
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF LOGAN CITY'S
PETITION REQUESTING
INVESTIGATION INTO UNION PACIFIC Docket No. 21-888-01
RAILROAD COMPANY'S
ADMINISTRATION OF AGREEMENTS
AND MAINTENANCE PROVISIONS**

**DIRECT TESTIMONY AND EXHIBITS
OF KEN TOM
ON BEHALF OF UNION PACIFIC RAILROAD**

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

2 A. Ken Tom. My business address is 2015 S. Willow Ave., Bloomington, CA 92316.

3 **Q. Please state your occupation and employment information.**

4 A. I am employed by Union Pacific Railroad (“UP”) and have been for over 17 years. I am
5 currently Manager of Industry and Public Projects Group and have been in this position for
6 the last year and a half.

7 **Q. What are the duties of your current position?**

8 A. I manage projects and the public project engineering consultants who work directly with
9 road authorities on projects such as grade crossing surface and signal maintenance, grade
10 separation, quiet zone and other public projects.

11 **Q. On whose behalf are you testifying and what is the purpose of your testimony?**

12 A. I am testifying on behalf of UP. The purpose of my testimony is to explain how
13 maintenance costs are derived for a Public Agency project such as the one for Logan in
14 this case.

15 **Q. Generally, and briefly, please describe the process for how UP works with the road
16 authorities and municipalities on grade crossing projects.**

17 A. A Public Agency such as Logan will contact UP via our contact center, and the contact
18 center will coordinate with the Public Agency to execute a Preliminary Engineering
19 agreement (“PE”). A Public Project Engineering Consultant (“PPEC”) is then assigned to
20 the project and coordinates with the Public Agency to perform a diagnostic, signal/surface
21 design, and estimate. In this case, the PPEC assigned was Lance Kippen.

22

23 Once the estimate is approved by the Public Agency, UP and the Public Agency will
24 negotiate a Construction and Maintenance Agreement (“C&M”) for the work that is agreed
25 to be performed. Once both UP and the Public Agency agree on the draft C&M, both sides
26 will execute it and the PPEC will coordinate internally with various departments to
27 schedule the work.

28 **Q. Are you familiar with the at-grade crossing at 1400 North 600 West in Logan, UT?**

29 A. Yes.

30 **Q. What is the purpose of a PE?**

31 A. Its purpose is for UP to be reimbursed for preliminary engineering costs by the Public
32 Agency for the Public Agency’s proposed project affecting UP property.

33 **Q. On what date did UP send a PE to the City?**

34 A. It was sent on December 8, 2016.

35 **Q. Did Logan acknowledge that it understood the terms of the PE for this project?**

36 A. Yes, Logan’s mayor signed and returned a copy of the PE to UP.

37 **Q. Isn’t it true that pursuant to the PE the City agreed that UP may withhold its approval
38 for any reason directly or indirectly related to safety or its operations, property issues,
39 or effect to UP’s facilities?**

40 A. Yes.

41 **Q. What is the purpose of a Construction and Maintenance Agreement (“C&M”)?**

42 A. The purpose of the C&M is to set forth the terms and conditions of the work to be
43 performed at the crossing. This includes the contractors’ right of entry to UP property,
44 safety requirements, insurance obligations, indemnification, and so forth.

45 **Q. On what date did UP send the C&M to the City?**

46 A. It was sent on March 19, 2020.

47 **Q. Did the C&M sent to Logan include terms or provisions regarding maintenance fees?**

48 A. Yes.

49 **Q. Is that commonly the first time that maintenance costs are discussed between the**
50 **parties?**

51 A. Yes. As part of UP's design process, the maintenance fees are calculated once we have an
52 approved front sheet for distribution. Having a fully approved preliminary design allows
53 our team to accurately calculate the annual cost of maintenance related to a crossing
54 upgrade or installation based on the type of circuitry required for that specific location.
55 Maintenance fees cannot be calculated until after we have this done.

56 **Q. What are the estimated annual maintenance costs for the type of crossing signals to**
57 **be installed in the City's proposed project at this location?**

58 A. \$11,475.

59 **Q. How does UP calculate crossing signal maintenance costs?**

60 A. UP calculates crossing signal maintenance costs pursuant to the American Railway
61 Engineering and Maintenance-of-Way Association ("AREMA") recommendations.
62 AREMA publishes the recommended practices for railway engineering infrastructure
63 including track, structures, communications, and signals. AREMA assigns a unit cost for
64 each item for maintenance and this unit cost is what UP used in its C&M proposal to Logan.
65 Attached to my testimony as Exhibit UP__(KT-1) is a copy of the form used to calculate
66 the maintenance costs.

67 **Q. What are the minimum standard requirements to be followed for testing signal**
68 **devices?**

69 A. Signal systems must be tested monthly, quarterly, and annually, as required by the Code of
70 Federal Regulations (“CFR”) 49 Part 234. Depending on the crossing size, physical
71 location, and other factors, testing may take anywhere from several hours to a few days.

72 **Q. Are signal maintenance costs calculated consistently in all jurisdictions?**

73 A. Yes.

74 **Q. What is typically the proposed cost apportionment for the maintenance costs in the**
75 **C&M?**

76 A. Monthly maintenance inspections are required by 49 CFR § 234.261. UP bills Public
77 Agencies like Logan only for labor and material actually used, and this apportionment is
78 based on AREMA’s recommendations. Generally, these fees include electricity, ordinary
79 scheduled and unscheduled maintenance and repair work, and technology upgrades. These
80 fees do not cover extraordinary work and major replacements, rehabilitations or
81 rearrangements.

82 **Q. At what phase does UP approve a project?**

83 A. After the C&M is executed, because this approves a final work order for construction
84 reimbursement.

85 **Q. Did UP approve this project?**

86 A. No, because a C&M was never executed by both parties.

87 **Q. Why didn’t UP approve this project?**

88 A. The City would not agree to the maintenance fee provision in the C&M.

89 **Q. Do you know when the subject of signal maintenance was raised with respect to the**
90 **Logan 1400 North 600 West Project?**

91 A. It was presented to the City in the C&M on March 19, 2020.

92 **Q. Are there times where construction is necessary even if the project does not have a**
93 **formally signed intergovernmental or Public Agency agreement, i.e., a C&M?**

94 A. No. A C&M must first be in place.

95 **Q. Has Logan conducted any construction at this time even though it has not executed a**
96 **C&M?**

97 A. Unfortunately, it appears so. Even though Logan's witness Thomas Dickinson testified
98 that no construction has taken place on UP property, Lance Kippen, the PPEC assigned to
99 this project, has evidence that Logan has unlawfully entered onto UP's property and
100 installed some facilities.

101 **Q. Does Utah Code state that UDOT shall pay all or part of the cost of installation,**
102 **maintenance, reconstruction or improvement of signal devices with funds provided**
103 **by the state, in conjunction with other available money including federal funds, for**
104 **crossing projects such as this in order to promote public safety?**

105 A. Yes, and this is addressed in Utah Code 54-4-15.1 through 54-4-15.4.

106 **Q. When did the City respond to UP's C&M?**

107 A. The City initially rejected the C&M on April 29, 2020. However, subsequently, over the
108 course of negotiating the maintenance fees, Logan did present a proposal that included an
109 apportionment of the maintenance fees between UP and Logan. Then Logan filed its
110 compliant with the Commission.

111 **Q. Does this conclude your testimony?**

112 A. Yes.