

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

THE PEND OREILLE VALLEY)	DOCKET NO. TR-031618
RAILROAD,)	
)	ORDER NO. 01
Petitioner,)	
)	
v.)	ORDER GRANTING PETITION TO
)	CLOSE A RAILROAD-HIGHWAY
CITY OF NEWPORT,)	GRADE CROSSING AT 2 nd STREET
WASHINGTON,)	
)	USDOT: 399587V
Respondent.)	WUTC: 30A 0.20
.....)	

BACKGROUND

- 1 On October 6, 2003, The Pend Oreille Valley Railroad (POVA) filed a petition with the Commission, seeking approval to close a public railroad-highway grade crossing. The crossing is located at the intersection of the petitioner’s tracks and 2nd Street, in Section 19, Township 31 N., Range 46 E., W.M., in Newport, Washington.
- 2 Respondent has consented to an entry of an Order by the Commission without further notice or hearing.
- 3 The petition states the reason for seeking to close the Division Street grade crossing as: “Due to switching involved within the Newport Yard, we (POVA) request closing the crossing to improve safety for railroad crews and vehicle traffic. Rail crews provide daily switching to Holland/M-Bar-D (A Rail Car Repair Company) within the Newport Yard. Eliminating this crossing will decrease the potential for a rail-vehicle collision while minimally affecting the mini-storage business. An alternative access road to the mini-storage facility has already been constructed by the railroad and City of Newport.” The petition essentially seeks to close the crossing due to frequent switching operations across 2nd Street, the availability of alternate access to the area served by the crossing,

and the relatively low volume of roadway traffic that uses the crossing (estimated at less than 50 vehicles per day).

- 4 Pursuant to the procedure specified in RCW 81.53.060, Commission Staff arranged for notice of the filing of the petition to be posted at the 2nd Street grade crossing and caused the same notice to be published in the Newport Miner, a newspaper of general circulation in the vicinity of the crossing, on October 15, 2003. The notice directed that any person having objection to the closure should state such objections in writing to the Commission by November 4, 2003.
- 5 On October 22, 2003, the Law offices of Michael J. McLaughlin filed a letter objecting to the closure of the 2nd Street railroad-highway grade crossing. The letter was filed on behalf of Acorn Enterprises, which owns a mini-storage business located immediately southeast of, and accessed via, the 2nd Street grade crossing. Although the Acorn Enterprises property is also accessible from the northeast, that access was not designated as a legal public access at the time of the filing. The attorney representing Acorn Enterprises subsequently advised Commission Staff that Acorn Enterprises would not object to the closure of the 2nd Street crossing if: 1) the roadway serving the mini-storage facility from the northeast is dedicated by the city of Newport as a public street; 2) the city of Newport agrees to provide standard municipal services for the new public access from the northeast; and 3) the city of Newport installs and maintains signs notifying the public of the new access to the mini-storage facility.
- 6 On May 5, 2005, the city of Newport filed a letter advising Commission Staff that the roadway that serves the mini-storage facility from the northeast was dedicated as a public roadway and named "State Avenue." State Avenue will be maintained by the city of Newport and will constitute the primary public access to the mini-storage facility, including for emergency access. In addition, the city of Newport has posted a sign along SR-41, approaching the newly dedicated roadway, which directs the public to the mini-storage facility. Staff subsequently

confirmed with their attorney that Acorn Enterprises reviewed the city's actions regarding the new roadway and considered their concerns satisfactorily addressed.

7 On July 14, 2004, Commission Staff sent a letter to the Law offices of Michael J. McLoughlin, stating that, since all of Acorn Enterprise's requirements for the closure of the 2nd Street railroad-highway grade crossing have been satisfied, the objection would be considered withdrawn. The letter advised Acorn Enterprise's attorney that Commission Staff would present their recommendation to the Commission on July 28, 2004, and to respond by July 26, 2004, with any comments or concerns. No further objections were received.

FINDINGS AND CONCLUSIONS

- 8 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over public railroad-highway grade crossings within the state of Washington. *Chapter 81.53 RCW.*
- 9 (2) The Division Street crossing, designated as USDOT 399587V is a public railroad-highway grade crossing within the State of Washington.
- 10 (3) RCW 81.53.060 and WAC 480-62-150(1)(b) require that the Commission grant approval prior to closing public railroad-highway grade crossings within the State of Washington.
- 11 (4) Commission Staff investigated the petition and recommended that it be granted, subject to specified conditions.
- 12 (5) This matter was brought before the Commission at its regularly scheduled meeting on July 28, 2004.

- 13 (6) After examination of the petition filed by the Pend Oreille Valley Railroad on October 6, 2003, and giving consideration to all relevant matters and for good cause shown, the Commission grants the petition.

ORDER

THE COMMISSION ORDERS:

- 14 The petition of the Pend Oreille Valley Railroad for closing a public railroad-highway grade crossing located at the intersection of 2nd Street and the petitioner's tracks, in Newport, Washington, is granted, subject to the following conditions:

- (1) Upon closure of the crossing, the Pend Oreille Valley Railroad must remove the crossing surface and warning devices at the crossing.
- (2) The city of Newport must install barricades or employ some other means that specifies the terminus points of 2nd Street on either side of the tracks and indicates that access across the tracks is not possible via 2nd Street.
- (3) The city of Newport must notify the Commission, in writing, when the crossing is closed to the public.

The Commissioners, having determined that this filing complies with the requirements of RCW 81.53.060, directed the Secretary to enter this Order.

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DATED at Olympia, Washington, and effective this 28th day of July, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary