

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF SPOKANE VALLEY,)	DOCKET TR-111033
)	
Petitioner,)	ORDER 05
)	
v.)	INITIAL ORDER GRANTING
)	MOTION TO WITHDRAW
UNION PACIFIC RAILROAD,)	PETITION, WITHOUT PREJUDICE,
)	AND VACATING PROCEDURAL
Respondent.)	SCHEDULE
)	
.....)	

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.¹ 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 objections to the petition, it does have concerns about cost allocations for the installations.

2 The Commission convened a prehearing conference on August 30, 2011. During the prehearing conference, the parties advised the Commission that they have agreed on a proposed procedural schedule. On September 1, 2011, the Commission entered Order 01 adopting the procedural schedule proposed by the parties.²

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

² The procedural schedule has been revised on numerous occasions due to the progression of settlement negotiations among the parties.

3 **PARTY REPRESENTATIVES.** Bryan D. Caditz, Hedeem & Caditz, PLLC, Seattle, Washington, represents the City. Carolyn Larson, Dunn Carney Allen Higgins and Tongue, LLP, Portland, Oregon, represents Union Pacific. Michael A. Fassio, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Staff).³

4 **MOTION TO WITHDRAW PETITION.** On April 2, 2012, the City filed a motion to withdraw its petition (Motion). The City asserts that it has reached a settlement with the Railroad which resolves the cost allocation issues for the installations. According to the City, the Spokane Valley City Council approved the settlement on March 27, 2012. The City insists that, if its Motion were granted, it would file a new petition to modify warning devices and install sidewalks at a highway-rail grade crossing, for which Union Pacific has waived its right to a hearing. The City maintains that the Railroad and Staff support this motion.

5 **DISCUSSION.** A party may withdraw a petition it has filed with the Commission initiating an adjudicative proceeding only upon permission by the Commission once a matter has been set for hearing. The Commission will grant a motion to withdraw such a petition if the withdrawal is in the public interest.

6 The Commission finds that it is in the public interest to grant the Motion. The Commission encourages parties to resolve disputes informally, and the parties here have reached an agreement which settles the cost allocation issues associated with the warning devices and sidewalks. Accordingly, the Motion is granted, without prejudice, and the procedural schedule is vacated.

³ 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.

ORDER

THE COMMISSION ORDERS:

- 7 (1) The motion to withdraw the petition filed by the City of Spokane Valley is granted, without prejudice.
- 8 (2) The procedural schedule in this matter is vacated.

Dated at Olympia, Washington, and effective April 3, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
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 twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and five (5) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250