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BEFORE THE PUBLIC SERVICE COMMISSION

**IN THE MATTER OF LOGAN CITY'S
PETITION REQUESTING
INVESTIGATION INTO UNION PACIFIC
RAILROAD COMPANY'S
ADMINISTRATION OF AGREEMENTS
AND MAINTENANCE PROVISIONS**

**PETITION AND REQUEST FOR
AGENCY ACTION**

Docket No.

STATEMENT OF THE CASE

Petitioner Logan City (the "City") requests that the Public Service Commission ("Commission") investigate the practices and actions taken by Union Pacific Railroad Company ("UPRR") with respect to UPRR's refusal to pay maintenance costs for improvements in at-grade crossings. The City maintains that UPRR's actions are in violation of the Public Utilities Act and associated rules, and are "unjust, unreasonable, [and] improper."

Specifically, in connection with the City's improvement of two intersections in the City that implicate UPRR tracks, UPRR has insisted that Petitioner be responsible for maintenance costs of the at-grade crossing and has refused to execute an at-grade crossing improvement agreement unless the City agrees. These actions are contrary to the Utah Department of

Transportation's ("UDOT") administrative rule, under which UPRR is responsible for maintenance of all passive and active warning devices within the UPRR-owned right-of-way as well as maintenance of the crossing material within the UPRR-owned right-of-way.

Petitioner respectfully requests the Commission investigate these impermissible practices of UPRR and take appropriate agency action to address the same. Notably, Petitioner understands that UPRR has taken similar positions with respect to at-grade crossings in other municipalities as well.

JURISDICTION

1. Petitioner brings this action under authority of [Section 54-4-1](#), granting the Commission jurisdiction to "supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in the state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the Department of Transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act."

2. In addition to the Commission's general jurisdiction, the following sections of the Public Utilities Code establish the Commission's specific jurisdiction and authority to consider and grant the relief Petitioner requests:

a. [Section 54-4-2](#) grants the Commission authority to conduct an investigation when such investigation "(i) is necessary to secure compliance with this title or with an order of the commission; (ii) is in the public interest; or (iii) should be made of any act or omission to act, or of anything accomplished or proposed, or of any schedule, classification, rate,

price, charge, fare, toll, rental, rule, regulation, service, or facility of a public utility.” In addition to seeking compliance with Title 54, Petitioner specifically seeks to compel UPRR’s compliance with UDOT’s June 8, 2021, order, attached as Exhibit A. Through that order, UDOT ordered UPRR “to proceed with the construction of the crossing improvements at the [crossings], without requiring additional signal maintenance fees from Logan City.” UDOT advised UPRR that it “may appeal this decision and order to the Public Service Commission in accordance with [Utah Code 54-4-15\(4\)](#).”¹ However, UPRR did not challenge UDOT’s decision.

b. [Section 54-4-7](#) grants the Commission the authority to investigate the practices of a public utility and determine whether they are “unjust, unreasonable, unsafe, improper, inadequate or insufficient,” and to remedy the same by order, rule, or regulation.

3. This Petition is filed under [Section 54-7-9\(1\)\(b\)](#) and is a request for agency action under [Section 63G-4-201](#).

PARTIES

4. Petitioner is a Utah municipality and a City of the third class.

5. UPRR is a Delaware corporation. It is a railroad franchise, connecting twenty-three states in the western two-thirds of the country by rail. UPRR is a “public utility” as defined by Section 54-2-1(22), subject to the jurisdiction and regulation of the Commission and the provisions of the Utah Public Utilities Act. [Utah Code § 54-2-1\(22\)](#).

¹ This section states: “The commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (4)(b).”

CIRCUMSTANCES REQUIRING COMMISSION INVESTIGATION

6. This Petition arises out of UPRR's efforts to require the City to make permanent and perpetual payments to UPRR for the costs it alleges are necessary to maintain UPRR's facilities in at-grade crossing rights of way located at 1400 N 600 W, in Logan, Utah (DOT# 806354Y) and 1800 N 600 W in Logan, Utah (DOT# 806357U). These efforts have included refusal to enter an agreement for improvement of the at-grade crossings unless the City agrees to assume these maintenance cost obligations.

Relevant Authority

7. [Section 54-4-15\(1\) of the Utah Code](#) provides:

No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the Department of Transportation [(UDOT)] having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

[Utah Code § 54-4-15\(1\)](#).

8. [Section 54-4-15\(2\)](#) gives UDOT the “the power to determine and prescribe the manner, including . . . *the terms of* installation, operation, *maintenance*, use and protection of . . . each crossing of a public road or highway by a railroad or street railroad” [Utah Code § 54-4-15\(2\)](#) (emphasis added).

9. [Section 54-4-15.1](#) requires UDOT to “provide for the installing, *maintaining*, reconstructing, and improving of automatic and other safety appliances, signals or devices at

grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state.” [Utah Code § 54-4-15.1](#) (emphasis added).

10. Pursuant to the Public Utilities Act, the State provides funds to be used, in conjunction with other available funds, “to pay all or part of the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in [Section 54-4-15.1](#) at any grade crossing of a public highway or any road over the tracks of any railroad or street railroad corporation in this state.” [Utah Code § 54-4-15.2](#).

11. Section 54-4-15.3 requires UDOT to “apportion the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in [Section 54-4-15.1](#) between the railroad or street railroad and the public agency involved,” “in accordance with the provisions of [Section 54-4-15](#).” [Utah Code § 54-4-15.3](#).

12. “Unless otherwise ordered by [UDOT], the liability of cities, towns and counties to pay the share of maintenance cost assigned to the local agencies by the department shall be limited to the funds provided under this act. Payment of any money from the funds provided shall be made on the basis of verified claims filed with the Department of Transportation by the railroad or street railroad corporation responsible for the physical installation, maintenance, reconstruction or improvement of the signal or device.” [Utah Code § 54-4-15.3](#).

13. UDOT promulgated [Administrative Rule 930-5](#) to satisfy these obligations.

14. Rule 930-5-8 governs maintenance of at-grade railroad crossings, and Rule 930-5-8(1) previously provided, in relevant part:

(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

[Utah Admin. Code R930-5-8\(1\) \(2020\)](#).

15. On September 18, 2020, UDOT authorized a proposed amendment to [Rule 930-5-8\(1\)](#) designed “to clarify the Department’s intent when it originally promulgated this rule in 2008.” (Sept. 18, 2020, Notice of Proposed Rule – Filing No. 53084 at 1, ¶ 3, attached as Exhibit B.)

16. As described in the notice, “[t]he change to Section [R930-5-8](#) adds text to make it clear that Section [R930-5-8](#) requires Railroads to maintain their railroad crossings through state owned right of way² and to pay maintenance of their railroad crossings through state owned right of way. The Department’s original intent was that meaning of the phrase ‘responsibility for maintenance’ includes the obligation to perform and pay for the maintenance of railroad crossings.” (*Id.* at 1, ¶ 4.)

² [Rule 930-5-8](#) actually applies more broadly to “Crossings” (also referred to as “Highway-Rail Grade Crossings”), which are defined as “the general area where a Highway and a Railroad cross at the same level within which are included the Railroad, Highway, and roadside facilities for public traffic traversing the area.” [Utah Admin. Code R.930-5-3\(8\)](#). “Highway” in turn defined as meaning “any public road, street, alley, lane, court, place, viaduct, tunnel, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the area within the right-of-way.” [Utah Admin. Code R930-5-3\(7\)](#). And, “Highway Authority” is defined as “the Department or local governmental entity that owns or has jurisdiction over a Highway.” [Utah Admin. Code R930-5-3\(9\)](#). The reference to “state owned right of way” appears to be shorthand or an imprecise reference, as confirmed by the amended filing discussed in paragraphs 17 through 21.

17. On November 5, 2020, UDOT authorized an amended filing in response to informal comments received regarding the prior Notice of Proposed Rule “that made the Department realize parts of the analysis may be confusing, misleading, or inaccurate.” (Nov. 5, 2020, Notice of Proposed Rule – Filing No. 53184 at 1, ¶ 3, attached as Exhibit C.)

18. As described in the notice, “The Department propose[d] changing [Subsection R930-5-8\(1\)](#) to clarify the Railroads’ and Highway Authorities’ allocated responsibility for performing and paying the costs of maintenance described in [Subsection R930-5-8\(1\)](#) and the exception to the allocation, which is a prior signed written agreement that changes the responsibilities.” (*Id.* at 1, ¶ 4.) The “proposed change only clarifies existing requirements.” (*Id.* at 2, ¶ 5(F).)

19. The notice explains that “the proposed change may save local governments from incurring new costs to maintain railroad crossings that affect local governments’ highways.” (*Id.* at 1, ¶ 5(A).)

20. It further explains that “the proposed rule change will not lead to new [expenses or costs] to [large or small business] railroads. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.” (*Id.* at 2, ¶¶ 5(C), (D).)

21. The proposed amendment was adopted and enacted on March 25, 2021. [Utah Admin. Code R930-5-8 \(2021\)](#).

22. The current version of [Rule 930-5-8\(1\)](#) provides, “Responsibility for maintenance is as described in this section unless a *prior signed written* agreement applies. *Responsibility means the obligation to perform and pay for the maintenance.*” [Utah Admin. Code R930-5-8\(1\) \(2021\)](#) (emphasis to show changes).

23. With respect to closures of crossings of public roadways, [Utah Code Section 54-4-15](#), provides in pertinent part:

[UDOT] shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing . . . of a public road or highway by a railroad . . . and to alter or abolish any such crossing . . . , and to prescribe the terms upon which such alteration or abolition of such crossings . . . shall be divided between the railroad . . . corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

[Utah Code § 54-4-15\(2\)](#).

The Dispute

24. For several years, a UPRR track has run mostly parallel to 600 W in Logan, Utah. At the intersection of 1400 N and 600 W (the “Intersection”), the track is approximately seventy-five feet east of the center of the Intersection.

25. Until relatively recently, 1400 N and 600 W were each one-lane roads, and the Intersection was controlled as a four-way stop. However, in 2003, Petitioner commissioned a study of the Intersection and determined that it met the criteria and requirements for signalized traffic control.

26. In 2011, Petitioner updated its Transportation Master Plan, and, in doing so, designated 1400 N as a Minor Arterial Roadway (five-lane road). The Petitioner hired an engineering consultant to complete design of the Intersection and traffic signal in 2016. The improvement implicated UPRR’s facilities at the Intersection, and Petitioner and UPRR executed a preliminary engineering services agreement in December 2016.

27. In 2017, a diagnostic team consisting of representatives from UDOT, UPRR, and Petitioner met onsite and discussed improvements that were needed to ensure a safe crossing.

UPRR dictated the design elements of the crossing, including signal improvements necessary for the project.

28. Over the next several years, the parties coordinated and entered agreements necessary for the design and construction of the Intersection and associated UPRR facilities. Ultimately UPRR provided Petitioner and involved parties a Crossing Estimate. A copy is attached as Exhibit D. The estimate did not include any information regarding maintenance fees.

29. On December 23, 2019, the City issued a Notice to Proceed to its contractor, LeGrand Johnson Construction, authorizing the commencement of construction work.

30. On March 19, 2020, UPRR sent the City a proposed At-Grade Crossing Agreement. A copy is attached as Exhibit E. That proposed agreement included a provision purporting to require Petitioner to pay an annual maintenance fee of \$11,475 that would be adjusted annually based on the American Association of Railroad's signal unit cost index and could be "re-determined" by UPRR, in its sole discretion, "at any time subsequent to the expiration of five (5) years following the date on which the annual [fee] was last determined or established." This annual fee would be due regardless of any maintenance that was actually performed on UPRR's facilities at the Intersection. Petitioner had not previously been provided any information on how the costs of maintenance would be allocated.

31. Petitioner objected to the provision regarding maintenance of UPRR's facilities, and initiated discussions with UPRR to resolve the issue. The parties were unable to reach agreement.

32. On June 29, 2020, UPRR rejected the Petitioners' request to allow construction to proceed on the project while the parties continued to negotiate the terms of the At-grade Crossing Agreement.

33. The parties' discussions eventually involved UDOT and the State Attorney General's Office. Attempting to assist in resolving the dispute, UDOT adopted an emergency 120-day rule to amend [Rule 930-5-8\(1\)](#) as is proposed in the amendment described above. (Notice of Emergency (120-Day) Rule – Filing No. 52999, attached as Exhibit F.)

34. As with the proposed amendment, the notice explained the change “clarifies the Department’s original intent was that ‘responsibility’ includes the obligation to perform and pay for the maintenance.” (*Id.* at 1, ¶ 5.)

35. It further explained that the engaging in regular rulemaking would cause an imminent peril to the public health, safety, or welfare. . . . A dispute exists over interpretation of this rule that will lead to delay in a planned construction project. The project in question is for the purpose of improving safety at an intersection on a state road and a railroad crossing. A delay in the project will create imminent peril to the public health, safety, or welfare at the intersection according to the Logan City Safety Manager.

(*Id.* at 1, ¶ 6.)

36. The emergency rule became effective July 31, 2020. (*Id.* at 1, ¶ 3.) Following its adoption, on August 4, 2020, Petitioner requested that UPRR expedite its revisions to remove the maintenance fee and execute the At-Grade Crossing Agreement.

37. UPRR did not do so. Instead, Petitioner and UPRR continued to negotiate, with the City offering to share in UPRR’s maintenance costs. Ultimately, however, UPRR continued to request that the City bear maintenance costs without any recourse except through re-negotiations and ultimate approval by UPRR.

38. UPRR has claimed and continues to take the position that [Sections 54-4-15](#) and - 15.3 do not authorize UDOT to require the railroad to pay the entirety of the signal maintenance and other maintenance costs.

39. UPRR has taken the same position with respect to the at-grade crossing located at 1800 N 600 W in Logan, Utah.

40. In 2016, a diagnostic team consisting of representatives from UDOT, UPRR, and Petitioner met onsite and determined the improvements necessary to ensure a safe crossing at 1800 N 600 W. UPRR dictated the design elements of the crossing including signal improvements necessary for the project.

41. In September 2020, Petitioner received an “AREMA Unit Statement of Railroad Highway Grade Crossing Signals Estimated Maintenance Costs” for this crossing. It identified an estimated annual maintenance cost of \$12,070.

42. In discussing the drafting of an agreement for the crossing, Petitioner expressed that the agreement should comply with the emergency rule regarding maintenance costs.

43. UPRR responded that the agreement would include that 100% of the maintenance costs for the at-grade crossing signals would be the responsibility of Petitioner unless it and UPRR negotiated otherwise.

44. Although the parties continued to discuss the matter, UPRR insisted that Petitioner bear the costs of signal maintenance for the crossing.

45. To date, no agreement has been reached because of the dispute over the obligation for those costs.

46. Certain permits and approvals that the City has obtained for the improvement of the 1800 N crossing expire beginning in August of this year.

47. The City alleges on information and belief that UPRR has taken the same position with other municipalities in this State as well.

48. On or about September 24, 2021, UPRR filed a lawsuit against UDOT challenging its amended Rule R930-5-8. However, the fact UPRR disagrees with the Rule does not excuse UPRR from compliance while and during the period the Rule is in effect, including the present time. *See, e.g., Macris v. Sevea Int'l Inc.*, 2013 UT App 176, ¶ 28, 307 P.3d 625 (“the proper method for contesting an adverse ruling is to appeal it, not to violate it”; “even if the trial court did err or exceed its discretion during the trial court proceedings, Appellants were obligated to comply with the trial court’s orders and assert their challenges through orderly and proper proceedings.” *Id.* (cleaned up)).

SPECIFIC REQUEST FOR AGENCY ACTION

49. The City incorporates the foregoing paragraphs by reference as though separately pled herein.

50. UPRR’s repeated efforts to require the City to bear the costs of maintaining UPRR’s facilities for the at-grade crossing at the Intersection, and other at-grade crossings in the City, is inconsistent with the Public Utilities Code—specifically [Sections 54-4-15 and 54-4-15.3](#)—and [Rule 930-5-8\(1\)](#).

51. As UDOT’s proposed—now adopted—amendment indicates, by adopting [Rule 930-5-8\(1\)](#) in 2008, UDOT intended to allocate the entirety of the responsibility for maintenance

of at-grade crossings as provided in that rule to the railroad—including the cost of the required maintenance. UPRR’s conduct is further in violation of UDOT’s June 8, 2021, order.

52. In addition, UPRR’s conditioning of the 400 North preliminary permit on the City’s closing of multiple other crossings usurps UDOT’s authority to dictate the timing and manner and costs apportionments for closing or abolishing crossings of a public highway by a railroad in violation of [Section 54-4-15](#).

53. The City therefore requests that the Commission investigate the matters detailed above and: (a) determine and adjudicate whether UPRR’s actions in attempting to require a contract term shifting the costs of maintenance to the City are in compliance with the Public Utilities Act, (b) determine and adjudicate whether UPRR’s practice of doing so is “unjust, unreasonable, . . . [or] improper;” and (c) compel UPRR’s compliance with the unchallenged June 8, 2021, UDOT order.

54. The City maintains UPRR’s lack of authority to require the City to bear the maintenance costs UDOT has allocated to railroads under the authority of [Sections 54-4-15](#) and -15.3 is clear. However, to the extent the Commission deems necessary or appropriate, the City requests the Commission engage in a formal administrative rulemaking proceeding under [Utah Code Section 63G-3-601](#) for the purpose of establishing by rule that regulated railroads cannot alter UDOT’s established allocation of maintenance costs by making such alteration a condition of approval of a crossing agreement.

DATED this 4th day of October, 2021.

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THE CITY

/s/ Craig J. Carlston

(Signed with Permission)

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2021, I served, via E-Mail, a true and correct copy of the attached **PETITION AND REQUEST FOR AGENCY ACTION** upon the parties listed below to:

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