

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

CITY OF KENNEWICK,

Petitioner,

v.

UNION PACIFIC RAILROAD,

Respondent.

DOCKET NO. TR-040664

COMMISSION STAFF'S  
ANSWER TO UNION PACIFIC'S  
MOTION TO CONSOLIDATE

1           The Staff of the Washington Utilities and Transportation Commission hereby  
answers the Union Pacific (UP) Railroad Company's November 7, 2005, Motion to  
Consolidate.

2           The Commission's September 21, 2005, Notice Modifying Procedural schedule  
established a date of December 12, 2005, for answers to dispositive motions. Staff  
believes that joining the Port of Benton as a party is necessary for a just adjudication  
of this matter. *See* CR 19 (a).

3           Staff agrees with UP that the Tri-City & Olympia Railroad and the Port of  
Benton (the operator and owner, respectively, of the tracks that run next to the UP

tracks at issue in this petition) are necessary parties to this adjudication. The proposed roadway would cross both the UP and Tri-City/Port of Benton tracks. A road crossing over the UP tracks will be useless unless the City eventually obtains authority to extend the same highway over the adjoining Tri-City/Port of Benton tracks.

4           The facts regarding the two sets of tracks cannot be considered in isolation. UP's tracks are a branch or spur off of the adjoining Port of Benton tracks and the proposed crossing would cross both tracks within very close proximity. *See* Exhibit A to UP's Motion to Consolidate.

5           The Commission typically weighs the public convenience and necessity for the grade crossing against the hazard that would be created by such a crossing. The hazard that would be presented by vehicles crossing the UP spur and the Tri-City & Olympia mainline in close proximity cannot be analyzed in isolation.

6           Additionally, there may be issues regarding appropriate protective devices to be employed at the crossings. The devices may need to be coordinated. To properly analyze that question, and to bind the Tri-City & Olympia and/or the Port of Benton to the requirement of the Commission's order in that regard, those entities must be made parties to the adjudication.

7

The Commission should require that the City file its petition for a crossing over the tracks of the Tri-City & Olympia (Port of Benton) tracks at this time, so that that petition may be consolidated with the instant case for hearing. If the Tri-City & Olympia and/or the Port of Benton wish to waive their right to a hearing, at least they will be bound by the outcome of the proceeding.

DATED this 12<sup>th</sup> day of December 2005.

ROB MCKENNA  
Attorney General

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JONATHAN C. THOMPSON  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff