

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF AUBURN,)	DOCKET TR-120828
)	
Petitioner,)	
)	ORDER 02
v.)	
)	
GATES, GATES, GATES LLC;)	INITIAL ORDER GRANTING
MOHAWK NORTHERN PLASTICS,)	MOTION TO WITHDRAW
LLC d/b/a AMPAC; AND BNSF)	PETITION
RAILWAY COMPANY,)	
)	
Respondents.)	
)	
.....)	

1 **NATURE OF PROCEEDING.** This proceeding arises out of a petition from the City of Auburn to construct a highway-rail grade crossing at A Street Northwest in the City of Auburn. The grade crossing will impact the railway operator Burlington Northern Santa Fe (BNSF) and two private companies, Gates, Gates, Gates LLC and Mohawk Northern Plastics, LLC d/b/a AMPAC (collectively Respondents) who currently make use of a private rail spur line at that location.

2 **PROCEDURAL HISTORY.** Following a prehearing conference held before Administrative Law Judge Adam E. Torem on August 22, 2012, the Washington Utilities and Transportation Commission (Commission) entered Order 01, which adopted a procedural schedule in this matter. Order 01 established dates for prefilng testimony and exhibits and gave notice of an evidentiary hearing and a public comment hearing, both to be held on Tuesday, February 12, 2013.

3 The parties have been engaged in negotiations to resolve their issues for several months. In order to allow sufficient time for these discussions, the Commission twice postponed the dates established for the parties to prefile witness testimony. On November 1, 2012, the parties notified the Commission that they had reached a full agreement in principle. At that time, the Commission suspended the procedural

schedule in anticipation of the parties making the requisite filing to resolve this adjudication.

- 4 **MOTION TO WITHDRAW PETITION.** On November 21, 2012, the City of Auburn filed a motion to withdraw its petition from Commission consideration, without prejudice to re-file a modified petition at an appropriate time in the future. According to the City of Auburn, all parties agree that the petition should be withdrawn at this time and resubmitted with additional details that will allow the crossing to be opened with reasonable and prudent measures to ensure public safety. The City of Auburn's motion indicates that all respondents in this docket agree on the appropriate measures and are expected to waive their right to a hearing on the modified petition.
- 5 **COMMISSION DECISION.** The Commission adjudicates petitions to open, close, or modify railway crossings when a respondent refuses to waive its right to a hearing. In this case, Respondent BNSF Railway expressed several concerns with regard to the City of Auburn's plans to open a public at-grade crossing without installing active warning devices. It appears that prior to filing any testimony or otherwise formally presenting disputed issues to the Commission, the City of Auburn has now addressed BNSF's original concerns and that an adjudication may no longer be necessary. Under the circumstances presented in this case, the Commission will not require the parties to submit formal settlement documents. However, the proposed at-grade crossing cannot be opened until the City of Auburn re-files its modified petition and receives Commission approval to open the crossing.
- 6 The Commission's primary concern in these cases is public safety. The City's modified petition must explain how it will implement sufficient active and passive warning systems to ensure public safety at the new grade crossing. The Commission will consider the sufficiency of the City's modified petition after it has been filed.
- 7 In accordance with WAC 480-07-380(3), the Commission concludes that the City of Auburn's motion to withdraw is in the public interest and should be granted.

ORDER

8 THE COMMISSION ORDERS that the City of Auburn's motion to withdraw its petition, without prejudice to later re-file, is granted.

Dated at Olympia, Washington, and effective November 27, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO 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 Petition for Review within ten (10) days after the 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 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 nine (9) 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
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