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UTILITIES AND TRANSPORTATION COMMISSION  
STATE OF WASHINGTON

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|---|---|----------------------------------|
| THE CITY OF WOODINVILLE, a political<br>subdivision of the State of Washington, | ) | DOCKETS: TR-143902 and TR-143903 |
|   | ) |                                  |
| Petitioner,   | ) | PETITIONER CITY OF WOODINVILLE’S |
|   | ) | BRIEF IN SUPPORT OF PETITIONER’S |
| v.  | ) | MOTION FOR PARTIAL SUMMARY       |
|   | ) | JUDGMENT ON REMAINING            |
| EASTSIDE COMMUNITY RAIL; and  | ) | UNRESOLVED ISSUE                 |
| BALLARD TERMINAL RAIL,  | ) |                                  |
|   | ) |                                  |
| Respondents,  | ) |                                  |
|   | ) |                                  |

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**I.      INTRODUCTION**

This Brief along with the supporting Declarations of Thomas E. Hansen and Greg A. Rubstello are filed in support of the Petitioner City of Woodinville’s request that the sole remaining issue on the objection of Eastside Community Rail (“ECR”) and Ballard Terminal Railroad Company (“BTRC”) in opposition to Woodinville’s petitions docketed as TR-143902 and TR-143903, be determined in favor of Woodinville as a matter of law on uncontested material facts. Woodinville’s proposed bridge and road widening project on SR202 includes the modification of the highway-rail grade crossings as described in the petitions. The project is

1 **partially federally funded** by a grant from the Federal Highway Administration (FHWA)  
2 administered by WSDOT (See Declaration of Hansen at paragraph #4). Maintenance of the new  
3 grade crossing arms included in the WSDOT approved revised channelization plan for  
4 Woodinville's project should be the sole responsibility of the railroad.

5  
6 On August 4, 2015 during mediation at WUTC offices the parties reached an accord on a  
7 revised WSDOT approved channelization plan with reduced length in the rail crossing arms.  
8 Agreement was also reach on use of asphalt instead of concrete crossing panels for the East  
9 Crossing, with the City agreeing to maintain the asphalt for 25 years. The City is installing  
10 concrete panels on the West Crossing to match what is already there. **The parties could not**  
11 **reach agreement on maintenance responsibility for the crossing arms, which the parties**  
12 **agreed would be resolved through a summary judgment procedure involving the filing of**  
13 **legal briefs supported by declarations of fact** (See Declaration of Hansen at paragraph #7).  
14 Should there be any contested material issue of fact arising out of the declarations, a contested  
15 hearing would be needed only for purposes of deciding the contested factual issue.

16  
17 Woodinville believes that there well be no material fact being contested to prevent a  
18 summary determination of the cross arm maintenance issue without a contested hearing.

## 19 20 **II. LAW AND ARGUMENT**

21 As stated in the FHWA Railroad-Highway Grade Crossing Handbook - Revised Second  
22 Edition August 2007, Chapter VII (Dec. of Rubstello, Exhibit A):

### 23 Maintenance Program

#### 24 A. Railroad Responsibility

25 The highway-rail crossing is unique to other highway features in  
26 that railroads install, operate, and maintain the traffic control  
devices located at the crossing. Even though a large portion of the  
cost of designing and constructing crossings, including traffic

1 control devices, is assumed by the public, **current procedures**  
2 **place maintenance responsibilities for devices located in the**  
3 **railroad right of way with the railroad.** The public agency  
4 having jurisdiction terminates its responsibility for the roadway at  
5 the crossing surface. (bold emphasis added)

6 Railroad responsibility for maintenance after installation on partially funded federal rail  
7 crossing projects is recognized by the BNSF Railway in their Grade Crossing Safety 2014  
8 Publication (Dec. of Rubstello, Exhibit B at p.3):

9 Federal funds pay about 90 percent of the cost of a signal  
10 installation and the local government jurisdiction city, county, etc.  
11 pays the other 10 percent. **The railroad maintains the signals**  
12 **from that time forward.** These maintenance costs usually equal  
13 the cost of the initial installation in about 10 years. ... (bold  
14 emphasis added)

15 Another BNSF publication explains the necessity of grade-crossing safety to the railroad  
16 (Dec. of Rubstello, Exhibit C):

#### 17 Railroad Grade Crossings

18 Our network includes just over 28,800 grade crossings. Promoting  
19 grade-crossing safety is an essential part of our operation and  
20 culture.

21 Trains cannot stop quickly. A 100-car freight train traveling at 55  
22 miles per hour will need more than a mile to stop once the train is  
23 set into emergency braking. When vehicle drivers or pedestrians  
24 violate traffic laws at grade crossings, or trespass onto railroad  
25 right of way, they are putting themselves and the train crews in  
26 danger.

In recent years, we've invested an average of \$95 million annually  
on grade-crossing maintenance, improvements and safety  
programs. Our initiatives include community education and  
awareness, train crew education and testing, crossing closures, new  
safety technology, vegetation control, and track and signal  
inspection and maintenance.

Given, the ECR/BTRC is not the BNSF and their trains are not 100 cars traveling at 55  
miles per hour through Woodinville, but the reason for the railroad operator to be responsible for  
the maintenance of crossing safety equipment remains the same.

1 Washington State in **Chapter 81.53 RCW** incorporates the responsibility of the railroad  
2 for maintenance where federal dollars fund or partially fund a project. RCW 81.53.261 in part  
3 provides that:

4 ... The commission shall also at said hearing apportion the entire  
5 cost of installation and maintenance of such signals or other  
6 warning devices, other than sawbuck signs, **as provided in RCW  
7 81.53.271: PROVIDED, That upon agreement by all parties to  
8 waive hearing ,the commission shall forthwith enter its order. (bold  
9 emphasis added)**

10 RCW 81.53.271 however, defers to RCW 81.52.295 for the apportionment of  
11 maintenance costs when as here, a federal-aid funding program is available to participate in the  
12 costs of installation of crossing signals and warning devices. RCW 81.53.295 in turn provides:

13 Whenever federal-aid highway funds are available and are used to  
14 pay a portion of the cost of installing a grade crossing protective  
15 device, and related work, at a railroad crossing of any state  
16 highway, city or town street, or county road at the then prevailing  
17 federal-aid matching rate, the grade crossing protective fund shall  
18 pay ten percent of the remaining cost of such installation and  
19 related work. **The railroad whose road is crossed by the  
20 highway, street, or road shall thereafter pay the entire cost of  
21 maintain the device. (bold emphasis added)**

22 Railroads pay for maintenance after construction of grade crossing protective devices  
23 absent an agreement by the state or a local jurisdiction in which the highway is located. This  
24 concept is further enunciated in **RCW 81.53.275** which states the following;

25 In the event funds are not available from the grade crossing  
26 protective fund, the commission shall apportion to the parties on  
the basis of the benefits to be derived by the public and the  
railroad, respectively, that part of the cost which would otherwise  
be assigned to the fund: PROVIDED, that in such instances the  
city, town, county or state shall not be assessed more than sixty  
percent of the total cost of installation on other than federal aid  
designated highway projects: **AND PROVIDED FURTHER,  
That in such instances the entire cost of maintenance shall be  
apportioned to the railroad. (bold emphasis added)**

Thus as here, when funds are not available from the grade crossing protective fund, the  
entire cost of maintenance shall be apportioned to the railroad.

1 **III. CONCLUSION**

2 Since the City's project is partially funded with federal aid funds and funds are not being  
3 contributed to the project from the grade crossing protective fund, the entire cost of maintenance  
4 must be apportioned to the ECR/BTRC (the railroad).

5 **IV. RELIEF REQUESTED**

6 Petitioner City of Woodinville requests an Order granting the City's two Petitions  
7 incorporating the agreements on: (1) the revised channelization plan with reduced length in the  
8 crossing arms, and (2) the use of asphalt instead of concrete crossing panels for the East  
9 Crossing, with City maintenance of the asphalt for 25 years; AND FURTHER providing that the  
10 railroad share bear sole maintenance responsibility for the new grade crossing arms.

11 DATED THIS 4<sup>th</sup> day of September 2015

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13  
14 OGDEN MURPHY WALLACE, P.L.L.C.

15 By 

16 Greg A. Rubstello, WSBA #6271  
17 Attorneys for Appellant Woodinville  
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