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June 8, 2021

Kenneth Tom
Union Pacific Manager of Industry and Public Projects
2015 So. Willow Ave.
Bloomington, CA 92316

Subject: Logan City Maintenance Agreement for Crossing at 1400 North 600 West
Crossing No.: DOT# 806354Y

Mr. Tom:

The Utah Department of Transportation is delegated the “power to determine and prescribe the manner . . . and terms of installation, operation, [and] maintenance” of each highway grade crossing in the state of Utah (Utah Code 54-4-15 and Administrative Rule R930-5). This delegated responsibility imposes on UDOT a duty to promote and safeguard the health and safety of the public as affected by highway railroad crossings. Additionally, UDOT has been charged by statute to work with federal programs, and otherwise, to install, maintain, reconstruct and improve automatic and other safety appliances, signals or devices at grade crossings on public streets (Utah Code 54-4-15.1 to 15.4). Pursuant to these authorities UDOT has enacted rules which prescribe the responsibilities of railroads, highway authorities and others to maintain crossings (R930-5-8). This rule was revised last year to clarify that maintenance includes the duty to pay for the maintenance work.

The highway crossing in Logan City referenced above has been subject to a review by the diagnostic team (see Surveillance Report dated June 6, 2017) and upon recommendation, was approved by UDOT for improvements to the highway and crossing. The highway improvements have been completed for some time, and the railroad crossing improvements have been designed, funded and approved. Union Pacific has refused to proceed with improvements to the rail crossing until Logan City enters into a written agreement to pay a fixed minimum amount yearly to cover all maintenance of devices and equipment at the crossing including those in the railroad’s right-of-way.

Utah Administrative Code R930-5-8 does provide an exception to the maintenance responsibilities set out in that rule if there is a prior written agreement. This provision is to protect rights established under agreements in place prior to the adoption of the rule. The language was not intended to permit a railroad to insist on an agreement that changes the maintenance obligations as a precondition to doing work on a previously approved crossing improvement project. The rule as constituted provides for sharing of responsibilities for

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maintenance of a crossing in a manner that places a duty on those best situated to carry out the required maintenance obligations and fairly distributes the duty to protect public health and safety. The insistence by Union Pacific on a new agreement that avoids its maintenance responsibilities is inconsistent with the rule. Such a precondition is contrary to the intent of the legislature in delegating authority to UDOT to make the present determinations by rule and undermines UDOT's authority to draft and enforce the rule.

Although Logan City and Union Pacific might in other circumstances mutually agree on a different regimen of maintenance responsibilities than required by the rule, UDOT has authority to determine and prescribe the terms governing maintenance of each highway rail grade crossing. In this instance Logan City has objected to the requested changes from the rule, and the proposed agreement in addition to being contrary to the obligations set out by rule, does not provide for an alternative exchange of benefits and burdens that is in the public interest. The railroad crossing improvement project has been properly reviewed and approved by UDOT and is ready to proceed. Refusing to proceed with this needed project unless Logan City signs an agreement that is contrary to UDOT's rule and without other justification is contrary to Union Pacific's duty to maintain highway crossings in a safe and efficient condition (Utah Code 10-7-26 and 56-1-11).

Union Pacific is ordered to proceed with the construction of the crossing improvements at the above crossing, without requiring the proposed additional signal maintenance fees from Logan City. Union Pacific may appeal this decision and order to the Public Service Commission in accordance with Utah Code 54-4-15(4).

If you have any questions regarding this letter, please contact me at 801-360-0052.
Sincerely,

James W. Golden

James W. Golden, P. E.
Chief Railroad Engineer
UDOT – Traffic & Safety

Cc:
Robert Keller, Attorney for Logan City
Paul Lindhardt, Public Works Director Logan City