



Michael W. Peters
Senior Vice President
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April 5, 2016

The Honorable Representative Tim Kelly
Chair, House Transportation Policy & Finance Committee
State of Minnesota
559 State Office Building
St. Paul, Minnesota 55155

Dear Chairman Kelly:

Genesee & Wyoming Railroad Services, Inc. provides real estate services and management for the two Genesee & Wyoming Inc. subsidiary railroads in Minnesota, the Otter Tail Valley Railroad (OTVR) and the Rapid City, Pierre & Eastern Railroad (RCPE).

Recently it has come to my attention that the Minnesota State House of Representatives is considering a new piece of legislation, HF.963 – “Railroad crossing rights-of-way by utilities requirements established”. I respectfully ask for your consideration of the points outlined below, and to vote against this bill.

1. The facts for the OTVR and RCPE utility agreement requests do not support that issues exist that require new state legislation.

Since the beginning of 2015, we have processed a total of 5 applications for utility type crossings across our two railroads. Numerous comments have been made by some Minnesota utilities claiming difficulties associated with obtaining utility agreements involving freight railroad rights-of-way (ROW). In a careful review of the five utility applications, we have found only one example of significant delays in the process. In this case the application was delayed because emails from the railroad to the utility were caught in the utility’s spam filter. In fact, in one of the five applications, the railroad raised engineering concerns about the crossing, but the utility proceeded with installing the crossing without responding to the engineering concerns, entering into an agreement or requesting flagging.

G&W Railroad Services is committed to prompt and fair processing of all utility agreement requests. Once a complete railroad application is received, it is our intent to respond as quickly as possible. Completion of applications is typically within 45 days or less if there is an open dialog between my group and the requesting utility. We are continually working to improve our turnaround time. In 2015 we implemented a new electronic system for the processing of applications that has taken significant time out of our process. We invested significant capital in this system. Capital that we won't be able to recoup based on the limitation on fees in this bill.

If there are specific examples of issues with the processing time of applications, we are prepared to address them with the utilities involved. If any specific examples are raised with your committee, please let me know and I will make sure that my team addresses them with the groups involved.

2. There are several flaws in this legislation:
 - It could result in the unsafe installation of utilities across railroads. Safe operation of the railroad is our highest priority. Any occupancy that comes in contact with the railroad has the potential of creating an unsafe situation for railroad employees and the general public. Our current process is designed to assure that all people working on or near the railroad are protected from unsafe situations. A key part of this is to ensure that any occupancies are designed under AREMA standards. If the occupancy is not designed to AREMA standards and the utility does not agree to change it, the only recourse for the railroad is the PUC. Putting aside potential federal preemption issues with this process, there is nothing in this bill defining the standards of a safe design.
 - It mandates expense on the part of the railroad while completely or severely limiting the ability to recoup those costs. Installations of utility crossings cause the railroad to incur costs to review and approve the design, coordinate with the contractors and inspect the installation. The railroad has to maintain people and systems to process these crossings, and the revenue outlined in this bill is insufficient to cover these costs.
 - It disregards the private property rights of railroads to control the location, method, and terms by which utilities place their facilities on railroad owned property. By allowing the installation of facilities without an agreement, license, easement, or condemnation order in place, the law disregards the railroads property rights which will lead to further frustration and potentially disruption of railroad operations. For example, if the railroad needs to have the crossing moved to further the safe operation of the railroad, what are the rules that govern that movement? As this involves the safe operation of a railroad, the state PUC would not have jurisdiction. These scenarios are typically spelled out in a standard license agreement. For utility installations outside of the right of way, \$750 does not adequately compensate for

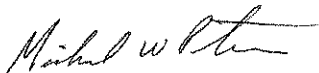
the review and processing of an agreement, and thus, provides \$0 compensation for the use of private property by utilities. For utilities in the public road right of way, the \$0 fee ignores the costs incurred by the railroad and scenarios where utility rights may have been specifically excluded from the grant of easement for the road by the railroad.

Careful and thorough review of utility crossing requests is done to maintain railroad and public safety. Incorrectly designed or installed crossings, even for something as apparently benign as a small diameter water pipeline, can undermine the railroad track structure and could result in a catastrophic derailment. Safety should be the first concern of all parties involved in this discussion; it certainly is our primary focus in processing any agreement requests.

Clearly, this bill is very similar to a bill that was recently passed in South Dakota. That law has all of the same issues that I have outlined above, and I predict will create long term headaches for all involved.

Thank you for your careful consideration of these points. If you have further questions on this, please let me know. Based on these points, I ask that you oppose HF.963.

Thank you,

A handwritten signature in cursive script, appearing to read "Michael W. Peters".

Michael W. Peters

