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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In Re:)	
Petition of Anderson Geneva, LLC, Ice Castle)	PETITION FOR RELIEF AGAINST
Retirement Fund L.L.C., and Anderson)	UNLAWFUL ACTION BY
Geneva Development, Inc.)	UTAH DEPARTMENT OF
)	TRANSPORTATION
)	
)	Docket No.: 11-888-01
)	

Petitioners, Anderson Geneva, LLC, Ice Castle Retirement Fund L.L.C., and Anderson Geneva Development, Inc., are owners and managers of the former Geneva Steel property located in Vineyard, Utah (collectively “Anderson Geneva”), and for cause of action allege as follows:

1. Petitioners are owners of property located at approximately 400 North and Vineyard Road, Vineyard Town, County of Utah, State of Utah.
2. At that location there is a railroad crossing which as been the subject matter of earlier petitions with this Commission (see Docket No. 09-888-01). The railroad crossing is herein referred to as the “Crossing”.
3. The Commission has jurisdiction of this matter pursuant to Section 54-4-15 of the Utah Code, in that this matter involves actions of Utah Department of Transportation (“UDOT”) with respect to a railroad-highway crossing.

4. Pursuant to Order of the Commission in the above-referenced Docket Number proceeding dated February 7, 2011 (the “Order”), UDOT was ordered to re-open the Crossing and follow applicable rules in determining whether it should close the Crossing.

5. Pursuant to the Order, UDOT conducted a Surveillance Review on February 22, 2011. A copy of the report from the Surveillance Review dated February 28, 2011 (the “Report”), is attached with this Petition. The Surveillance Review and Report are deficient and fail to conform with Utah law and the Order as set forth hereinafter.

6. The Report fails to properly characterize the historical use of the Crossing.

7. The Report fails to properly characterize the Crossing as a public highway crossing.

8. In violation of the Order, UDOT has once again ordered that the Crossing be temporarily closed. UDOT continues to refuse to open the Crossing.

9. The Report incorrectly characterizes the statements of representatives of the Town of Vineyard and Anderson Geneva regarding improvements. For example, under the heading “General Crossing Improvements”, at subparagraph 1, it is represented that the Town of Vineyard requested Crossing improvements be designed according to current conditions prior to temporary closure and construction by Utah Transit Authority (“UTA”). That is inaccurate. The request of the Town of Vineyard and Anderson Geneva was that the Crossing be improved to a level of service that existed historically as a public road and providing access to the Geneva property. This included a 50’ wide roadway with three lanes coming from the east and west approaches to the Crossing.

10. Likewise, at the same subparagraph 1, the Report states that no city street exists on the east side of the tracks. Pursuant to the Order, this Commission established that a public roadway exists on the east side of the tracks, extending to the edge of the Union Pacific Railroad

(“UPRR”) right of way.

11. Under “General Crossing Improvements”, subparagraph 2 of the Report, it states that the parties agreed Vineyard Road needs to be realigned because of the safety concerns. This also mischaracterizes the discussions of the parties. Anderson Geneva and the Town of Vineyard accepted the recommendations of UPRR and UDOT that the approach on the west side of the Crossing should be realigned and redesigned similar to those realignments and designs which were performed on other crossings for the UTA commuter rail.

12. In the Report under the heading “Specific Crossing Improvements” at subparagraphs 1-5, UDOT correctly characterizes the unsafe conditions as being caused by the addition of mainline track by UTA, its conclusions are incomplete in that costs are not allocated to UTA as required, pursuant to statute and rules. For example, at subparagraph 1, the findings reflect design requirements for a realigned Vineyard Road; however, the finding does not apportion costs. Allocation of all costs to UTA are mandatory under Section 54-4-15 and Utah Admin. Code R930-5-7(5).

13. Subparagraph 2 of “Specific Crossing Improvements” requires UTA to install signage, gates and crossing panels, but fails to specifically require UTA to perform the road realignment.

14. Subparagraph 3 of “Specific Crossing Improvements”, requires UPRR to replace the road approach that was taken out on the east side of the UPRR tracks. However, reference is made to a 2-lane roadway and the approach should be approved to a 3-lane roadway as existed.

15. Subparagraph 4 under “Specific Crossing Improvements” refers to quiet zone requirements. It directs the Town of Vineyard and UTA to work towards an “equitable solution”. This is not adequate for apportionment of costs. Since the work is being required by UTA, it is unclear what portion of the costs might be incurred or required by the Town of

Vineyard.

16. Subparagraph 5 of “Specific Crossing Improvements” requires that the Crossing remain temporarily closed without date and without further clarification. This is in direct violation of the Order.

17. UTA should be apportioned all costs for improvements required at the Crossing, including road realignment.

18. The Report fails to meet the requirements and standards for surveillance reports promulgated by the Federal Highway Administration. For example, there is no engineering analysis of the Crossing, and there are no design recommendations from UDOT except as set forth in the Surveillance Report and Ruling. The Report and Ruling should be revised to require full apportionment of costs and factual findings should be revised to conform to prior rulings of this Commission.

19. Utah Administrative Code R930-5-7 and R930-5-14 require that public notice be given of new railroad tracks being installed at the Crossing, and no notice has been given. UDOT should be required to provide public notice and hold a public hearing.

20. UDOT should be ordered to comply with the Orders of this Commission.

PETITIONERS RESPECTFULLY REQUEST RELIEF AS FOLLOWS:

a. UDOT should be required to amend its factual findings under the Surveillance Report and Ruling consistent with the record of proceedings in this Commission and the Order.

b. UDOT should be required to apportion all costs for improvements at the Crossing, including road realignments to be allocated to UTA.

c. UDOT should be required to provide public notice and opportunity for public hearing pursuant to the Sections R930-5-5 and 14.

d. UDOT should be required to follow the Orders of this Commission and to re-open

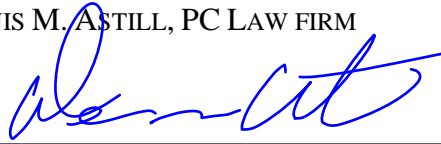
the Crossing.

e. UDOT should be required to conduct a Surveillance Review in accordance with standards set forth by the Federal Highway Administration.

DATED this 30th day of March, 2011.

DENNIS M. ASTILL, PC LAW FIRM

By:



Dennis M. Astill
Attorneys for Petitioners

Certificate of Service

I hereby certify that on the 30th day of March, 2011, a true and correct copy of **PETITION FOR RELIEF AGAINST UNLAWFUL ACTION BY UTAH DEPARTMENT OF TRANSPORTATION** was filed with the Public Service Commission electronically and by hand, and true and correct copies served to the persons and in the manner below:

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