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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of Union Pacific Railroad's	:	
Petition for Relief against the Utah Department	:	DOCKET NO. 09-888-01
of Transportation	:	
	:	UTAH DEPARTMENT OF
	:	TRANSPORTATION'S PREHEARING
	:	POSITION STATEMENTS
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	:	
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Utah Department of Transportation ("UDOT") submits its Prehearing Position Statements.

PREHEARING POSITION STATEMENTS

1. **400 North as a Private at Grade Railroad Crossing.** UDOT's first determination concerning this crossing was designating it as private. UDOT concluded the crossing was private because the crossing entered private property with gates that are generally locked. The Anderson Entities installed a "NO TRESPASSING" sign on the fence. In addition, the crossing is not currently part of Vineyard's public road system.

Because of the dispute concerning the status of the crossing, Psomas was hired to perform a survey on the 400 N Crossing based upon the August 3, 1942 Resolution and Order by the Board of Utah County Commissioners. During that time period, Utah County sold 1,500 acres of land to the Defense Plant Corporation. Based upon the sale of this property, the county roads crossing the future plant site were no longer needed for the use by the general public so these county roads were abandoned. Based upon this reasoning, there would not be a need for public at grade crossing into the now private property. The area of the crossing that is affected by the abandonment resolution ranges from partially to completely located within in the abandoned area.

In order to rededicate the crossing as public, the crossing would have to be used continuously used as a public thoroughfare for a period of ten years. Utah Code Ann. Section 72-5-104(1). In order to claim the crossing was public, Anderson Geneva must demonstrate proof of (i) travel across the crossing; (ii) by the public; and (iii) without permission. *Jennings Investment v. Dixie Riding Club*, 2009 Ut App 119, ¶11, 208 P.3d 1077. The burden of

establishing the public use for the ten year period is the individual or entity claiming the public dedication. *Id.* at ¶11.

During the time period the plant operated on the currently Anderson Entities' owned property, the crossing was used by the employees of Geneva Steel and by non-employees (presumably invitees) to the parking area. Further entry onto the Geneva Steel property was governed by gates. Anderson Entities' Response to UDOT's Discovery Requests, Response to Interrogatory Number 6. The fence around Anderson Geneva's property existed since 1942 and the fence has never been removed. Anderson Entities' Response to UDOT's Discovery Requests, Response to Interrogatory Number 7. The use described in Anderson Entities' discovery responses do not support the required element of public access without permission.

2. **400 North as a Public at Grade Railroad Crossing.** Based upon the receipt of additional information and the private classification being vigorously contested by the Anderson Entities, UDOT reassessed the private classification of the crossing. UDOT relied upon the following factors in making a redetermination: 1) no private crossing agreement with the railroad was produced; 2) the FRA database classified the at grade crossing as public for a substantial number of years; and 3) this crossing was part of the Town of Vineyard's Transportation Master Plan for future development within Anderson Entities' property. Based upon these factors, the crossing was reclassified as public.

Despite UDOT's change in view as to the classification, the documents and facts support either classification. UDOT will defer to the Public Service Commission concerning the

classification of the at grade railroad crossing. If the crossing is ultimately determined to be private, UDOT will not have any jurisdiction over the crossing.

3. **UDOT's Decision to Temporarily Close the Crossing.** Upon review of the current condition of the crossing, UDOT unequivocally determined the crossing to be unsafe. One of the unsafe conditions was caused by the locked access gate to Geneva property on the east side of the track. One of the safety concerns is created because a long vehicle or a vehicle with a trailer could be forced to stop on the tracks because of the locked gate.¹ The vehicle would not have an opportunity to back up to leave the crossing safely. Any crossing by its nature is dangerous because of the conflicting traffic between the trains and vehicles. Allowing vehicles to cross three parallel train tracks on a roadway that does not have an outlet poses an unnecessary risk to both the vehicles and trains. The roadway into the Anderson Entities' property is not currently part of Vineyard's city road system and the Anderson Entities have a number of other accesses to their property. Therefore, the crossing is not necessary at this time and should remain closed.

While the engineering analysis has not been completed because the future development and city roads have not been determined, 400 North and Vineyard Road will need to be realigned and the lights and gates on the west approach would need to be relocated with the addition of the UTA track. The distance from the edge of the UTA track to the railroad gate should be fifteen feet and the distance from the gate to the stop bar should be eight feet. Currently the approach

¹ After the crossing was blocked with a concrete barrier pursuant to UDOT's order to temporarily close the crossing, the Anderson Entities opened the gate and claimed the safety issue was addressed. Until there is a public road that continues to the east of the track, this safety issue is not adequately addressed because the Anderson Entities can close the gate on their property at any time.


roadway does not allow for these required distances. If a vehicle stopped on the road in order to wait for the trains, the traffic on the road would be required to stop for the waiting vehicle. This situation creates another unsafe situation.

The approved Vineyard Transportation Master Plan addresses the safety concern about allowing a public roadway past the east side of the tracks. Once the Anderson Entities receive site plan approval for their property and the public roadway infrastructure is designed, then the Anderson Entities, Vineyard, UPRR and UTA will have sufficient information to understand the design requirements for the crossing at 400 North in order to meet the design standards for the interface of the roadways and crossings as outlined in the MUTCD, AREMA, UDOT Standard Drawings and Highway Authority standards. However, without a clear definition of the future approach roadway cross sections or alignment, it is impractical to establish a permanent design solution for the 400 North crossing at this time, especially with no definitive time frame for the planned use of the Anderson Entities' property.

Therefore, if the Public Service Commission determines that the crossing is public, UDOT requests that the crossing be closed until the design requirements can be ascertained by the future use of the neighboring property. Otherwise, the current crossing is unsafe and poses an unnecessary risk to vehicles and trains.

Dated this 30th day of June, 2010

UTAH ATTORNEY GENERAL'S OFFICE



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MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing **UDOT's Prehearing Statement**, postage prepaid, this 30th day of June, 2010, to the following:

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