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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION HEARINGS BOARD

CITY OF SPOKANE VALLEY, a municipal
corporation,

Complainant,

vs.

UNION PACIFIC RAILROAD COMPANY
(aka UPRR),

Respondent.

No. TR-210814; 210809

ANSWER OF UNION PACIFIC RAILROAD
COMPANY TO COMPLAINT AND
PETITION TO MODIFY WARNING
DEVICES AT A HIGHWAY RAILROAD
GRADE CROSSING

USDOT: 66256C

Respondent Union Pacific Railroad Company (“UPRR”), by and through undersigned
counsel, hereby responds to City of Spokane Valley’s Complaint as follows:

I. VENUE AND JURISDICTION

1. This paragraph contains a legal conclusion to which no response is required. To the
extent a response is required, UPRR is without information or knowledge sufficient to admit or
deny and therefore, denies. UPRR specifically denies that the Washington State Utilities and
Transportation Commission (the “Commission”) has jurisdiction over this matter and further
denies that the Commission may compel UPRR to pay for grade crossing improvements that are
of no ascertainable benefit to UPRR.

1 **II. PARTIES**

2 2. Upon information and belief, UPRR admits.

3 3. UPRR admits that it is a transportation company doing business in Spokane County,
4 State of Washington. UPRR also admits that Ellis Mays is a contact person for UPRR.

5
6 **III. FACTS**

7 4. UPRR denies that the parties entered into an agreement and denies all remaining
8 allegations for lack of sufficient knowledge or information.

9 5. UPRR admits.

10 6. This paragraph contains a legal conclusion to which no response is required. To the
11 extent a response is required, UPRR denies that it contains a complete and accurate statement of
12 facts and applicable law, and as such, denies. UPRR specifically denies that the proposed
13 construction was based upon public safety considerations and further denies that the delay in
14 effectuating the upgrade is harmful to the interests of public safety.

15 7. The attached exhibits speak for themselves.

16 **IV. RELIEF REQUESTED**

17 Complainant’s request for relief should be denied in its entirety.

18 **AFFIRMATIVE DEFENSES**

19 By way of further answer and by way of affirmative defense, UPRR alleges, and states as
20 follows:

21 1. Complainant’s complaint, in whole or in part, fails to state a claim upon which relief
22 may be granted.

23 2. If evidence shows that federal funds were not used for this project, RCW 81.53.295
24 would not apply.

25 3. The City’s Complaint violates the Commerce Clause of the U.S. Constitution, and
26 therefore any relief granted by the Utilities and Transportation Committee is void.

27 4. The City’s Complaint violates the ICC Termination Act, 49 U.S.C. §10501.

1 **DECLARATION OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that I
3 caused a true and correct copy of the foregoing to be served via the methods below on this 14th
4 day of March, 2022 on the following counsel/party of record:

5 6 7 8 9 10 11 12 13 14 15 16 17 18	Kenneth W. Harper MENKE JACKSON BEYER, LLP 807 N. 39 th Avenue Yakima, WA 98902 Phone: (509) 575-0313 Email: kharper@mjbe.com zfoster@mjbe.com qplant@mjbe.com Julie@mjbe.com <i>Attorneys for City of Spokane Valley</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via E-mail:
	Washington Utilities & Transportation Commission	<input checked="" type="checkbox"/> efiling.utc.wa.gov/form
	Jeff Roberson Assistant Attorney General Office of the Attorney General Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504-0128 Phone: (360) 664-1188 E-mail: jeff.roberson@utc.wa.gov betsy.demarco@utc.wa.gov	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via E-mail:

19
20
21 /s/ Elizabeth Pina
22 Elizabeth Pina, Legal Assistant
Elizabeth.Pina@lewisbrisbois.com