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utilities and transportation commission  
state of washington

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| THE CITY OF WOODINVILLE, a political subdivision of the State of Washington,  Petitioner,  v.  EASTSIDE COMMUNITY RAIL; and BALLARD TERMINAL RAIL,  Respondents, | )))))))))))) | DOCKETS: TR-143902 and TR-143903  petitioner city of Woodinville’s brief IN REPLY TO RESPONDENT’S BRIEF IN RESPONSE |

# INTRODUCTION

The Respondents ECR/BTRC responded to the City’s motion in summary judgment and brief with a Brief in Response unsupported by declaration or affidavit of fact challenging any of the factual statements by Thomas Hansen and Greg A. Rubstello in their declarations supporting the City’s motion for an order granting the City’s two petitions that include the stipulations reached in mediation and a decision that the railroad has sole responsibility for the cost of maintenance of the cross arms and safety equipment installed within the rail corridor.

Respondents do not contest the factual statements of Hansen that the respondents agreed during mediation to (1) the revised WSDOT approved channelization plan with the reduced length in the rail crossing arms (38’); see the Declaration of Hansen at paragraph 7; and Supplemental Declaration of Hansen at paragraph 4; and (2) the use of asphalt instead of concrete panels for the East Crossing, with the City agreeing to maintain the asphalt for 25 years; see Declaration of Hansen at paragraph 7. Respondents specifically state in their brief that the only remaining issue is “the repair costs of the proposed extra long crossing arms…”

Respondents fail to cite any legal authority for their position that the City cost share in the maintenance costs of the cross arms or dispute the City’s legal analysis. Instead they point to several grade crossing agreements having no relevance to the crossings at issue, express concern over the length of the crossing arms, question the project funding, and complain of the cost burden on the railroad.

The arguments of ECR/BTRC fall short of the mark and the City’s request for relief should be granted.

# LAW AND ARGUMENT

Since ECR/BTRC fails to contest the City’s legal analysis or to provide any legal analysis in opposition to the City’s legal analysis in its initial briefing, it must be assumed that ECR/BTRC does not dispute the analysis.

In his third declaration filed with this Reply, Woodinville Public Works Director Thomas Hansen clarifies (1) that the crossings at issue are not particularly subject to high winds and that the crossing arms to be installed are designed to sustain high winds (at paragraph 3); (2) the rail crossing projects addressed in the agreements attached to the Response Brief were not addressing federally funded projects (at paragraph 4); the full funding of the Sammamish River Bridge Project is in the City Budget (at paragraph 5) and with the recent STB decision approving the City’s purchase of the rail corridor without common carrier responsibilities, the City will proceed with the purchase within the next 30 days. ECR/BTRC presented no factual evidence challenging these statements of fact by Hansen.

# CONCLUSION

The position of ECR/BTRC has no support in the law or in the facts. The City’s request for relief should be granted.

# RELIEF REQUESTED

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

DATED THIS 16th day of October 2015

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|  | Ogden Murphy Wallace, P.L.L.C. | |
|  | By |  |
|  |  | Greg A. Rubstello, WSBA #6271  Attorneys for Appellant Woodinville |

DATED this \_\_\_ day of August, 2015.

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|  | Ogden Murphy Wallace, P.L.L.C. | |
|  | By |  |
|  |  | Greg A. Rubstello, WSBA #6271  Attorneys for Appellant Woodinville |