

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

CITY OF KENNEWICK,	)	
	)	DOCKET NO. TR-040664
Petitioner,	)	
	)	ORDER NO. 04
v.	)	
	)	ORDER ESTABLISHING
UNION PACIFIC RAILROAD,	)	PROCEDURAL SCHEDULE;
	)	NOTICE OF HEARING
Respondent.	)	<b>(Set for January 19, 2006, 9:30</b>
	)	<b>a.m.)</b>
.....	)	

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     **Conference.** The Commission convened a prehearing conference in this docket at Olympia, Washington on June 2, 2005, before Administrative Law Judge Karen M. Caillé. At that conference the parties agreed to a schedule that set evidentiary hearings for January 19, 2006.

3     **Appearances.** Tyler Morris, Assistant City Attorney, represents the City of Kennewick. Carolyn Larson, attorney, Portland, OR, represents respondent Union Pacific Railroad. Jonathan Thompson, Assistant Attorney General, Olympia, WA, represents the Commission Staff.

4     **Background.** The City of Kennewick filed this petition on April 9, 2004. A prehearing conference was scheduled for June 28, 2004, and continued at the parties' request three times, to October 19, 2004, to allow the parties to continue discussions in furtherance of a settlement.

- 5 On October 19, 2004, the Commission convened a prehearing conference before Administrative Law Judge C. Robert Wallis, and among other things, set a procedural schedule with a hearing date of May 9, 2005. Due to conflicts, the schedule was later revised, as stipulated by the parties, with a hearing date of June 6, 2005.
- 6 On February 22, 2005, the City of Kennewick and Union Pacific Railroad filed a joint stipulation requesting that the procedural schedule be suspended because they had reached a tentative settlement agreement. The Commission entered an order suspending the procedural schedule, and directed the parties to report back to the Commission by April 22, 2005, with either an agreed upon joint settlement agreement or a new proposed hearing schedule.
- 7 On April 25, 2005, the City of Kennewick and Union Pacific Railroad informed the Commission, by filing a joint motion for continuance that the Union Pacific Railroad and the City of Kennewick have agreed to the terms for moving Union Pacific's interchange operation with the Tri-City & Olympia Railway from Kennewick to Wallula Junction. However, Union Pacific still needs to secure BNSF Railway's permission to allow the Tri-City & Olympia Railway to operate over joint UPRR/BNSF tracks to reach Wallula. The Commission extended the deadline to June 1, 2005 for reporting in writing with an agreed settlement or recommendations for further process. In addition, the Commission set a prehearing conference for June 2, 2005, to discuss the procedural status of the docket.
- 8 On June 1, 2005, Union Pacific filed a status report and recommendation for process. Union Pacific reports that BNSF told Union Pacific several months ago that it would likely consent to allowing Tri-City & Olympia to operate over the joint UP/BNSF tracks to reach Wallula, but it has not yet given its written consent. Union Pacific requests additional time of 35 days to assess whether or not a relocation to Wallula is likely.

- 9     **Procedural Schedule.** The Commission declines to follow Union Pacific's process recommendation and establishes the procedural schedule that is attached to this Order as Appendix A, which is incorporated into the body of this Order by this reference. The Commission acknowledges the efforts of the City of Kennewick and Union Pacific to settle this matter, and notes that the procedural schedule will still allow time for Union Pacific to finalize terms with BNSF, if that proposal remains viable.
- 10    **Notice of Prehearing Conference.** The Commission here gives notice of a prehearing conference in this matter, to mark exhibits and to resolve objections and process issues. The conference will be held in Room 108, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, on **Monday, January 9, 2006, at 9:30 a.m.**
- 11    **Notice of Hearing.** The Commission here gives notice of a hearing in this matter on **Thursday, January 19, 2006, beginning at 9:30 a.m.**, in Room 108 of the Commission's offices, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.
- 12    **Document preparation and process issues.** The procedures outlined in paragraphs 9-11 of Order No. 01, served on November 15, 2004, relating to filing of pleadings, and other documents, remain in effect.

DATED at Olympia, Washington, and effective this 6th day of June, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ  
Administrative Law Judge

**APPENDIX A**  
**DOCKET NO. TR-040664**

<b>EVENT</b>	<b>DATE</b>
Informal discovery ends	<b>August 22, 2005<sup>1</sup></b>
City of Kennewick files testimony and exhibits	<b>September 19, 2005</b>
Commission Staff files testimony and exhibits	<b>October 10, 2005</b>
Railroad files testimony and exhibits	<b>October 31, 2005</b>
Dispositive motions, if any	<b>December 5, 2005</b>
Answers, if any to any dispositive motions	<b>December 12, 2005</b>
Prehearing conference (if necessary) to mark exhibits and resolve objections and process issues	<b>January 9, 2006</b>
Hearing begins	<b>January 19, 2006</b>
Briefing or oral arguments	<b>T/B/D</b>

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<sup>1</sup> The City of Kennewick and Union Pacific Railroad agreed that this date may be flexible to accommodate Union Pacific's expert without impacting the filing date for the City's prefiled testimony.