

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of
CITY OF SPOKANE VALLEY

To Modify Warning Devices at a
Highway-Railroad Grade Crossing of
Union Pacific Railroad Company

CITY OF SPOKANE VALLEY,

Complainant,

v.

UNION PACIFIC RAILROAD
COMPANY,

Respondent.

DOCKETS TR-210809 and
TR-210814 (*Consolidated*)

ORDER 02

GRANTING MOTION TO STRIKE

BACKGROUND

- 1 On October 25, 2021, the City of Spokane Valley (City) filed with the Washington Utilities and Transportation Commission (Commission) a Petition to Modify Warning Devices at a Highway-Railroad Grade Crossing (Petition) in Docket TR-210809. The Petition seeks to modify a grade public road crossing over Barker Road. The City simultaneously filed a formal complaint (Complaint) against Union Pacific Railroad (UPRR) in Docket TR-210814. The Complaint seeks a Commission decision assigning ongoing maintenance costs for the grade crossing protective devices to UPRR.
- 2 On January 24, 2022, the Commission issued Order 01, Consolidating Dockets; Denying Motion to Dismiss; Prehearing Conference Order (Order 01). The Commission noticed an evidentiary hearing for May 10, 2022, at 9:30 a.m.
- 3 In Order 01, the Commission also set the procedural schedule for this case. The Commission provided for City of Spokane Valley Direct Testimony, due March 22,

2022; UPRR and Commission Staff Response Testimony, due April 12, 2022, and Rebuttal/Cross Answering Testimony (All Parties), due April 26, 2022.

4 On March 22, 2022, the City filed Direct Testimony from its witnesses Brett Johnson, Robert Lochmiller, and Gloria Mantz.

5 On April 13, 2022, UPRR filed Response Testimony from its witnesses Ellis Mays and Peggy Ygbuhay (Response Testimony).

6 On April 26, 2022, the City filed Rebuttal Testimony from its witness Mantz.

7 Also on April 26, 2022, UPRR filed Rebuttal Testimony from its witnesses Mays and Ygbuhay (Rebuttal Testimony). The substantive questions in each of the UPRR witnesses' Rebuttal Testimony referred specifically to and rebutted the "prefiled testimony" of City witnesses.¹

8 On April 28, 2022, the City filed a Motion to Strike Prefiled Rebuttal Testimony (Motion to Strike). The City argued that UPRR's Rebuttal Testimony actually responds to the City's Direct Testimony filed earlier on March 22, 2022. The City maintains that this testimony should have been filed as response testimony on April 12, 2022, as required by Order 01. The City argues that UPRR had the opportunity to submit this testimony in its response testimony and denied the City an opportunity to respond by reserving this testimony for its rebuttal.

9 On May 2, 2022, UPRR filed a Response to Motion to Strike Rebuttal Testimony. UPRR argued that the City's Motion is unsupported by any references to supporting authority and that it ignores Order 01, which allowed for rebuttal testimony.

DISCUSSION

10 We grant the City's Motion to Strike. Order 01 established the procedural schedule for this case. Order 01 provided for three rounds of pre-filed testimony: City of Spokane Valley Direct Testimony, due March 22, 2022; UPRR and Commission Staff Response

¹ *E.g.*, Rebuttal Testimony of Ellis Mays at 2:10 ("In her prefiled testimony, Gloria Mantz offered that . . ."). *Accord* Rebuttal Testimony of Peggy Ygbuhay at 2:6 ("In his prefiled testimony, Brett Johnson indicated that . . .").

Testimony, due April 12, 2022, and Rebuttal/Cross Answering Testimony (All Parties), due April 26, 2022.

11 UPRR submitted Response Testimony from its witnesses Mays and Ygbuhay, on April 13, 2022, which responded to the City’s Direct Testimony filed earlier on March 22, 2022. Under the procedural schedule established by Order 01, UPRR would have then been allowed to submit *cross-answering* testimony by April 26, 2022, responding to any response testimony filed by Commission staff (Staff). However, Staff did not file any response testimony in this case. The provision for cross-answering testimony became moot.

12 UPRR, however, filed Rebuttal Testimony on April 26, 2022, which responded a *second time* to the Direct Testimony of City witnesses filed on March 22, 2022. Order 01 does not authorize what is effectively additional Response Testimony. The provision for “Rebuttal/Cross Answering” testimony in Order 01 permitted parties to reply to Response Testimony. Because UPRR was the only party that filed Response Testimony, only the City was authorized to file Rebuttal Testimony.

13 Therefore, we grant the City’s Motion. UPRR should not be permitted to file a second round of Response Testimony in the guise of Rebuttal Testimony, depriving the City of an opportunity to respond prior to the evidentiary hearing.

ORDER

14 **THE COMMISSION ORDERS That the City of Spokane Valley’s Motion to Strike is GRANTED.**

DATED at Lacey, Washington, and effective May 5, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael S. Howard
MICHAEL HOWARD
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.