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BEFORE THE PUBLIC SERVICE COMMISSION

**IN THE MATTER OF LOGAN CITY'S
PETITION REQUESTING
INVESTIGATION INTO UNION
PACIFIC RAILROAD COMPANY'S
ADMINISTRATION OF AGREEMENTS
AND MAINTENANCE PROVISIONS**

**DIRECT TESTIMONY OF THOMAS
DICKINSON FOR LOGAN CITY &
LOGAN EXHIBITS 1-7**

Docket No. 21-888-01

1 **Q. Please state your name and business address.**

2 A. My name is Thomas Dickinson. My business address is 290 N 100 W, Logan, Utah.

3 **Q. By whom are you employed and what is your position?**

4 A. I am employed by Logan City as the Assistant City Engineer. I have held that position since
5 approximately April 2018. Prior to that, I had worked for Logan City for approximately
6 twenty years. Most recently, I was a staff engineer for one year. Prior to that, I was a senior
7 engineering technician for approximately three years, a storm water inspector for
8 approximately three years, and a building inspector for approximately fourteen years.

9 **Q. Please briefly describe your responsibilities in your role as Assistant City Engineer.**

10 A. I have a wide range of responsibilities that include planning, design, and construction of
11 Logan City capital improvement projects as well as managing contracts and coordinating
12 design with project consultants.

13 **Q. Are you familiar with the at-grade crossing located at 1400 North 600 West in Logan?**

14 A. Yes. That is DOT# 806354Y. I have been working on this project since 2016, through
15 design and permitting with the Union Pacific and design agencies, as well as construction.

16 **Q. Will you describe the 1400 North crossing?**

17 A. For many years, a Union Pacific track has run mostly parallel to 600 W in Logan. At the
18 intersection of 1400 N and 600 W, the track is approximately seventy-five feet east of the
19 center of the intersection. Until relatively recently, 1400 N and 600 W were each one-lane
20 roads, and the Intersection was controlled as a four-way stop.

21 **Q. Has there been a change to the 1400 N and 600 W intersection?**

22 A. Yes. In 2003, the City commissioned a study of the intersection and determined that it met
23 the criteria and requirements for signalized traffic control. In 2009, the City hired a
24 consultant to design the intersection and traffic signal. Due to high construction costs, the
25 improvements were not completed at that time. In 2011, the City updated its Transportation
26 Master Plan. The updates included designating 1400 N as a Minor Arterial Roadway, which
27 means five-lane road. As a result, in 2016, the City hired a consultant to complete design
28 of the intersection and traffic signal.

29 **Q. Did this proposed expansion of 1400 N affect Union Pacific's facilities?**

30 A. Yes, the expansion did implicate Union Pacific's facilities at the intersection. Because of
31 this, the City and Union Pacific executed a preliminary engineering services agreement in
32 December 2016. We refer to that agreement as the PEA.

33 **Q. Attached to your written testimony is Logan Exhibit 1. Is that the PEA you just**
34 **referenced?**

35 A. Yes. Logan Exhibit 1 is true and correct copy of the PEA without its exhibit.

36 **Q. Did the PEA include any terms or provisions regarding maintenance fees for the**
37 **crossing?**

38 A. No it did not. It is a short document that sets out that Logan City and Union Pacific will
39 collaborate on preliminary engineering and other related services, development of cost
40 estimates, and review of the project's preliminary layout. It also provides that the City
41 agrees to reimburse Union Pacific for its expenses and costs incurred for collaborating in
42 the development of the project's preliminary engineering and other preliminary activities.
43 The PEA does note that the City and Union Pacific would enter into separate "License,

44 Right of Entry, Construction and Maintenance Agreements” for the actual construction of
45 the project, but it did not specify any terms for the payment of maintenance costs or fees.

46 **Q. Can you describe what happened with the plans for the crossing after the parties**
47 **entered the PEA?**

48 A. On February 1, 2017, we held a diagnostic review onsite. Eric Cheng, who was UDOT’s
49 Chief Railroad Engineer at the time attended on behalf of UDOT; I attended for the City
50 along with Bill Young, City Engineer, and Jed Al-Imari, who was then the Streets and
51 Stormwater Manager; Lance Kippen attended for Union Pacific; and Nate Jones, John Van
52 Hoff, and Travis Bailey attended for AECOM, the engineering consultant. At that meeting,
53 we discussed the background of the project, the history of the crossing, and the intended
54 result of the project to allow for identification of improvements that would be needed to
55 ensure a safe crossing. Union Pacific dictated the design elements of the crossing, including
56 signal improvements necessary for the project.

57 **Q. Was there any discussion during the onsite meeting of maintenance costs or fees?**

58 A. No, there was not.

59 **Q. What occurred after the onsite meeting?**

60 A. On June 6, 2017, we received a surveillance report from UDOT. This report, that was
61 prepared by UDOT, included six specific recommendations for the crossing,
62 memorializing the recommendations from the diagnostic review.

63 **Q. Attached to your written testimony is Logan Exhibit 2. Is that the surveillance report**
64 **you just referenced?**

65 A. Yes. Logan Exhibit 2 is true and correct copy of the surveillance report.

66 **Q. Did the report include any discussion of maintenance costs or fees?**

67 A. No, it did not.

68 **Q. What occurred next?**

69 A. On March 1, 2018, we had another diagnostic review meeting onsite to discuss the crossing.
70 Many of the same people from the first meeting attended, including myself. A separate
71 surveillance report was not prepared following this meeting.

72 **Q. What were the next steps in moving forward with the project?**

73 A. From April 2018 to approximately December 2018, we continued with the design of the
74 project, using design consultant AECOM. There was periodic review submitted to Union
75 Pacific. On February 2, 2019, Union Pacific gave final approval of the design to AECOM.

76 **Q. At some point, did Union Pacific provide the City with a crossing estimate?**

77 A. Yes, we received that in September 2019 through AECOM.

78 **Q. Attached to your written testimony is Logan Exhibit 3. Is that the crossing estimate**
79 **you just referenced?**

80 A. Yes. Logan Exhibit 3 is true and correct copy of the crossing estimate.

81 **Q. What is the purpose of the crossing estimate?**

82 A. It identifies the amount the City will owe Union Pacific for the work to widen the crossing
83 within the Railroad right of way and install the portion of the signal that is in the Railroad
84 right of way.

85 **Q. Did the crossing estimate include any terms or provisions regarding maintenance fees**
86 **for the crossing?**

87 A. No it did not.

88 **Q. What did the City do after receiving the crossing estimate?**

89 A. Our next major step was to issue a notice to proceed to our contractor, LeGrand Johnson
90 Construction. This authorized them to begin construction work. Given Union Pacific had
91 approved the design, the City did not think that moving forward with construction would
92 be a big issue. Construction began on January 21, 2020, and proceeded with road
93 excavation outside of the Railroad right of way and utility installation. The City had
94 previously secured utility crossing permits.

95 **Q. Did the City then at some point receive a proposed agreement from Union Pacific for
96 the crossing?**

97 A. Yes. We received a proposed at-grade crossing agreement from Union Pacific on or about
98 March 19, 2020.

99 **Q. Attached to your written testimony is Logan Exhibit 4. Is that the proposed
100 agreement you just referenced?**

101 A. Yes. Logan Exhibit 4 is true and correct copy of the proposed agreement we received in
102 March 2020.

103 **Q. Did this proposed agreement include any terms or provisions regarding maintenance
104 fees for the crossing**

105 A. Yes. The proposed agreement included a paragraph – Section 16 – that addressed signal
106 maintenance costs. That paragraph stated that the City agreed to pay Union Pacific \$11,475
107 annually for Union Pacific’s maintenance of the railroad crossing warning signals that are
108 to be installed at the crossing. It explained that this annual fee would be increased annually

109 based on the American Association of Railroad's signal unit cost index, and could be made
110 by Union Pacific through automatic adjustments to the billing.

111 **Q. What was the City's response to the proposed agreement.**

112 A. We reviewed the proposed agreement internally. We were surprised by the provision
113 regarding maintenance fees because that had not been discussed during the process, we
114 thought that it was inconsistent with UDOT's administrative rule regarding apportionment
115 of maintenance fees, and it was not in line with other agreements Logan had with Union
116 Pacific. On this latter point, the City had entered an agreement with Union Pacific in
117 August 2010 regarding an at-grade crossing at 1700 S. That agreement included a short
118 signal maintenance provision that provided the City would reimburse Union Pacific for the
119 cost of future maintenance but did not impose a flat annual payment requirement. As a
120 result of these concerns, I reached out to UDOT to ask about the authority for inclusion of
121 the fee in the proposed agreement. UDOT indicated that it would look at the applicable
122 statutes, applicable rules, and the Manual of Uniform Traffic Control Devices and research
123 the issue.

124 **Q. Did the City raise this issue with Union Pacific?**

125 A. Yes. On April 29, 2020, I responded to Union Pacific's email with the proposed agreement
126 asking that Union Pacific remove the maintenance fee provision (Section 16).

127 **Q. What was Union Pacific's response to the City's request to remove the maintenance
128 fee provision?**

129 A. On May 1, 2020, Mary Schroll, Union Pacific Engineer, sent an email with proposed
130 modifications of the agreement that included three options: first, the City accept the

131 proposed annual maintenance fee as it was written; second, the City pay a lump sum
132 amount for a certain number of years' maintenance; and third, the City or UDOT would be
133 responsible for reimbursing Union Pacific for annual maintenance.

134 **Q. Attached to your written testimony is Logan Exhibit 5. Is that the email exchange you**
135 **just referenced?**

136 A. Yes. Logan Exhibit 5 is true and correct copy of the email thread that began with Union
137 Pacific sending the proposed agreement and ended with Ms. Schroll's May 1, 2020, email,
138 without the proposed agreement that was attached and we already discussed.

139 **Q. Are you aware of whether UDOT also contacted Union Pacific about this issue around**
140 **this timeframe?**

141 A. Yes, I was carbon copied on a May 1 email from UDOT to Union Pacific and was also
142 forwarded by UDOT a May 11 email that was sent from the Utah Attorney General's Office
143 to Union Pacific.

144 **Q. Did the City respond to Union Pacific's proposal?**

145 A. Yes, the City again asked for removal of the provision. In the alternative, we proposed
146 delaying any maintenance fee obligation until there was a resolution of the issue or a
147 limited, three-year agreement under which the City would pay a maintenance fee of \$1000
148 per year.

149 **Q. What was the response?**

150 A. Union Pacific proposed a 20% reduction in the original maintenance fee.

151 **Q. During this time, what was the status of the construction of the 1400 N intersection?**

152 A. During this time, the City through its contractor continued with construction outside of the
153 Railroad right of way, including the installation of utilities. Road construction and road
154 utilities outside of the Railroad right of way were nearing completion. The contractor was
155 placing backfill and getting ready to prepare to pave the road outside of the right of way.
156 This included hauling in road base and roadway material. Basically, we were nearing
157 completion of the construction outside of the Railroad right of way, meaning that the road
158 widening was almost complete on either side of the crossing. Because of this, on June 29,
159 2020, we asked Union Pacific that it allow construction to proceed within the right of way,
160 the actual crossing, while the parties continued to negotiate the terms of the agreement.

161 **Q. What was Union Pacific's response?**

162 A. Union Pacific declined to allow construction to proceed within the right of way until the
163 maintenance fee issue was fully resolved and a final agreement was executed.

164 **Q. Was there further discussion of the issue?**

165 A. Yes, on July 22, 2020, the City participated in a virtual meeting with Union Pacific, its
166 counsel, an Assistant Utah Attorney General for UDOT, and RailPros, Union Pacific's
167 contract engineer, to discuss the issue. At that meeting, the City and Union Pacific were
168 unable to resolve the maintenance fee issue.

169 **Q. Did the City provide any additional information to the Attorney General's office
170 following that virtual meeting?**

171 A. Yes. On July 28, 2020, the City Engineer Bill Young and Safety Officer Brody Parker
172 evaluated the safety of the 1400 N at-grade crossing. We sent this information to the
173 Attorney General's Office that day.

174 **Q. Attached to your written testimony is Logan Exhibit 6. Is that the letter you just**
175 **referenced?**

176 A. Yes. Logan Exhibit 6 is true and correct copy of the letter the City, through Mr. Young,
177 sent to the Attorney General's Office.

178 **Q. What were the City's safety concerns at this point?**

179 A. As I mentioned before, we were nearing completion of the road improvements outside of
180 the Railroad right of way. If the improvements within the right of way were not constructed
181 concurrently with the installation of the signal, we identified several issues. First, given the
182 configuration of the intersection, we believed it was likely that cars would back up and
183 stack on the railroad tracks, presenting a serious safety concern to motorists and Union
184 Pacific track traffic. Second, without the improvements to the crossing, cars would still
185 have to slow down to comply with the current yield sign before crossing the tracks,
186 reducing the efficiency of the signal and causing driver frustration. We were concerned
187 that frustration could, in turn, lead to unsafe driving decisions. Third, because the road had
188 been improved on either side of the crossing, resulting in a transition from wide
189 (approximately 77 feet) to narrow (approximately 32 feet) through the crossing and back
190 to wide on the other side, there was the potential for drivers to try to cross the tracks outside
191 of the current paved crossing. Fourth, the absence of the planned sidewalks creates a danger
192 for pedestrians who are funneled to the tracks which is not improved for pedestrian
193 crossing. Finally, we noted the possibility that these safety concerns may require the City
194 to close east-west traffic across the right of way at 1400 N, which would require a detour
195 of traffic onto current City streets either four blocks north or four blocks south. These issues

196 were discussed with more detail in the letter to the Attorney General's Office, but this
197 summarizes our concerns.

198 **Q. What happened after the City sent that information to the Attorney General's Office?**

199 A. The next day, UDOT issued notice of an emergency 120-day rule that amended Rule 930-
200 5-8 that addresses maintenance of at-grade crossings. That filing referenced the safety
201 concerns that the City had identified with the 1400 N crossing.

202 **Q. Did the City take any further action regarding the proposed agreement after adoption**
203 **of the emergency rule?**

204 A. Yes. The day before the emergency rule became effective, Union Pacific had sent a
205 counterproposal to the City and asked for a response by August 14, 2020. On August 4, the
206 City's legal department sent Union Pacific a copy of the emergency rule and requested that
207 the agreement be executed without the maintenance fee provision and allow construction
208 to begin within the right of way construction to begin. During a follow up conversation on
209 August 10, we learned from Union Pacific that it claimed it had not received the letter and
210 also that it was not aware of the emergency rule. Union Pacific was going to determine
211 how to proceed.

212 **Q. Were the City and Union Pacific able to come to some resolution?**

213 A. Unfortunately, no. Between August 10 and October 9, 2020, the City and Union Pacific
214 continued to discuss the issue but were not able to come to an agreement. A sticking point
215 was that Union Pacific continued to insist on a perpetual maintenance fee obligation of the
216 City. I understand that the City continued to discuss the issue with Union Pacific through

217 outside counsel and ultimately filed a petition in this matter before the Public Service
218 Commission when those efforts were not successful.

219 **Q. Has the City been able to proceed with construction at the 1400 N intersection while**
220 **these negotiations have been ongoing?**

221 A. Not within the Railroad right of way. Construction is now complete outside of the right of
222 way, on either side of the crossing. As I mentioned before, this means we have a road on
223 either side of the right of way that is wider than and does not match up with the crossing
224 itself. This presents the safety concerns I discussed before. To address some of those
225 concerns, the City has placed barricades on the northbound lane that does not allow for a
226 right hand turn from the intended lane. If you are traveling eastbound, there are two
227 traveling lanes with a drop lane that forces you to turn southbound since both lanes cannot
228 cross the right of way. The City also placed barricades on the westbound lane restricting
229 vehicular travel to a single lane for turning left, right, and straight, which obviously causes
230 delays.

231 **Q. Has the City experienced a similar issue at any other crossings within its jurisdiction?**

232 A. Yes. We have had much the same issue with an at-grade crossing located at 1800 N and
233 600 W in Logan. This is DOT# 806357U.

234 **Q. Can you briefly describe the history of the dispute over that crossing?**

235 A. Like with the 1400 N crossing, there was a diagnostic review meeting held onsite with
236 representatives from UDOT, Union Pacific, and the City in 2016. As with the other, Union
237 Pacific dictated the design elements of the crossing, including signal improvements
238 necessary for the project. In September 2020, we received an "AREMA Unit Statement of

239 Railroad Highway Grade Crossing Signals Estimated Maintenance Costs” for this crossing.

240 It identified an estimated annual maintenance cost of \$12,070.

241 **Q. Attached to your written testimony is Logan Exhibit 7. Is that the estimate you just**
242 **mentioned?**

243 A. Yes. Logan Exhibit 7 is true and correct copy of the AREMA estimate we received in
244 September 2020.

245 **Q. After receiving that estimate, did the City discuss maintenance fees with Union**
246 **Pacific?**

247 A. Yes. In discussing the drafting of an agreement for the crossing, we expressed that the
248 agreement should comply with the emergency rule regarding maintenance costs, under
249 which Union Pacific would be responsible for those costs. Union Pacific responded that
250 the agreement would include that 100% of the maintenance costs for the at-grade crossing
251 signals would be the responsibility of the City unless it and Union Pacific negotiated
252 otherwise.

253 **Q. Have the City and Union Pacific been able to reach an agreement regarding the 1800**
254 **N crossing?**

255 A. No. Like with the 1400 N crossing, we continued to discuss the matter with Union Pacific,
256 but it continued to insist that the City bear the costs of signal maintenance for the crossing.
257 Although I asked to review a draft agreement so that we could discuss specific
258 modifications, Union Pacific refused to provide a draft unless the City agreed to include a
259 provision requiring it to pay maintenance fees. We have not been able to reach a resolution
260 and, as a result, there is no crossing agreement for this crossing.

261 **Q. What is the current status of the 1800 N crossing?**

262 A. The City currently has this project out to bid for construction. One concern we have, and
263 partly why we have it out to bid, is the risk of losing grant funds the City obtained for the
264 project, including the widening of the crossing. The City obtained those grant funds
265 through the Cache County Council of Government, which now has a three-year provision
266 on new awards and is understandably anxious to make unused funds available for new
267 projects.

268 **Q. Other than the grant funds, are there any permits or approvals that the City is at risk
269 of losing if construction does not proceed on this crossing?**

270 A. Yes. The City had four utility permits from Union Pacific that began expiring in 2021. We
271 were able to get an extension of those through July 1, 2022. In addition, the City has several
272 permits from private property owners to enter and construct. These permits have time
273 limitations. Nine permits have expired and at least two more are set to expire by February
274 2022. Others are approaching their expiration.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

DATED this 28th day of January, 2022, in Salt Lake County, Utah.



Thomas Dickinson