(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE PETITION FROM UNION PACIFIC RAILROAD COMPANY TO CLOSE A GRADE CROSSING IN PONDERAY LOCATED AT MILEPOST 76.12 | )  )  )  )  )  )  ) | CASE NO. UPR-R-99-1  NOTICE OF PETITION  NOTICE OF SETTLEMENT               CONFERENCE  ORDER NO. 27900 |

On November 23, 1998, the Commission received a letter from Union Pacific Railroad’s Manager of Industry and Public Project requesting that the Commission issue an Order authorizing the closure of an “old” grade crossing in Ponderay, Idaho located at Milepost (MP) 76.12.  This crossing and its “new” replacement located at MP 76.45 have been the subject of controversy dating back to 1987.  Over the years on at least two occasions, the City of Ponderay and others have objected to the closing of the “old” crossing.  On November 27, 1998, the Administrator of the Regulated Carrier Division forwarded a letter to the City inquiring whether it concurred in UP’s current request to close the “old” crossing.  On December 10, 1998, the City replied and stated that it continues to object to the closure of the “old” crossing.

BACKGROUND

This is the third time in almost 12 years that Union Pacific (or its wholly-owned subsidiary) has requested an Order authorizing closure of the “old” crossing.  To understand and appreciate the circumstances surrounding this matter, the following information is provided.

1.  The Initial Application.  In September 1986, UP and the City of Ponderay entered into an agreement to construct a new grade crossing for entry into the Bonner Mall at MP 76.45 (the new crossing).  In exchange for granting a right-of-way across the railroad’s two sets of tracks (a mainline and a passing track), the agreement called for closure of an existing crossing at MP 76.12 (the old crossing).  When the new crossing was opened in November 1986, the Railroad began to demolish and close the old crossing.  Once demolition started, a nearby business filed an objection with the Commission arguing that closure would adversely affect the business and inconvenience the public.  Eventually, the City of Ponderay filed a Petition with the Commission requesting that it hold a hearing to determine whether the old crossing should be closed.

The old crossing an “access” road intersects with the Mall’s frontage road and were parts of old U.S. Highway 95.  This “old” roadway was abandoned when U.S. 95 was relocated to its current location to the west.  When relocated, the northern portion of old U.S. 95 was deeded to the Mall.  See Order No. 21357.  The old crossing served the southern part of an area referred to as the “commercial triangle.”  Its boundaries are formed by the Mall on the north side, new U.S. 95 on the west side and State Highway 200 on the east side.  The two highways intersected at the southern point of the commercial triangle.

Following a hearing, the Commission authorized the closure of the old crossing once two conditions were met.  First, the new crossing was to be equipped with automated flashing signals and barrier gates.  In addition, Southbound State Highway 200 would be widened to accommodate a deceleration/right-turn lane into Bonner Mall via the new crossing.  Northbound Highway 200 would be widened also to accommodate a center left-turn-only lane at the new crossing.  Second, the Mall was to convey to a public entity or in some other manner permanently ensure that motorists using the entire commercial development will have access to the new crossing.  This second condition was imposed because the Commission was concerned that the Mall could (although there was no indication it would do so) deny vehicular access to the new crossing for patrons of nearby businesses other than the Mall through its ownership of the vacated portion of old U.S. 95.  Order Nos. 21357 and 21442.

2. The Second Petition.  In June 1994, UP again petitioned the Commission for an Order authorizing the closure of the old crossing.  The Railroad asserted that the two conditions set out above had been met.  In response, the City of Ponderay objected observing that the turn bays for State Highway 200 had not been constructed.  In October 1994, the Railroad subsequently withdrew its request.  Order No. 25783.

3.  Present Application.  In the present Application, UP maintains that the two conditions contained in Order Nos. 21442 and 21357 have been met.  In response, the City of Ponderay again objects to the closure of the old crossing.  Although the City acknowledged that the required signalization and highway construction had been completed, the City maintained that the second requirement (assurance of access) had not been met.  In addition, the City also noted that many new businesses have located in the Mall area and the closure of the old crossing would adversely affect these new businesses.  Finally, the City maintained that subsequent research indicates that the relocation of old U.S. Highway 95 resulted in certain properties adjacent to the old crossing being granted right-of-way to and from both Highway 95 and State Highway 200.

THE COMMISSION’S ROLE

Chapter 3 of Title 62 governs the Commission’s role regarding grade crossing disputes.  In particular, Idaho Code § 62-305 provides that at such time as a new crossing is constructed “or whenever the closing and abandonment of an existing crossing is in the interest of and reasonably necessary for the public safety, or an existing crossing is no longer necessary as a public crossing for any reason, then the old grade crossing shall be deemed to be unnecessary and may be eliminated and discontinued.”  If there is an objection to the closure, then the Railroad

shall petition the public utilities commission for an order eliminating and discontinuing said grade crossing . . . and said commission shall be and is hereby authorized and empowered to hear and determine said petition in accordance with the provisions of [the public utilities law]. [I]f upon hearing duly had [the Commission] shall find and determine that the closing and abandonment of such grade crossing is in the interest of, and reasonably neces­sary for the public safety, or that said crossing is no longer reasonably needed, it shall make an order authorizing the closure and abandonment of said crossing.

Id.  See also Idaho Code § 62-304.

DISCUSSION

As set out above, the old crossing has been the subject of controversy for more than 10 years.  In Order Nos. 21357 and 21442 issued in 1997, [as amended] authorization to close the old crossing was conditioned upon two sets of conditions.  The first, the new crossing should be equipped with automated signals and barrier gates.  In addition, State Highway 200 was to be widened to provide lanes for turning traffic at the new crossing.  From the comments filed in this matter recently, there appears to be no dispute regarding the first condition contained in our Order No. 21357.

In addition to the safety improvements, the second condition was that the Mall convey that portion of old U.S. Highway 95 controlling access to the new grade crossing to a public entity or ensure in some fashion that the motoring public will have use of old U.S. 95 to gain access to the new crossing.  Among other things, the City has disputed whether the second condition from our prior Orders has been met.  To allow the parties to present evidence pertaining to the second condition and to present their respective positions, the Commission has determined that it is appropriate to convene an informal settlement conference in this matter.

NOTICE OF SETTLEMENT CONFERENCE

YOU ARE HEREBY NOTIFIED that a settlement conference in this matter is scheduled to convene at 10:00 a.m. Tuesday, February 9, 1999 in the Sandpoint Community Hall, 204 S. First Street, Sandpoint, Idaho.  The purpose of the settlement conference is to provide an opportunity for the parties to determine whether they can resolve this matter without further proceedings.  In particular, the parties should disclose evidence concerning whether the second condition has been met.  The Commission directs that representatives of the City, Union Pacific Railroad, Bonner Mall, and Idaho Transportation Department personnel meet to discuss the possibility of settling this matter.

YOU ARE FURTHER NOTIFIED that in the event that the parties cannot resolve this matter, then those in attendance should recommend a hearing schedule for the Commission’s consideration.  Interested persons are encouraged to attend including other businesses in the immediate area.

YOU ARE FURTHER NOTIFIED that all hearings and settlement conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act.  Persons needing the help of a sign language interpreter or other assistance of the kind that the Commission is obligated to provide under the Americans with Disabilities Act in order to participate in or to understand the testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing.  The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION

PO BOX 83720

BOISE, IDAHO  83720-0074

(208) 334-0338  (TELEPHONE)

(208) 334-3151  (TEXT TELEPHONE)

(208) 334-3762  (FAX)

O R D E R

IT IS HEREBY ORDERED that the Commission convene a settlement conference in this matter as set out in the body of this Order above.  The purpose of the settlement conference is to provide an opportunity for the parties and interested persons to reach a settlement in this matter.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of January 1999.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

bls/O:uprr991.dh

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

January 29, 1999