

Exhibit No. ____ (KH-4)
Docket TR-100098
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF FIFE,

Petitioner,

v.

UNION PACIFIC RAILROAD,

Respondent.

DOCKET TR-100098

EXHIBIT TO TESTIMONY OF

Kathy Hunter

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Final Order Affirming and Adopting Initial Order in Docket TR-961394

September 3, 2010

SERVICE DATE

MAY - 2 1997

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UNION PACIFIC RAILROAD COMPANY,)	
)	DOCKET NO. TR-961394
Petitioner,)	
)	
v.)	COMMISSION DECISION AND
)	ORDER AFFIRMING AND
CITY OF FIFE,)	ADOPTING INITIAL ORDER
)	GRANTING PETITION FOR
Respondent.)	CLOSURE OF 54TH AVENUE
.....)	EAST CROSSING IN FIFE

On November 4, 1996, Union Pacific Railroad Company petitioned the Commission for closure of the 54th Avenue East grade crossing at Milepost 149.08 Seattle Subdivision on the Union Pacific railroad in Fife, Pierce County. The petition alleges that the crossing is to be closed in conjunction with a project to extend a main line siding across 54th Avenue East and build a bypass road south of the tracks from 54th Avenue East to Frank Albert Road, where there is an overpass across the railroad tracks. It alleges that the redirection of traffic to the overpass will eliminate the hazards associated with the existing at-grade crossing, protect the residential area north of the tracks by directing traffic around instead of through the neighborhood, and permit full utilization of the railroad siding without creating crossing blockage problems for motorists. The proposal is to leave the crossing in place and not utilize the siding until the bypass road is open for use.

The City of Fife filed an answer supporting the petition, but requesting that the Commission condition closure upon specified criteria being met. Union Pacific notified the Commission, in writing, that it had no objection to the conditions set forth in the city's answer.

On March 5, 1997, the Commission served notice of the petition and notice of hearing upon the original parties, upon owners of property within 500 feet of the crossing identified in the petition, and upon other interested persons. The Commission also caused notice of the hearing to be posted at the crossing site, and caused notice of the hearing to be published as required by RCW 81.53.060. The Commission received written comments only from the Puyallup Tribe of Indians prior to hearing.

A hearing was held on March 25, 1997, before Administrative Law Judge John Prusia. A number of members of the public testified at the hearing, mostly in opposition to closure of the crossing. None requested party status. Two submitted written comments subsequent to the hearing.

On April 17, 1997, the administrative law judge entered an initial order proposing that the Commission grant the petition to close the crossing. The initial order would find that all grade crossings are dangerous and that this crossing will be particularly dangerous due to the presence of the siding, that safer alternative crossings are reasonably accessible and are able to accommodate the traffic that now uses the 54th Avenue East crossing, and that the dangers posed by the crossing outweigh any need for additional emergency access. It would conclude that the public safety requires that the crossing be closed. The initial order would condition closure on several conditions that have been agreed to by Union Pacific and the City of Fife. The initial order was served on all parties of record.

All parties of record have notified the Commission that they have no objection to the initial order and do not intend to petition for administrative review. They have requested that the Commission enter a final order in this matter forthwith, rather than wait for the expiration of the 20 days allowed by rule for filing petitions for administrative review.

The Commission has examined the initial order and the record. It finds that the initial order properly characterizes the testimony in its findings, and reaches proper conclusions from those findings on all material issues. In accordance with RCW 34.05.464 and WAC 480-09-780(6), the Commission accepts the findings of fact and conclusions of law, and adopts the initial order as its own for purposes of this proceeding, with one correction: the date on the second line of Finding of Fact No. 5 is corrected to read "March 13, 1997."

ORDER

THE COMMISSION ORDERS That the initial order in this docket is affirmed and adopted for purposes of this proceeding, with the correction stated above. In so doing,

THE COMMISSION FURTHER ORDERS That the petition of Union Pacific Railroad Company for closure of the 54th Avenue East grade crossing at or near milepost 149.08 Seattle Subdivision in Fife, Pierce County, is granted, and Union Pacific is authorized to effect the closure, conditioned upon the following criteria being met:

- a. The UPRR shall comply with the Department of Ecology's Puget Sound Stormwater Technical Manual for temporary and permanent stormwater facilities. A stormwater plan must be approved by the City prior to fill and grade permit issuance. That plan must take into

consideration the existing stormwater conditions on adjacent properties and the impact to those properties caused by changes in the stormwater system. No plan shall be approved that increases or impedes stormwater flows on adjacent properties. Drainage District Number 21 must have the opportunity to review and comment on the stormwater plan prior to permit issuance by the City of Fife.

b. The UPRR shall provide the City with a copy of the U.S. Army Corps of Engineers 404 Permit and a wetland mitigation planting plan prior to the issuance of any permit from the City.

c. All fill imported into the site shall be clean fill. If other than clean fill is to be used, the UPRR must have a permit from the Tacoma-Pierce County Health Department and the approval of the City.

d. The 54th Avenue East Extension shall be built across Puyallup Tribe of Indian land as outlined in Document 1, pages 17-18 of the "Settlement Agreement between the Puyallup Tribe of Indians and Local Governments in Pierce County, the State of Washington, the United States of America, and Certain Private Property Owners," dated August 27, 1988. The road shall be constructed, accepted by the City and open to through traffic before the crossing is closed.

e. Upon closure of 54th Avenue East, the UPRR shall construct a temporary emergency cul-de-sac with ballast material on the north side of 54th Avenue. The location of the cul-de-sac shall be approved by the Community Development Director prior to construction or permit issuance. The temporary cul-de-sac shall be constructed in a manner that support fire apparatus;

f. The track siding extension shall not be used for long-term storage of rail cars. Under normal conditions, long-term means more than 24 hours. The siding will have power-operated switches controlled only by the dispatching center.

g. The UPRR shall pay to the city of Fife the sum or \$10,000 (Ten Thousand Dollars) to be used for the purchase of landscape materials to provide screening between the railroad tracks and the residential community to the north of the tracks (David Court Neighborhood).

h. The UPRR shall provide a perpetual easement for a grade separated pedestrian/bicycle access across the railroad tracks at the 54th Avenue East alignment.

DATED at Olympia, Washington, and effective this 1st day of May 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 81.04.200 and WAC 480-09-820(1).