that conference the parties agreed to a schedule that required evidentiary hearings on May 9, 2005.

3     On November 22, 2004, the City of Kennewick filed a Stipulation, agreed upon by Union Pacific Railroad and Commission Staff, regarding the hearing schedule. On November 23, 2004, the Commission issued a notice modifying the procedural schedule that required evidentiary hearings on June 6, 2005.

4     On February 22, 2005, the City of Kennewick (City) and Union Pacific Railroad (UPRR) filed a joint Stipulation and Order Continuing Scheduling Order. Both, the City and UPRR indicate they have reached a tentative settlement agreement in this matter contingent upon two conditions being met by April 1, 2005. The parties stipulate to strike all dates set forth in the Commission's Scheduling

Order. Both parties state if the conditions of the settlement are satisfied, a stipulated dismissal will be entered, and if the conditions are not met, the parties will provide the Commission with proposed dates for the Commission's approval. The parties indicate if necessary, new dates will be provided upon receipt of a joint stipulation submitted no later than 60 days. The terms of the Administrative Procedure Act<sup>1</sup> and State Constitutional law<sup>2</sup> require that, the Commission approve any proposed settlement. Commission rules outline the procedures for approval.<sup>3</sup>

5 **Appearances.** John Ziobro, city attorney, represented the City of Kennewick. Carolyn Larson, attorney, Portland, OR, represented respondent Union Pacific railroad. Jonathan Thompson, Assistant Attorney General, Olympia, represents the Commission Staff.

6 **Objections:** Commission staff reports that they do not have an objection to a further continuance.

### ORDER

THE COMMISSION ORDERS That:

- 7 (1) The joint request of the City of Kennewick and Union Pacific Railroad for a continuance of the procedural schedule is granted until further notice.
- 8 (2) The parties are required to report back to the Commission by April 22, 2005, with either an agreed upon joint settlement agreement or if necessary, a new proposed hearing schedule.

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<sup>1</sup> RCW 34.05.060.

<sup>2</sup> See, Adjudications under the APA, Section 9.04D, in *Washington Administrative Law Practice Manual, Finnigan, et al., Release No. 14 (2004)*.

<sup>3</sup> See, WAC 480-07-730 through 750.

- 9 (3) The Commission will review any proposed settlement pursuant to the processes set out in WAC 480-07-730 through 750.

DATED at Olympia, Washington, and effective this 23rd day of February, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS  
Administrative Law Judge