

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own
Motion, seeking to amend Title 291, Chapter 5
Telecommunications Rules and Regulations,
to adopt rules in accordance with Nebraska
Legislative Bill 181 [2010]

RULE AND REGULATION NO. 176

ORDER OPENING DOCKET AND
SEEKING COMMENT
Entered: August 31, 2010

COMMENTS OF UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company, a common carrier operating a line within the State of Nebraska ("UPRR"), hereby submits the following comments in response to the Order made and entered on August 31, 2010 by the Nebraska Public Service Commission soliciting public comment on the amending of Title 291, Chapter 5, Telecommunications Rules and Regulations, to adopt rules in accordance with Nebraska Legislative Bill 181 passed in 2010 by the Nebraska Legislature regarding telecommunications lines, wires or cables crossing railroad right-of-ways:

1.) SECTION 013.02C PETITION FOR HEARING: UPRR recommends that the word "completed" be inserted in line 4 between the word "the" and the phrase "crossing application" and that, in the same line, the phrase "(which shall include the engineering specifications described in Section 013.03A)" be inserted between the word "application" and the word "by," with the result that Section 013.02C states:

"Petition for Hearing: If the railroad carrier and the telecommunications carrier are unable to negotiate a binding wire-crossing agreement within sixty (60) days after receipt of the *completed* wire crossing application (*which shall include the engineering specifications described in Section 013.03A*) by the rail carrier, either party may submit a petition for a hearing on the disputed terms and conditions of the wire-crossing agreement." **[Emphasis added.]**

The purpose of this recommendation is to clarify that the 60-day period provided for reaching a negotiated agreement does not commence until a completed crossing application has been provided, including the all-important engineering specifications. There should be no room left for doubt on this point; without detailed engineering, UPRR and other rail carriers will be unable to determine if the application will destabilize the railbed or otherwise pose a safety hazard. In order to achieve the objectives of Nebraska Legislative Bill 181, it is important to emphasize that engineering specifications must be produced for review at the very outset of the application process.

2.) SECTION 013.02F OPPORTUNITY TO RESPOND: UPRR recommends that language in line 5 requiring the non-petitioning party to respond "within ten (10) days after service of the petition be replaced by a thirty (30) day response period, with the result that Section 103.022F states:

"Opportunity to Respond: The non-petitioning party under Section 013.02C shall respond to the petition and provide any relevant documentation concerning the unresolved issues and the position of the non-petitioning party with respect to those issues within *thirty (30) days* after service of the petition." **[Emphasis added.]**

The purpose of this recommendation is to provide the non-petitioning party with sufficient time to craft a truly responsive pleading. If the regulation does not provide adequate time to provide a considerate

response, it will prove unnecessarily more difficult to either reach an amicable resolution, on the one hand, or to complete the new procedure before the Nebraska Public Service Commission, on the other. In analogous judicial proceedings other than emergency injunctions, the responding party is typically provided with thirty days to provide its formal answer or responsive pleading. In the context of this regulation, it should be taken into account that the staffs of both the rail and telecommunications industries are continuously managing access rights involving portfolios of thousands of properties, with the result that adequate time must be provided to respond thoroughly and in good faith. In 2007, UPRR estimated that it has 4,227 active power and telecommunications agreements covering the State of Nebraska; UPRR would anticipate that the telecommunications industry has an equally large portfolio demanding time and attention.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

Gerard Sullivan

Its:

Senior General Attorney