
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 21-888-01

**DIRECT TESTIMONY AND EXHIBITS
OF PAUL RATHGEBER
ON BEHALF OF UNION PACIFIC RAILROAD**

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

2 A. Paul Rathgeber. My business address is 24125 Old Aldine Westfield Road, Spring, Texas
3 77373.

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

5 A. I am employed by Union Pacific and have been for over 24 years. I am currently the
6 Director of Industry and Public Projects and have been in this position for 4 years. In my
7 current position I lead the team that works directly with road authorities on projects such
8 as grade crossing surface and traffic control device installations and upgrades, grade
9 separation, quiet zone and other public projects.

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

11 A. I'm testifying on behalf of Union Pacific Railroad ("UP"). The purpose of my testimony
12 is to describe UP's process for handling road projects such as the one at issue in this case.

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

15 A. The Union Pacific process has four basic phases: (1) Proposed by Agency, (2) Railroad
16 Design, (3) Agreement and (4) Construction.

17
18 During the Proposed by Agency phase, the Public Agency, i.e. road authority or
19 municipality, provides the proposed scope of work or preliminary design to UP. From that
20 the parties will execute a preliminary engineering reimbursement agreement, review the
21 scope and impact of the proposed project, participate in diagnostics, and recommend design
22 changes based on federal, railroad, state, and industry standards. Once the parties agree on
23 the scope or preliminary design, the project progresses to the Railroad Design phase.

24

25 The Railroad Design phase involves railroad specific design and ballpark estimates of the
26 railroad's cost to facilitate the project to completion. This occurs after the Public Agency
27 has clearly defined the scope of its work and a Diagnostic or onsite meeting has been held.
28 Upon the Public Agency's approval of the ballpark cost estimate from UP, the project
29 progresses to the Agreement Phase.

30

31 Standardized agreements are generally used in the Agreement Phase because they can
32 reduce the amount of time taken by stakeholders to process and execute agreements. This
33 is the stage where crossing maintenance, real estate, and construction estimate costs are
34 discussed.

35

36 At the final phase, Construction, the parties agree to the starting times, project materials
37 are ordered, the work is jointly coordinated and scheduled, constructed, inspected, and the
38 parties mutually determine an in-service or completion date. This allows for final billing
39 and closure of the project.

40 **Q. How many public, at-grade crossings currently exist in the state of Utah?**

41 A. 547

42 **Q How many open ongoing at-grade crossing projects does UP currently have in Utah?**

43 A. 135, with three being new at-grade crossings, and a handful being private party projects.

44 **Q. Are you familiar with the 2013 Master Agreement that was discussed in the direct
45 testimony of Logan City's ("Logan" or the "City") witness James Golden?**

46 A. Yes, I am.

47 **Q. What is the purpose of a Master Agreement?**

48 A. To efficiently manage Section 130 projects between a State's Department of Transportation
49 ("DOT") and the UP.

50 **Q. What specific types of projects are covered under the terms of the 2013 Master
51 Agreement between UP and Utah's Department of Transportation ("UDOT")?**

52 A. Section 130 projects, meaning that the funding comes from the federal Section 130
53 program which provides funds to eliminate hazards at highway-rail grade crossings.

54 **Q. Does UP typically enter into a Master Agreement with the DOTs or other state
55 regulatory agencies in states in which it operates?**

56 A. Yes, with most states.

57 **Q. Are UP's Master Agreements in other states similar to the UDOT Master Agreement?**

58 A. In general concept, yes, but the specific mechanics may differ. Utah is actually an easier
59 format than others, and the task order process is a method we would like to use in other
60 states.

61 **Q. Is the Logan City project at 1400 North and 600 West the type of project that is
62 covered by the Master Agreement?**

63 A. No, as this is not a Section 130 project, and it's my understanding that no other federal
64 funds are being used.

65 **Q. Does this mean that the terms of the 2013 Master Agreement with UDOT have no
66 relevance to this case?**

67 A. That is my understanding, yes.

68 **Q. Was there a Preliminary Engineering Agreement ("PE") signed for this project, and
69 if so, did it include terms or provisions regarding maintenance fees?**

70 A. Yes, there is a PE that has been signed by Logan City's representative. The PE does state
71 that the project will be of no cost to UPRR, however, it does not distinguish any specific
72 costs. So, maintenance costs are not specifically discussed in the PE. However, as Logan's
73 witness, Mr. Dickinson, notes in his testimony at lines 43-45, the PE does mention the
74 Construction and Maintenance Agreement. The title of that agreement itself indicates that
75 there will need to be an agreement as to how maintenance costs will be paid. This belies
76 Logan's apparent attempt to act surprised, according to Mr. Dickinson's testimony at lines
77 112-113, when Logan was presented with the Construction and Maintenance Agreement
78 that had provisions for the payment of maintenance costs.

79 **Q. How do some of the states neighboring Utah apportion maintenance costs between**
80 **UP and entities such as Logan that are proposing projects that will impact UP's**
81 **property and operations?**

82 A. It depends on the project scope, the funding type, and the agency type. Some are 100%
83 Public Agency cost, some are cost shares. For instance, for Colorado crossing surface
84 projects, if UP identifies the need to replace the rail portion of the crossing, the Public
85 Agency must pay 50% (road portion) for the project. In California, for signal maintenance,
86 a per-device-type maintenance fee is paid annually by the state. This allows for collection
87 by the railroad from local Public Agencies for the outstanding sum.

88 **Q. Does UP collect money for signal maintenance from other parties pursuant to**
89 **agreements in crossing projects in UP's system that are similar to the Logan crossing**
90 **at issue in this case?**

91 A. Yes. We collect millions of dollars per year in signal maintenance.

92 **Q. Who are some of the other parties UP bills for signal maintenance?**

93 A. Cities, counties, federal agencies, quasi-governmental/public agencies, industrial entities,
94 commercial entities, and other private parties. In essence, whomever the road authority is
95 for that location. This would be consistent with the Manual for Uniform Traffic Control
96 Devices (“MUTCD”) § 1A.07, which provides that the responsibility for maintenance of
97 traffic control devices is with the road authority.

98 **Q. Why does UP collect money for signal maintenance from these parties?**

99 A. The federal government, via its regulations in the Code of Federal Regulations (“CFR”)
100 and other means, has stated that road crossing projects are of no benefit to the railroads,
101 and therefore in most cases, railroads shall bear no costs for these projects. Additionally,
102 the CFR also states that “preservation,” which is the definition of maintenance in 23 USCA
103 §101(a)(4)(B), is listed as a cost of construction. Therefore, maintenance is really a project
104 cost to be borne by the road authority.

105 **Q. In determining the maintenance cost, what cost method does UP utilize?**

106 A. The cost of maintenance varies by each location, and the American Railway Engineering
107 and Maintenance-of-Way Association (“AREMA”) unit costs have been the standard for
108 decades. The railroad has to inspect each crossing monthly, with some quarterly and annual
109 testing, reporting, and maintenance activities, as dictated by the United States Department
110 of Transportation (“USDOT”) via the 49 CFR Part 234 and the Federal Railroad
111 Administration (“FRA”). This is a real cost, as is the cost of replacing components that are
112 damaged by roadway users, weather events, and the eventual end of life replacements.

113 **Q. How does UP collect the money it bills for signal maintenance?**

114 A. Some are annually billed, some are billed as work is performed, some is lump sum by
115 Public Agency by year, some are upfront lump sums to cover replacements, as dictated by
116 the negotiated agreements.

117 **Q. How is the money that UP collects for signal maintenance spent?**

118 A. Maintenance payments are allocated to the signal maintenance team for actual maintenance
119 costs. This includes federally regulated testing and compliance with 49 CFR part 234.

120 **Q. Are you familiar with the use of Construction and Maintenance Agreements**
121 **(“C&M”)?**

122 A. Yes.

123 **Q. What is the purpose of the C&M**

124 A. The C&M is the document that approves the scope of work, allows for entry onto UP
125 property, grants licenses/easements for the road or improvements and sets responsibilities
126 and funding terms. Therefore, construction cannot occur without a C&M.

127 Unfortunately, Public Agencies sometimes set their letting dates before even providing
128 concept plans to the railroad, and this places themselves in a precarious risk situation with
129 their contractors.

130 **Q. Mr. Dickinson’s testimony seems to imply that Logan was surprised it was being**
131 **asked to pay for maintenance yet in the past, hasn’t Logan contractually agreed to**
132 **pay the cost of signal maintenance?**

133 A. Yes. In an August 11, 2010, Agreement for a similar project. A copy of this agreement is
134 attached to my testimony as Exhibit UP__ (PR-1).

135 **Q. What type of cost apportionment was in the 2010 agreement?**

136 A. The City agreed to pay maintenance within 30 days of receipt of a UP invoice.

137 **Q. Why is the cost apportionment UP is requiring for 1400 North 600 West project**
138 **different than the 2010 agreement?**

139 A. The 1400 North language proposed is consistent with current UP standard language, which
140 has been modified since the August 2010 agreement. Even after several good faith
141 negotiated proposals by UP between March of 2020 and October of 2021, the City refused
142 to progress. The City made no reasonable counteroffers, and in fact claimed they were
143 surprised that maintenance costs were included to be collected from the City, even with
144 several prior agreements that included maintenance terms.

145 **Q. Are you aware of any other agreements that address cost allocation between the City**
146 **and UP for maintenance?**

147 A. Yes. In a March 17, 1982, agreement. A copy of this agreement is attached to my testimony
148 as Exhibit UP__ (PR-2).

149 **Q. What type of cost allocation was used in the 1982 agreement?**

150 A. The 1982 agreement specified that if in the future the roadway should, by state or local
151 authority, require automatic signal warning devices, such warning devices would be
152 installed under the terms and conditions to be negotiated by the parties.

153 **Q. Why isn't UP using the same type of cost apportionment in this case?**

154 A. The systemwide standard language, including the industry standard AREMA unit cost
155 calculations, are what was used in our proposed C&M as it is now our standard language
156 systemwide.

157 **Q. Will UP derive an ascertainable benefit from the proposed project?**

158 A. No, in fact, the proposed project increases risk to the railroad and public as it increases
159 potential exposure opportunities, increases surface maintenance costs, creates previously

160 non-existent signal costs, impedes railroad drainage, increases the footprint of a
161 burdensome and conflicting property use, reduces our ability to fully enjoy our own
162 property, and decreases the commercial opportunities for the railroad in the area. The
163 project solely benefits the road authority and road users. That is why UP should not pay
164 any costs for the project. 23 CFR § 646 defines when the railroad receives a benefit from
165 a crossing project and this is specified as only when the road authority constructs a grade
166 separation while closing an at-grade crossing that is equipped with active warning devices.
167 This finding of a benefit in only this situation is based on the results of studies performed
168 by USDOT.

169 **Q. How does UP spend the monies it collects from other parties for signal maintenance?**

170 A. Maintenance payments are allocated to the signal maintenance team for actual maintenance
171 costs. This could be a reimbursement for as-performed work in some instances, or via the
172 annual payments from a Public Agency that are allocated to the maintenance team. The
173 AREMA unit costs that are used have not been updated since the early 1990s, and therefore,
174 annual lump payments like that we proposed to Logan are likely lower than an actual cost
175 option.

176 **Q. When UP's crossing signal devices are damaged or destroyed by a third party, who
177 pays for the repair or replacement of the devices?**

178 A. It depends on the language in the agreements in place in that state. In some instances, like
179 Utah, UP pursues collection from the party who damaged the crossing, if known, and if
180 not, UP has the right via the Master Agreement with UDOT to negotiate terms of
181 replacement with the road authority for some locations. If, in some states, no agreement
182 exists, UP replaces as expediently as practical. A typical gate mechanism alone costs

183 \$8,000. If one were to add other components such as lights, the gate arm, wiring, union
184 labor, and testing, the costs are typically around \$18,000 per mechanism replaced. If a
185 cantilever or cabin is impacted, it is significantly more cost. Even if we look at only the
186 gate arm being knocked off by an imprudent roadway user, the costs can range from \$1,200
187 for the arm plus the \$200-400 for labor and any train delays this may cause.

188 **Q. What is the average useful life of crossing signal devices such as those to be installed**
189 **in the City's proposed project?**

190 A. Around 20 years. Technology changes, frequency of use, and weather conditions can
191 impact this timeline.

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

193 A. Yes.