# BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re the Petition of:

CLARK COUNTY,

Petitioner

v.

BURLINGTON NORTHERN SANTA FE RAILWAY,

Respondent.

DOCKET NO. TR-190228

PETITIONER'S MOTION TO WITHDRAW PETITION WITHOUT PREJUDICE

# 1. INTRODUCTION & RELIEF REQUESTED

Pursuant to WAC 480-07-380(3)(a), Petitioner Clark County ("Petitioner") hereby moves to withdraw its April 2, 2019, Petition without prejudice. Petitioner expressly reserves the right file a future Petition with the Washington Utilities and Transportation Commission to facilitate a quiet zone at the crossing that is the subject of this matter.

## II. FACTS

On April 2, 2019, Petitioner Clark County filed with the Washington Utilities and Transportation Commission a Petition for Installation of Median Barriers at a Highway-Rail Grade Crossing. The Petition sought to install median barriers on both sides of the crossing at NW 122 Street in Vancouver, Washington. Since that time, the parties have determined that Burlington Northern Santa Fe Railway ("BNSF") owns a significant portion of the right of way on the western side of the crossing, including the area where the proposed median would be

installed. BNSF has represented that it opposes the installation of the proposed median in part because it will block access to crew change areas on the north and south side of NW 122<sup>nd</sup> west of the crossing. Under the circumstances it does not appear that the median design referenced in Clark County's Petition will be feasible.

#### III. AUTHORITY AND ARGUMENT

The Commission has authority to grant Petitioner's Motion to Withdraw pursuant to WAC 480-07-380(3), which provides in relevant part:

#### (3) Motion to withdraw.

(a) *General*. Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion. The motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.

Under the circumstances present in this case, including BNSF's objections and its ownership of the road and right of way where the proposed western median was to be installed, the median design referenced in Clark County's Petition does not appear to be feasible. These facts constitute good cause to allow Clark County to withdraw the subject Petition without prejudice and with permission to file a future petition to facilitate a quiet zone at the crossing.

#### IV. CONCLUSION

In the interests of efficiency and based upon the good cause set forth herein, Clark County respectfully requests that the Commission grant this Motion to Withdraw the April 2, 2019, Petition without prejudice and with permission to re-file a future petition relating to the subject crossing.

Respectfully submitted this 25<sup>th</sup> day of August 2020.

s/ Taylor R. Hallvik

Taylor R. Hallvik, WSBA #44963 Deputy Prosecuting Attorney Clark County Prosecutor's Office – Civil Div. Attorney for Petitioner

### **CERTIFICATE OF SERVICE**

On this 25<sup>th</sup> day of August 2020, I, Pamela Hamilton, hereby certify that I made service of the foregoing *PETITIONER'S MOTION (FOR ORDER) TO WITHDRAW PETITION WITHOUT* 

PREJUDICE on the parties listed below via electronic mail and U.S.P.S. mailing:

Attorney for UTC Staff

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s/ Pamela Hamilton

Pamela Hamilton, Paralegal