

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF WOODINVILLE, ) DOCKET TR-143902  
 ) (Consolidated)  
 Petitioner, )  
 ) ORDER 02

v. )  
 )

EASTSIDE COMMUNITY RAIL, )  
BALLARD TERMINAL RAIL, PORT )  
OF SEATTLE, AND WASHINGTON )  
STATE DEPARTMENT OF )  
TRANSPORTATION, )  
 )  
 Respondents. )

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CITY OF WOODINVILLE, ) Docket TR-143903  
 ) (Consolidated)  
 Petitioner, )  
 ) ORDER 02

v. )  
 )

EASTSIDE COMMUNITY RAIL, ) ORDER GRANTING MOTION FOR  
KING COUNTY, BALLARD ) PARTIAL SUMMARY  
TERMINAL RAIL, AND ) DETERMINATION; REQUIRING  
WASHINGTON STATE ) FILING OF SETTLEMENT  
DEPARTMENT OF ) DOCUMENTS OR STATUS REPORT  
TRANSPORTATION, ) **(By December 2, 2015)**  
 )  
 Respondents. )

..... )

**BACKGROUND**

1 On November 18, 2014, the City of Woodinville (the City) filed petitions seeking approval to modify two at-grade crossings (Petitions) to accommodate the construction of two additional

lanes of traffic on State Route 202.<sup>1</sup> The proposed modifications at both crossings include updated flashers, automatic gates, and signal preemption at nearby parallel intersections, which will prevent traffic from stopping on the tracks.

- 2 On December 29, 2014, the Commission received a letter from Eastside Community Rail and Ballard Terminal Railroad Company (the Railroads) opposing the petitions.
- 3 On March 19, 2015, the Commission convened a prehearing conference in both proceedings, consolidated the dockets, and adopted a procedural schedule. On April 13, 2015, the parties participated in a settlement conference mediated by Administrative Law Judge Dennis Moss.
- 4 On April 15, 2015, Staff notified the Commission that the parties had made progress toward settlement during the mediated conference and requested the deadlines for filing testimony be suspended to allow additional time for negotiations. On August 4, 2015, the parties participated in a second mediated settlement conference with Judge Moss. The parties reached agreement on all issues except the question of whether the City or the Railroads would be responsible for the maintenance costs of the warning devices at both crossings.<sup>2</sup> The parties agreed to resolve that issue through a summary determination proceeding.
- 5 On September 4, 2015, the City filed a Motion for Partial Summary Judgment on Remaining Unresolved Issue and Brief in Support of Petitioner's Motion for Partial Summary Judgment on Remaining Unresolved Issue (City's Motion and Brief).<sup>3</sup>

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<sup>1</sup> The petition to reconstruct a highway-rail grade crossing, and install an inter-tie between a highway signal and a railroad crossing signal system at State Route 202 in the City of Woodinville, USDOT Crossing No. 091797E was assigned to Docket TR-143902. The petition to reconstruct a highway-rail grade crossing, and install an inter-tie between a highway signal and a railroad crossing signal system at State Route 202 in the City of Woodinville, USDOT Crossing No. 091797F was assigned to Docket TR-143903.

<sup>2</sup> During the conference, the parties agreed to reduce the length of the crossing arms and use asphalt instead of concrete crossing panels for the East crossing. The City agreed to maintain the asphalt for 25 years, and to install concrete panels on the West crossing to match the existing concrete.

<sup>3</sup> Although the City refers in its Motion to "summary judgment," WAC 480-07-380(2) addresses motions for "summary determination." Accordingly, the City's Motion will be hereinafter be referred to as a motion for summary determination consistent with the Commission's procedural rules.

- 6 In its Brief, the City argues that maintenance of the new grade crossing arms included in the WSDOT-approved revised channelization plan for Woodinville’s project should be the sole responsibility of the Railroads. The City quotes the Federal Highway Administration Railroad-Highway Grade Crossing Handbook, which provides that “current procedures place maintenance responsibilities for devices located in the railroad right of way with the railroad.”<sup>4</sup> The City also argues that railroad responsibility for maintenance of signals following installation of federally-funded rail crossing projects is recognized by BNSF in its Grade Crossing Safety 2014 Publication, which notes that installation costs are split between federal funds and the local jurisdiction, and “the railroad maintains the signals from that time forward.” Finally, the City argues that RCW 81.53.295 requires a railroad to pay for maintenance costs when, as here, a project is partially funded by federal funds.
- 7 On September 29, 2015, Staff filed a response to the City’s Motion and Brief (Staff’s Response). Staff supports the City’s request, and argues that the Railroads have a statutory duty to maintain the reconfigured crossing arms at both grade crossings. Staff notes that although the City’s Motion and Brief solely addresses maintenance responsibility for the new crossing arms, the City is also clearly requesting the Commission assign maintenance responsibility for all other active warning devices at both crossings to the Railroads.
- 8 On October 2, 2015, the Railroads filed a brief in response to the City’s Motion and Brief (Railroads’ Response). The Railroads argue that bearing the cost of maintaining the crossing arms represents a substantial financial risk, and request the Commission devise a cost-sharing solution that does not place an undue burden on the Railroads. The Railroads point to crossing agreements with other government agencies, such as King County and the City of Puyallup, where the parties agreed that local government agencies would pay for all maintenance and repair costs for crossing signals. The Railroads also assert that, to their knowledge, the City’s project is not approved or funded by the City, state, or federal sources, and that expanding the bridge will interfere with future railway plans. Finally, the Railroads argue that because they are Class 3 railroads that are not yet operating at a profitable level they need public support, when reasonable.
- 9 On October 16, 2015, the City filed a reply to the Railroads’ Response (City’s Reply). In its Reply, the City argues that the Railroads failed to cite any legal authority for their position, and failed to dispute the City’s legal analysis.

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<sup>4</sup> City’s Brief at 3:1-2, quoting the Federal Highway Administration Railroad-Highway Grade Crossing Handbook – Revised Second Edition August 2007

- 10 On October 16, 2015, King County filed a Brief to Clarify Certain Points of Fact related to the Railroads' assertion that King County is responsible for maintaining the 190<sup>th</sup> and 195<sup>th</sup> Street crossings in Woodinville. Rather, the City of Woodinville has been responsible for the maintenance of those crossings since the City became incorporated in 1993.
- 11 Greg A. Rubstello, Ogden Murphy Wallace P.L.L.C., Seattle, Washington, represents Petitioner City of Woodinville. Doug Engle, Managing Director, Snohomish, Washington, represents Respondent Eastside Community Rail. Byron Cole, CEO, Seattle, Washington, represents Ballard Terminal Railroad. Ahmer Nizam, Manager – Utilities and Railroad, Olympia, Washington, represents the Washington State Department of Transportation (WSDOT). Isabel Safora, Deputy General Counsel, Seattle, Washington, represents the Port of Seattle. Andrew Marcuse, Senior Deputy Prosecuting Attorney, Seattle, Washington, represents King County. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Staff).<sup>5</sup>

#### DISCUSSION AND DECISION

- 12 We grant the City's motion for partial summary determination and find that the Railroads are responsible for the cost of maintaining of all active warning devices at both crossings. While RCW 81.53.261 does not prohibit interested parties from entering into an agreement for the apportionment of maintenance costs, both parties acknowledge that no such agreement has been reached here. Absent such an agreement, the Commission does not have the authority to devise and impose a cost-sharing solution, as the Railroads request. As noted by the City in its Brief, RCW 81.53.261 directs the Commission to apportion the costs of installing and maintaining signals and other warning devices in accordance with RCW 81.53.271.
- 13 RCW 81.53.271, in turn, refers to RCW 81.53.295 for the apportionment of installation and maintenance costs where federal-aid funding is available; where no federal-aid funding is available, RCW 81.53.271 apportions maintenance between the grade crossing protective

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<sup>5</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 this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

fund and the railroad. Where, as here, federal-aid funding is available,<sup>6</sup> RCW 81.53.295 provides that “[t]he Railroad whose road is crossed by the highway, street, or road, shall thereafter pay the entire cost of maintaining the device.” The applicable statutes do not permit the Commission to order a city, town, county, or state to assume responsibility for the cost of maintaining warning devices at railroad crossings. Accordingly, the Railroads must bear the cost of maintaining all active warning devices at both crossings.

- 14 With respect to the agreements reached by the parties during the mediated settlement conferences, as discussed above, the parties should file a settlement agreement or stipulation memorializing the terms of their agreements by Wednesday, December 2, 2015.

### FINDINGS AND CONCLUSIONS

- 15 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the placement and conditions of operation of at-grade crossings of railroad tracks over public roadways within the State of Washington.
- 16 (2) The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding.
- 17 (3) Through two mediated settlement conferences, the parties reached agreement on all issues except the question of which party should bear the maintenance costs for the crossing arms at both crossings.
- 18 (4) Pursuant to RCW 81.53.295, the Railroads are responsible for the cost of maintaining the active grade crossing protective devices at both crossings. The Commission should therefore grant the City’s Motion for partial summary determination.
- 19 (5) With respect to the remaining issues on which the parties have reached agreement, the parties should be required to file a settlement agreement or stipulation memorializing the terms of their agreements by December 2, 2015.

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<sup>6</sup> In its Response, the Railroads state that “[t]o the best of our knowledge, this project is not approved or funded by the City, state or federal sources.” (Response, p. 3). Thomas Hansen’s declaration, however, explains that the project received a federally-funded grant in 2007, administered by WSDOT, which will fund 19.3 percent of the project. *See* Declaration of Thomas Hansen, ¶4.

**ORDER**

THE COMMISSION ORDERS:

- 20 (1) The City of Woodinville's motion for partial summary determination is GRANTED.
- 21 (2) The parties must file a settlement agreement or stipulation memorializing the terms of their agreements on the issues that are no longer contested by December 2, 2015.

Dated at Olympia, Washington, and effective November 16, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

**NOTICE TO THE 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) 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 (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) 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), as amended in the 2006 legislative session, 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.

You must serve on each party of record one copy of any Petition or Answer filed with the Commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and three copies of your petition or answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250