



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

September 29, 2015

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *City of Woodinville v. Eastside Community Rail, Ballard Terminal Rail, Port of
Seattle and Washington State Dep't of Transportation*
Dockets TR-143902 and TR-143903 (consolidated)

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and one copy of Staff's Response to City of Woodinville's Motion for Summary Determination, and Certificate of Service.

Sincerely,

JULIAN BEATTIE

Assistant Attorney General

JB/emd

Enclosures

cc: Parties w/enc.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF WOODINVILLE,

Petitioner,

v.

EASTSIDE COMMUNITY RAIL, and
BALLARD TERMINAL RAIL,

Respondents.

DOCKETS TR-143902 and TR-143903

COMMISSION STAFF'S RESPONSE
TO CITY OF WOODINVILLE'S
MOTION FOR SUMMARY
DETERMINATION

I. INTRODUCTION

1 The City of Woodinville seeks an order “providing that the railroad [shall] bear
sole maintenance responsibility for the new grade crossing arms.” City of Woodinville’s
Motion for Partial Summary Judgment (Motion) at 5.

2 As discussed below, Commission Staff supports this request. Under
RCW 81.53.261, .271, and .295, Eastside Community Rail and Ballard Terminal Rail
(the railroads) have a duty to maintain the reconfigured crossing arms at both grade
crossings at issue in the above dockets (USDOT Crossing Nos. 092050F and 091797E).

3 Although the City’s motion addresses crossing arms only, Thomas Hansen’s
declarations make clear that the City also wants the Commission to assign to the railroads
maintenance responsibility for all other active warning devices located at the crossings
(e.g., flashing light signals). Staff supports this request as well.

II. COMMISSION STAFF’S RESPONSE TO CITY’S MOTION

4 Staff agrees with the City’s basic legal analysis. As the City argues on page four
of its brief, and as discussed below, RCW 81.53.261, .271, and .295 control.

5 The City’s motion asks the Commission to apportion maintenance costs
associated with certain grade crossing protective devices. The Commission evaluates this

type of request under RCW 81.53.261. In doing so, the Commission follows the rules set forth at RCW 81.53.271. Under RCW 81.53.271, if the Commission determines that “a federal-aid funding program is available to participate in the costs of . . . installation [of any grade crossing protective device],” the Commission looks to RCW 81.53.295 to apportion maintenance costs.

6 Here, according to Mr. Hansen’s supplemental declaration, federal funds “will contribute to the funding of the cost of installation of the grade crossing protective devices, including the new crossing arms.” Hansen Suppl. Decl. ¶ 3.

7 Because a federal-aid funding program is “available to participate in the costs of . . . installation” of the reconfigured crossings, the Commission looks to RCW 81.53.295 to apportion maintenance costs.

8 RCW 81.53.295 provides, “The railroad whose road is crossed by the highway, street, or road shall thereafter [i.e., following installation of any grade crossing protective device] pay the entire cost of maintaining the device.” This sentence ends the inquiry. Because a federal-aid funding program is available to participate in the costs of installing the reconfigured crossings, the railroads must maintain the reconfigured crossing arms.

9 Although the City’s motion solely addresses “maintenance responsibility for the new grade crossing arms” (Motion at page 5, line 10), it is clear that the City also wants the Commission to assign maintenance responsibility for all other active warning devices located at the crossings. Note that Mr. Hansen’s original declaration asserts that the railroads are “100% responsible for ongoing maintenance of the crossing arms *along with the other devices* located in the railroad right of way.” Hansen Initial Decl. ¶ 8 (emphasis added). Mr. Hansen’s supplemental declaration similarly asserts that “the railroad

(ECR/BTRC) is 100% responsible for ongoing maintenance of all grade crossing protective devices, including the crossing arms *and other devices located in the railroad right of way.*” Hansen Suppl. Decl. ¶ 8 (emphasis added).

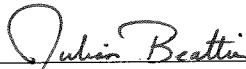
10 Given Mr. Hansen’s statements, Staff supports a broad reading of the City’s motion. The motion should be read to request assignment of maintenance responsibility for *all* active warning devices located at the reconfigured crossings. Under RCW 81.53.261, .271, and .295, such responsibility falls to the railroads.

III. CONCLUSION

11 Staff recommends that the Commission order the railroads to maintain all active warning devices, including the reconfigured crossing arms, located at USDOT Crossing Nos. 092050F and 091797E (as reconstructed according to the WSDOT Channelization Plan attached to Mr. Hansen’s supplemental declaration).

Dated September 29, 2015.

Respectfully submitted,

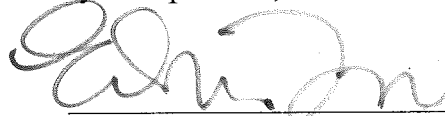


JULIAN H. BEATTIE
Assistant Attorney General
Counsel for Commission Staff

Dockets TR-143902/TR-143903
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Response to Motion for Summary Determination upon the persons and entities listed below by depositing a copy of said document in the United States mail, addressed as shown on the Service List, with first class postage prepaid.

DATED at Olympia, Washington this 29th day of September, 2015.



ELIZABETH M. DeMARCO

For City of Woodinville:

Greg A. Rubstello
Ogden Murphy Wallace PLLC
901 Fifth Avenue, Suite 3500
Seattle, WA 98164-2008
Phone: (206) 447-7206
E-mail: grubstello@omwlaw.com
thomash@ci.woodinville.wa.us

For Eastside Community Rail:

Doug Engle, Managing Director
1011 Maple Avenue
Snohomish, WA 98290
Phone: (425) 891-4223
E-mail: doug.engle@escrail.org

For Wash. State Dep't of Transp.:

Ahmer Nizam
310 Maple Park Ave., SE
P.O. Box 47329
Olympia, WA 98504-7329
Phone: (360) 705-7271
E-mail: nizama@wsdot.wa.gov

For Ballard Terminal Railroad:

Byron Cole
4725 Ballard Ave., NW
Seattle, WA 98107-4810
Phone: (206) 947-2120
E-mail: byroncole@comcast.net

For Port of Seattle:

Isabel Safora
Deputy General Counsel
P.O. Box 1209
Seattle, WA 98111-1209
Phone: (206) 707-3216
E-mail: safora.i@portseattle.org