



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35915]

Tri-City Railroad Company—Petition for Declaratory Order

By petition filed on March 19, 2015, Tri-City Railroad Company, LLC (TCRY) seeks a declaratory order concerning efforts by two Washington State communities to bisect TCRY's tracks with a proposed at-grade street crossing. TCRY, a Class III rail carrier, operates on approximately 16 miles of track, which is owned by the Port of Benton.<sup>1</sup> The track runs through the City of Kennewick and the City of Richland (collectively the Cities).<sup>2</sup> TCRY asks for a finding that 49 U.S.C. 10501(b) preempts actions by the Cities to condemn and acquire a right-of-way for a proposed at-grade crossing, which would bisect TCRY's main and passing tracks.<sup>3</sup> TCRY claims that the proposed at-grade crossing would unreasonably interfere with current and planned railroad operations by rendering portions of the tracks unusable for switching and railcar storage operations.<sup>4</sup> Moreover, TCRY asserts that the proposed at-grade crossing would create new hazards for both rail crews and members of the public.<sup>5</sup>

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<sup>1</sup> TCRY Pet. 4, Mar. 19, 2015.

<sup>2</sup> Id.

<sup>3</sup> Id. at 1-2 and 46-7.

<sup>4</sup> Id. at 1.

<sup>5</sup> Id.

TCRY states that the Cities filed two petitions with the Washington State Utilities and Transportation Commission (UTC) to approve the at-grade crossing at issue here. TCRY claims that the first petition, filed in 2006, was denied because the UTC found that the Cities had failed to meet their burden to demonstrate that the inherent and site-specific dangers of the crossing could be mitigated with the installation of safety devices.<sup>6</sup> The Cities filed a second petition in 2013. TCRY notes that the UTC initially denied the 2013 petition, but that it ultimately reversed itself and approved the crossing.<sup>7</sup>

The Cities subsequently served a pre-condemnation notice outlining the Cities' plan for condemning the right-of-way and offered \$38,500 in compensation.<sup>8</sup> On April 7, 2015, TCRY filed a supplemental affidavit of counsel with the Board and attached the Cities' Notice of Planned Final Action and the proposed condemnation ordinances. According to the Cities, approval of these ordinances would authorize the commencement of eminent domain (condemnation) proceedings against TCRY.<sup>9</sup> Although the Cities were scheduled to consider the condemnation ordinances in April, the record is silent concerning the outcome.

The Cities did not file a reply to the petition for declaratory order as provided for in 49 CFR1104.13(a), but they did file a notice of appearance on March 20, 2015.

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, a controversy exists as to whether the proposed condemnation action to construct an at-

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<sup>6</sup> Id. at 13-4.

<sup>7</sup> TCRY Pet. 18-20, Mar. 19, 2015.

<sup>8</sup> Id. at 23.

<sup>9</sup> TCRY's Supplemental Aff. Ex. 1, Apr. 7, 2015.

grade crossing is preempted under 10501(b), and the record is incomplete. The Board will therefore institute a declaratory order proceeding and consider the matter under the modified procedure rules at 49 CFR pt. 1112.

The Board will treat TCRY's March 19 petition as its opening statement. Replies and comments from interested parties are due June 8, 2015. TCRY's rebuttal to all replies and comments shall be due June 17, 2015.

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR parts 1112 and 1114.

2. Replies are due June 8, 2015.

3. TCRY's rebuttal is due June 17, 2015.

4. Notice of the Board's action will be published in the Federal Register.

5. This decision is effective on its service date.

Decided: May 18, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,  
Clearance Clerk.

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