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MEMORANDUM

DATE: March 11, 2009

TO: Public Service Commission

FROM: Division of Public Utilities
Philip Powlick, Director
Rea B. Petersen, Manager Customer Service

RE: Anderson of Geneva/Ice Castle Retirement Fund vs. UDOT
Anderson of Geneva, LLC and Ice Castle Retirement Fund LLC and
Anderson Geneva Development, Inc. vs. Union Pacific Railroad Co.
Docket No. 09-999-05

Recommendation: Issue Procedural Order

Complaint Analysis: Anderson Geneva/Ice Castle Retirement Fund filed a petition on February 9, 2009 for relief against alleged unlawful actions of Utah Department of Transportation (UDOT). The petition alleges unlawful actions by UDOT in regard to a public at grade railroad crossing located at 400 North and Vineyard Road, in Vineyard Town, Utah, specifically that UDOT, acting in concert with Utah Transit Authority (UTA), recently provided notices regarding the possible change or improvement to certain railroad crossings in Utah County in connection with the Commuter Rail South project being undertaken by UTA.

A second petition was filed on February 23, 2009 by Anderson Geneva, LLC, Ice Castle Retirement Fund, LLC, and Anderson Geneva Development, Inc. against alleged unlawful actions of the Union Pacific Railroad Company. The petition complains of unlawful actions by the Union Pacific Railroad Company (Union Pacific) in regard to a public at grade railroad crossing, specifically that Union Pacific has provided inaccurate

and incomplete information to UDOT and to UTA for the purpose of influencing those agencies and obtain the closure of the 400 North Crossing.

The Public Service Commission combined the two petitions under one docket number.

Division Review and Recommendation: UCA 54-4-15 (4)(a) reads "The commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department [UDOT] pursuant to this section, except as provided under Subsection (4)(b)." Subsection (4)(B) applies to entities disposing of nuclear waste, which does not seem to be at issue in these petitions.

In 2005 the Commission decided similar issues in a Docket on a grade crossing closure. See Docket 05-999-02 Order issued May 27, 2005

The Commission issued a Notice for a Scheduling Conference to be held on March 25, 2009. The scheduling conference will provide the timeframe in which the parties are allowed to respond to the petition. In the absence of any settlements or agreements between the parties the Division recommends that the Commission schedule a hearing.