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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  
of Transportation

**Union Pacific Railroad Company's Petition  
for Rehearing and Stay**

Docket No. 09-888-01

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Pursuant to Sections 54-7-15 and 63-6-401 of the Utah Code, Union Pacific Railroad Co. ("Union Pacific") seeks rehearing of the Report and Order of the Public Service Commission of Utah (the "Commission"), entered February 7, 2011.

**A. Grounds for Rehearing**

Union Pacific seeks rehearing on the following two grounds:

**1. UDOT does not have jurisdiction over the Crossing because 400 North is not a "public road" at the point where it crosses the railroad tracks**

UDOT does not have jurisdiction over the Crossing at issue in this matter because 400 North Street in Vineyard, Utah, is not a public road at the point where it crosses Union Pacific's tracks. The Commission ruled that, under Utah law, the Utah Department of Transportation ("UDOT") has "an explicit grant of authority over railroad crossings of *public roads or highways* . . . ." Feb. 7, 2011, Rep. & Order at 11 (emphasis added). Section 54-5-15(2) provides, with emphasis, that

The department 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 one railroad by another railroad or street railroad, and of a street railroad by a railroad and of *each crossing of a public road or highway by a railroad or street railroad, and of a street by a railroad or vice versa*, and to alter or abolish any such crossing, to restrict the use of such crossings to certain types of traffic in the interest of public safety . . . .

Accordingly, for UDOT to have jurisdiction, a road must cross railroad tracks, and the road must be a public road, meaning, it must be located on public right of way.

In this case, the road—400 North—is no longer located on public right of way. The Commission ruled that 400 North, at the point where it crosses Union Pacific’s tracks, is located only partially on public right of way, if at all. The Commission ruled: “There is no doubt the road and Crossing, *as they presently lie*, are either entirely or partly within the land that was vacated. They lie almost completely off the public ROW.” Feb. 7, 2011, Rep. & Order at 16 (emphasis in original). Nevertheless, the Commission ruled that, “despite the fact the Crossing and portion of 400 North . . . were reconfigured or shifted on the land previously abandoned, they were not abandoned or vacated originally by the 1942 Resolution, and were not abandoned or vacated by formal order thereafter. Therefore, its current placement has no effect on the legal nature of the Crossing today.” *Id.* at 16.

To the contrary, the current placement of 400 North determines whether UDOT has jurisdiction over the Crossing. The Commission ultimately ruled that “[t]he Crossing is public and so are all public thoroughfares remaining after the 1942 Resolution.” *Id.* at 18. However, because it was relocated, 400 North is not one of the “thoroughfares remaining after the 1942

Resolution.” UDOT’s jurisdiction is limited to *public roads*. Therefore, UDOT does not have jurisdiction over 400 North at the point where it crosses Union Pacific’s tracks.

Union Pacific urges the Commission to grant rehearing to reconsider UDOT’s statutory grant of authority as applied in this case in light of the Commission’s finding that “[t]here is no doubt the road and Crossing, *as they presently lie*, are either entirely or partly within the land that was vacated. They lie almost completely off the public ROW.” *Id.* at 16 (emphasis in original).

**2. A public thoroughfare that crosses into private property should be considered a private crossing**

The Crossing leads into property that has been private since 1942 and, therefore, should be considered private. The Commission ruled that “the Crossing and what is left of 400 North [i]s a bit of an oddity—a public thoroughfare that crosses into private property.” Feb. 7, 2011, Rep. & Order at 19. Relying on Utah law holding that real property designated for public use can only cease to be such by formal vacation, the Commission ruled that the Crossing is public. *Id.* at 20. However, the absence of a formal abandonment or vacation should not be given such decisive weight. Even if 400 North were a public thoroughfare, the Crossing still should be considered private. Union Pacific urges the Commission to grant rehearing to reconsider the proper weight to be given the absence of a formal order of abandonment or vacation in light of the many other relevant factors, including the factor that led the Commission to rule that, “[i]f viewing these engineering standards alone without considering the statutory and other legal provisions governing abandonment of public thoroughfares, it would seem the Crossing would be private.” *Id.* at 13.

**B. Stay pending final agency action**

Pursuant to Section 63G-4-405 of the Utah Code, Union Pacific petitions the agency to grant a stay of its February 7, 2011, Order pending agency review and any subsequent judicial review. A stay is necessary to prevent substantial improvements from being constructed and installed at the Crossing at UDOT's insistence when the Commission or a court may yet determine that UDOT does not have jurisdiction over the Crossing.

UDOT held a surveillance review of the Crossing on February 22, 2011. Then, on February 28, 2011, UDOT issued a Surveillance Report and Ruling directed to Utah Transit Authority. A true and correct copy of the February 28, 2011, Surveillance Report and Ruling is attached as Exhibit A. In its Ruling, UDOT ordered temporary closure of the Crossing until improvements are installed and constructed. Ex. A at 2. UDOT outlined substantial and costly improvements to be installed and constructed, and design work has begun.

Specifically, UDOT ruled that Vineyard Road must be realigned to the west because of safety concerns. *Id.* This will require road improvements on both the east and west sides of the Crossing. *Id.* Railroad lights, gates, and crossing panels are to be installed to match the new road alignment and improvements. *Id.* at 3. Standard railroad signage must be placed. *Id.* UDOT has ruled that UTA is responsible for installation of crossing panels, safety improvements, and signs. *Id.* However, UDOT has ruled that Union Pacific is responsible for the reinstallation of the east road approach to the Crossing. *Id.*

To prevent possibly unnecessary installation and construction of these improvements at the Crossing, Union Pacific urges the Commission to stay the February 7, 2011, Report and Order pending rehearing and possible subsequent judicial review.

DATED this 9th day of March, 2011.

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Reha Kamas  
Attorney for Union Pacific

**Certificate of Service**

I hereby certify that on the 9th day of March, 2011, a true, correct and complete copy of the foregoing was served upon the following attorneys in the manner indicated below:

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