

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Union Pacific Railroad's)
Petition for Relief against the Utah) DOCKET NO. 09-888-01
Department of Transportation (UDOT)) INTERIM ORDER FOR SUPPLEMENTAL
) POST-HEARING BRIEFING
)

ISSUED: October 20, 2010

By The Commission:

The Commission has reviewed the parties' post-hearing briefings and wishes to provide the parties with further opportunity to address issues raised in the post-hearing briefs.

The Commission recites the following for background purposes only, and makes no factual findings or legal conclusions in this matter.

Utah Code Ann. § 54-4-15(4)(a) give the Commission jurisdiction over disputes arising out of UDOT's actions pursuant to section 54-4-15. Vineyard and Anderson Geneva's position is that the section cited does not itself "enumerate a standard of review," but point to the Commission's order rendered *In the Matter of an Appeal to Road Closure in Draper*, Docket No. 05-999-02, issued May 27, 2005 in citing a standard of review previously used by the Commission.¹ See *Joint Post-hearing Brief for Vineyard Town and Anderson Entities*, p.4. Union Pacific pointed to the "arbitrary and capricious" standard suggested by Anderson and Vineyard, and our 2005 Order stating that the Commission now should determine if UDOT's determination that the crossing is public "was reasonable and rational based on relevant and

¹ Citing language where the Commission finds it "should not substitute our judgment for [UDOT's] but should overturn UDOT's decision only if we determine that those findings are so without foundation that they must be considered arbitrary and capricious, or if we determine that UDOT failed to follow its own established procedure in arriving at its decision"

applicable engineering standards.” *Union Pacific Railroad’s Responsive Post-hearing Position Statement*, p.3.² UDOT, in its initial Post-hearing Brief, contended that

when a statute grants discretion to an agency to interpret and apply the law, the agency interpretation and application is reviewed for reasonableness. UDOT’s interpretation of its own rule will be upheld if the interpretation is reasonable and rational. UDOT has specialized knowledge concerning the construction, maintenance, and operation of public roads and railroad crossings.

UDOT’s Post-hearing Brief, p.5.

Within 21 days of this Order, the parties shall submit comments providing greater legal authority and analysis on the following: 1) the standard of review the Commission should follow in resolving disputes arising out of an action of UDOT; and 2) the deference which the Commission should give UDOT as UDOT interprets “its own rule[s]” or enabling statutes, including any relevant case law which details, interprets, or clarifies how the Commission should treat UDOT’s interpretation of its Rules or enabling statutes. Specifically, what deference should be given when UDOT purports to distinguish between any so-called “temporary closures” or “permanent closures,” *Id.* at p.5. The parties, especially UDOT, should provide information as to whether any state court has dealt with such a distinction.

DATED at Salt Lake City, Utah, this 20th day of October, 2010.

/s/ Ruben H. Arredondo
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary
G#69294

² Union Pacific also noted that the then-Commission recited the separate standards of review urged by the parties, cited one of the standards as being “whether UDOT’s decision was reasonable and rational” but then “without further analysis, the Commission stated ‘This approach appears reasonable and we therefore proceed accordingly.’” *Id.* at p.3.