

# UNION PACIFIC RAILROAD COMPANY

LAW DEPARTMENT



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Ted Boyer, Commission Chairman  
Utah Public Service Commission  
Heber M. Wells Building  
160 East 300 South  
Salt Lake City, Utah 84114

*Re: Petition for Relief Against Utah Department of Transportation*

Dear Chairman Boyer:

Union Pacific Railroad Company ("Union Pacific"), by and through counsel of record, respectfully submits this Petition to the Utah Public Service Commission, seeking review of a decision of the Utah Department of Transportation ("UDOT") issued on July 13, 2009, that the railroad crossing located at 400 North in Vineyard, Utah, DOT No. 254903N, is a public crossing. In support of this Petition, Union Pacific states as follows:

1. This petition relates to the railroad crossing at 400 North in Vineyard, Utah, DOT No. 254903N (the "Crossing").
2. The Commission has jurisdiction to hear this petition pursuant to Utah Code Ann. § 54-5-15.
3. The Manual on Uniform Traffic Control Devices ("MUTCD") defines a public highway-rail grade crossing as an intersection between a public roadway and a railroad. The MUTCD makes clear that the "roadway on either side of the crossing must be a public roadway, i.e. under the jurisdiction of, and maintained by, a public authority and open to public travel. If either approach to a crossing does not qualify as a public roadway, then the crossing is typically classified as a private crossing."
4. The Crossing at issue has not been open to public travel since the property on the east side of the Crossing was quitclaimed to Defense Plant Corp. for the Geneva Works site on August 10, 1942.
5. The 1942 Resolution and Order that quitclaimed the property on the east side of the Crossing to Defense Plant Corp. recognized that the general public no longer needed access to the Geneva Works property.
6. After the property was deeded to Defense Plant Corp., the east side of the Crossing was used by Geneva Works as an entrance to the plant for employees and business invitees.

7. Since closure of the Geneva Works site, the Crossing has seen little traffic.
8. In fact, the current landowners, Anderson Geneva, placed a fence at or near the property line and blocked the road entering the property.
9. Upon information and belief, the fence was placed and the road blocked when the environmental remediation work on the Geneva Works site began in 2005, and the fence has been in place ever since.
10. Therefore, for approximately sixty-seven years, and until today, the Crossing has led directly into a “privately-owned roadway[] utilized only by the owner’s licensees and invitees.” The history and present use of the Crossing meet the Railway-Highway Grade Crossing Handbook definition of a private crossing.
11. In addition, the roadway on either side of a public highway-rail grade crossing must be under the jurisdiction of and maintained by a public authority. There is no indication that the Crossing has been maintained by a public agency.
12. Since public maintenance has not been performed on the approaches to the Crossing, the road over the Crossing cannot be considered public and the Crossing itself cannot be considered public.
13. The Crossing has been categorized as a public crossing in the database maintained by the Federal Railroad Administration (“FRA”). However, information contained in the FRA database often is incorrect.
14. On July 13, 2009, the Utah Department of Transportation (“UDOT”) issued a decision classifying the Crossing as a public crossing.
15. UDOT determined, however, that “the current conditions at the Crossing are unsafe for the public” and ordered the Crossing to be closed until the approach roadways are improved and the Crossing has been improved to meet safety standards to be prescribed by UDOT in the future.
16. The Utah Transit Authority (“UTA”) will shortly commence commuter rail operations in this location. The addition of commuter rail widens the Crossing, increases train volume, and places freight trains and commuter trains, operating at different speeds, at the same crossing.
17. Further, upon information and belief, Anderson Geneva intends to build a commercial development on the former Geneva Works site. Geneva Anderson intends for the Crossing to be the primary access to the new development. This will dramatically increase vehicular traffic over the Crossing.
18. Therefore, public safety demands a careful and accurate determination of whether the Crossing is public or private.

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Wherefore, Union Pacific requests the following relief from the Commission:

1. An order precluding improvements to the Crossing pending disposition of this Petition;
2. A determination that the Crossing is a private crossing; and
3. A determination that the Crossing, as private, cannot be used as a public access point for the Anderson Geneva development of the former Geneva Works site and that, instead, the Crossing must be closed.

Sincerely,

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Reha Deal  
Counsel for Union Pacific Railroad Company