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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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 REPLY POST-**
: **HEARING BRIEF**
:
:
:

Utah Department of Transportation (“UDOT”) submits its Reply Post-Hearing Brief.

ARGUMENT

I. UDOT COMPLIED WITH UTAH ADMINISTRATIVE CODE R930-5.

The role of the diagnostic/surveillance review team is to provide recommendations to UDOT for changes needed at the railroad crossings. R930-5-7. This team serves as a

mechanism for the different agencies and railroads coming together to discuss options and alternatives for safety improvement. R930-5-7. Eric Cheng recognized that the absence of the city street on the east side of the tracks created a substantial impediment in determining the safety improvements to the 400 N. railroad crossing. At this point, the developer, Anderson Entities, failed to dedicate the necessary land for the city streets within its property. The city street infrastructure has not been dedicated or constructed within Anderson Entities' property; consequently, the approach roadway information is nonexistent.

Eric Cheng does not want to spend public money on improvements when any proposed improvements will not be the solution once the city road is constructed on the east side of the tracks. (II Tr. 189) Furthermore, funding any improvements for the crossing would be squandering public money because the construction of future city streets and subdivisions would require substantial changes to the current crossing, including the realignment of Vineyard Road. Besides the future substantial safety improvements needed, the crossing does not serve any public purpose. Even Mr. Hendricks agreed that it would be difficult to design any modifications or improvements without the necessary information about the city street. (II Tr. 328)

In addition, the majority of the Anderson Entities' property is undeveloped and traffic will increase dramatically.¹ (II Tr. 145) This increase of vehicle traffic due to the development of the property would be the principal impact to the railroad crossing, not the addition of a

¹ The current master plan for the Anderson Entities' property envisions over 27,000 residents, together with over 1 million square feet of commercial uses, over 1 million square feet of office uses and over 1 million square feet of industrial/light industrial uses. (Anderson Entities' Exhibit 26) This master plan is dramatically different than the current condition of the property, which is mostly vacant and undeveloped.

track.² Currently, the 400 N. crossing does not constitute a vital access for Anderson Entities and Vineyard Town but will in the future when the property is developed. In their Post-Hearing Brief, Anderson Entities stated that any improvements to the crossing would be unnecessary for the current level. This statement is contrary to the testimony given by Eric Cheng (II Tr. 149-153) Anderson Entities are claiming improvements are unnecessary because of the lack of use of the crossing by Anderson Entities, including the prohibition of the public on the private property as evidenced by the “No Trespassing” sign and the previous locked gates. (Joint Trial Ex. 154)

Due to the lack of city road infrastructure and requisite information, UDOT did not conduct another surveillance review because the improvements cannot be ascertained. Therefore, any surveillance review for safety improvements would be pointless. Once the pertinent information is available, UDOT will conduct a surveillance review in compliance with its rule for a determination of the necessary safety improvements and the crossing will be opened.

As stated in UDOT’s Post-Hearing Brief, public notice is not necessary for temporary closures but the public notice would be required for a permanent closure of a public street when it would be important for the local jurisdictions and residents to provide input as to the impacts concerning the loss of a public crossing. Public notice is not required for temporary closures of public roads that cross railroad tracks because of safety concerns. Requiring public notice for

² Mr. Hendricks admitted that the build out of the property would cause a substantial change and this change would affect the crossing design. In addition, he would want to know the width and angle of the approach roadway. (II Tr. 325-328)

temporary closures would expose the traveling public to significant safety hazards. Ironically, the two interested parties, Vineyard Town and Anderson Entities who desire to keep the crossing open, have been contesting UDOT's decisions regarding the crossing since 2008. To request additional public notice would be superfluous.

II. THE 400 N. CROSSING IS UNSAFE

Eric Cheng thoroughly examined the 400 N. railroad crossing as evidenced by visiting this site seven to eight times unlike Mr. Hendricks. In addition, Eric Cheng has reviewed hundreds of railroad crossings for safety issues, while Mr. Hendricks has not. (II Tr. 126, 130) Unlike Eric Cheng, who has twenty-two years as a safety engineer, Mr. Hendricks was not credible and does not possess substantial experience in railroad crossings as evident in his lack of knowledge of UDOT's access standards for approach roadways and limited experience with surveillance reviews.³ (II Tr. 311-315, 320). However, Eric Cheng and Mr. Hendricks agreed that 400 N railroad crossing has a number of safety problems, including geometric deficiencies, storage length and the alignment of the road. (II Tr. 147-148, 153, 318, 327-328).

When an agency has discretion to determine an issue, the agency's action is reviewed for reasonableness. *Salt Lake County v. Labor Commission*, 2009 UT App. 112, ¶9, 208 P.3d 1087. Based upon several safety concerns with the crossing, UDOT's decision to temporarily close the 400 N. railroad crossing is reasonable considering the lack of city street infrastructure within the Anderson Entities' property and the lack of any current need for the public railroad crossing.

³ Mr. Hendricks admitted that Eric Cheng and Jim Marshall know more about surveillance reviews than he does. (II Tr. 317)

CONCLUSION

For the reasons stated by Eric Cheng, UDOT's Chief Railroad Engineer, the current crossing is unsafe and poses an unnecessary risk to vehicles and trains. The necessary improvements for the railroad crossing cannot be determined at this time due to the lack of a city street on the east side of the tracks. Without the pertinent information, it is impossible to establish a permanent design solution for the 400 N. crossing at this time, especially with no definitive time frame for the planned use of the Anderson Entities' property.⁴

Based upon the current conditions of the railroad crossing and approaches, UDOT followed its procedure in R930-5. UDOT's decision to temporarily close the railroad crossing is reasonable with the current conditions of the crossing. Because UDOT's decision is reasonable, the decision cannot be arbitrary and capricious.

Therefore, if the Public Service Commission determines that the crossing is public, UDOT requests that the crossing be temporarily closed until the design requirements can be ascertained by the future use of the neighboring property and the construction of the city's approach roadway. If the Public Service Commission rules that the crossing is private, then UDOT will not have any jurisdiction over the crossing.

⁴ When a property is developed, the developer is required to pay for those impacts as part of the approvals from the local jurisdictions. Utah Code Ann. §10-9a-508.

Dated this 23rd day of September, 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 Reply Post-Hearing Statement**, postage prepaid, this ____ day of September, 2010, to the following:

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