

November ¹⁶²⁶15, 2012

Washington Utilities and
Transportation Commission
Attn: Records Center
PO Box 47250
Olympia, WA 98504-7250

RE: Docket No. TR-12028, City of Auburn v. Gates, Gates, Gate LLC et.al.
Motion to Withdraw Petition

Dear Clerk:

Enclosed is the Petitioner's Motion to Withdraw Petition. I can be reached at
253.804.5027 (voice), 253.931.4007 (fax), or sgross@auburnwa.gov.

Very truly yours,


Steven L. Gross
Assistant City Attorney

Encl.

cc: All Counsel

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**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF AUBURN,

Petitioner,

v.

GATES, GATES, GATES LLC;
MOHAWK NORTHERN PLASTICS,
LLC d/b/a AMPAC; AND BNSF
RAILWAY COMPANY,

Respondents.

DOCKET TR-120828

PETITIONER'S MOTION TO
WITHDRAW PETITION

1. Pursuant to WAC 480-07-380(3), The City of Auburn ("City") moves to withdraw its petition filed in TR-120828, without prejudice. For the reasons set forth below, withdrawal of the petition is in the public interest.

2. On June 6, 2012, the City filed a petition to open an at-grade crossing over a private rail spur on A Street NW in Auburn. Respondents Gates, Gates, Gates LLC ("Gates") and Mohawk Plastics, LLC dba AMPAC ("AMPAC") waived their right to a hearing, which waivers were attached to the City's petition.

3. Respondent BNSF Railway ("BNSF") filed a response June 26, 2012.

4. The WUTC, by Notice dated July 16, 2012, scheduled a prehearing conference to be held on August 22, 2012.

5. The WUTC conducted the prehearing conference on August 22, 2012. It issued a Prehearing Conference Order the same day, and noticed an evidentiary hearing on the question of whether the City could be allowed to open the crossing pending the outcome of this Petition, such hearing to be held on August 23, 2012.

1 6. Upon the City's filing of additional information on August 22 stating the City's
2 position that it would not open the crossing until the WUTC ruled on its petition, the
3 WUTC struck the hearing.

4 7. The WUTC issued a Prehearing Conference Order on August 23, 2012.

5 8. The parties conducted a settlement conference on September 25, 2012.

6 9. On September 28, 2012, Petitioner filed a stipulated Motion to Amend
7 Prehearing Conference Order, in order to allow the parties to continue negotiations.
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9 10. The WUTC granted the Parties' motion by order dated October 4, 2012.

10 11. Petitioner submitted a Second Agreed Request for Continuance on October
11 18, 2012, and the WUTC granted the motion the same day.

12 12. On October 18, 2012, the Petitioner filed an agreed notice of proposed
13 settlement, asking the WUTC to suspend the procedural schedule. The WUTC did so by
14 Notice dated October 22, 2012

15 13. The Parties have been working together to resolve this Petition in a way that
16 allows the crossing to be opened while still taking reasonable and prudent measures to
17 protect public safety. They have reached a series of agreements that the parties expect
18 to accomplish this.
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20 14. If this Motion is granted, the City will file a new petition in accordance with the
21 agreements. BNSF, Gates, and AMPAC have agreed to waive their right to seek review
22 of an order granting the City's motion to withdraw its Petition, and anticipate that the
23 new petition will include waivers of hearing.
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1 15. WAC 480-07-380(3) provides:

2 (3) *Motion to withdraw.* A party may withdraw from a
3 proceeding only upon permission granted by the commission in
response to a written motion if:

4 (a) In the case of a matter initiated by a tariff filing, the
5 commission has entered a complaint and order suspending the
filing; or

6 (b) In all other cases, the commission has issued a hearing
7 notice or otherwise commenced an adjudicative proceeding
pursuant to chapter
8 34.05 RCW.

9 The commission will grant a party's motion to withdraw from a
proceeding when the party's withdrawal is in the public interest.

10 16. Withdrawal of the City's petition without prejudice is in the public
11 interest as all matters in dispute appear to have been resolved by the
12 Agreement and a hearing is unnecessary. Counsel for BNSF, Gates, AMPAC, and
13 WUTC staff have advised counsel for the City that the other parties support this
14 motion.

15 DATED this 16th day of November, 2012

17 CITY OF AUBURN

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20 By:


21 Daniel B. Heid, WSBA # 8217
22 Steven L. Gross, WSBA # 24658
23 Attorneys for Plaintiff, City of
24 Auburn