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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**

**REBUTTAL TESTIMONY OF THOMAS
DICKINSON FOR LOGAN CITY &
LOGAN EXHIBIT 13**

Docket No. 21-888-01

1 **Q. Mr. Dickinson, are you familiar with Lance Kippen's testimony that "there has been**
2 **the placement of electrical devices and signage on the UP right-of-way" which he**
3 **described as "a clear violation of UP's property rights"?**

4 A. Yes.

5 **Q. And have you had the opportunity to review Exhibit UP_(LK-1)?**

6 A. Yes.

7 **Q. Did Logan City place the signage Mr. Kippen referenced within Union Pacific's right**
8 **of way?**

9 A. Unfortunately, Mr. Kippen is correct that signage was mistakenly placed within the Union
10 Pacific right of way by Logan City's contractor.

11 **Q. Can you please describe how that occurred?**

12 A. Due to the delays that the City and contractor experienced trying to negotiate with Union
13 Pacific to complete the project in accordance with the design plans that were reviewed and
14 approved by Union Pacific, the construction team was forced to make last minute changes
15 to the intersection to avoid the Union Pacific right of way. The focus was to ensure safety
16 to vehicular travel with emphasis on pavement markings and vehicular warning and
17 regulatory signs. Unfortunately, the City's contractor placed pedestrian warning signs
18 within the right of way even though the walkway was not finished due to the issues with
19 finalizing an agreement with Union Pacific. There were also vehicle regulatory signs that
20 were installed as per the plans in a location within the right of way.

21 **Q. Prior to reviewing Mr. Kippen's testimony, had Union Pacific raised this issue with
22 Logan City?**

23 A. No. We would be happy to remove the signage from the right of way if Union Pacific
24 would like, and would have done so previously if we had been asked.

25 **Q. Does Logan City have any information as to how the electrical devices shown in
26 Exhibit UP_(LK-1) came to be located within Union Pacific's right of way?**

27 A. Yes. According to our information, Geary Electric, which was Union Pacific's contractor,
28 installed that equipment under Electrical Permit #18-45679, which had been issued by the
29 City.

30 **Q. Attached to your written testimony is Logan Exhibit 13. Is that the permit you just
31 referenced?**

32 A. Yes. As you can see, Geary Electric is listed as the electrical contractor and Union Pacific
33 is listed as the tenant/project owner.

34 **Q. Was that electrical equipment inspected?**

35 A. Yes, Geary Electric requested a power-to-panel inspection, which authorizes energizing
36 the equipment and setting the meter. The City performed that inspection on November 30,
37 20108, and indicated it was okay to install the meter. The meter was then installed on
38 December 3, 2018. The City will not perform the power-to-panel inspection or install the
39 meter without a request from the electrical contractor.

40 **Q. Does Logan City have any information on who the customer for that equipment is?**

41 A. Yes, utility billing files show the customer as Union Pacific, and Union Pacific has received
42 a small bill each month.

43 **Q. Are you familiar with Paul Rathgeber's testimony that Union Pacific made "several
44 good faith negotiated proposals" to Logan City for the terms of the maintenance
45 provision of the Construction Management and Maintenance Agreement for the 1400
46 N crossing and "[t]he City made no reasonable counteroffers"?**

47 A. Yes.

48 **Q. Do you agree with that testimony?**

49 A. No.

50 **Q. Can you please explain why?**

51 A. As I previously testified, after receiving the draft agreement, the City requested that Union
52 Pacific remove the annual maintenance fee provision to be consistent with Utah
53 Administrative Rule 930-5-8. The email response we received, which is Logan Exhibit 5,

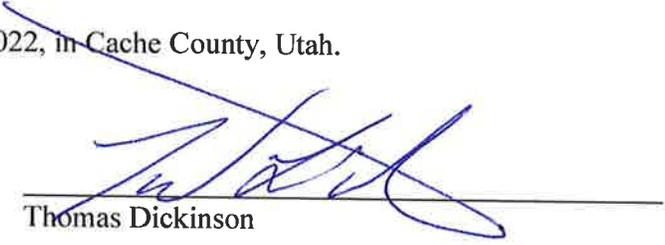
54 included three proposals—the first was to accept the agreement as written, the second
55 included a lump sum for a certain number of years’ maintenance, and the third was that
56 either the City or UDOT would be responsible for reimbursing Union Pacific for annual
57 maintenance. In response, we proposed either delaying any maintenance fee obligation
58 until we could resolve this dispute or that we enter a three-year agreement under which the
59 City would pay a maintenance fee of \$1000 per year. We made the latter offer even though
60 we felt it was inconsistent with Utah Administrative Rule 930-5-8, such that we would be
61 voluntarily taking on an obligation the City did not have. In response, Union Pacific
62 proposed reducing the annual fee to \$9180 per year. We did not see this as a reasonable
63 compromise. Even after the emergency rule became effective, which we saw as resolving
64 any uncertainty as to maintenance fee obligations, Union Pacific continued to insist on
65 Logan City agreeing to a perpetual maintenance fee. While Logan City was willing to
66 compromise and agree to *some* maintenance fee obligation, at one point including as much
67 as a lump sum payment of \$40,000 for a four-year period for three crossings, it was not
68 willing to accept a perpetual obligation when we did not feel the Administrative Rule
69 imposes or allows Union Pacific to require that obligation. When it became clear to us that
70 we were not going to be able to reach an agreement without some perpetual or long-term
71 annual maintenance fee obligation, the City determined it was necessary to bring this issue
72 before the Public Service Commission and get its interpretation of Utah Administrative
73 Rule 930-5-8.

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

75 A. Yes.

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

DATED this 8TH day of April, 2022, in Cache County, Utah.



Thomas Dickinson

Exhibit 13

ELECTRICAL - MECHANICAL - PLUMBING
 Miscellaneous Permit Application
 Building Safety Division



Permit # 18-45679	<i>Please print legibly and complete all areas.</i>			City PC#	
	Project Address	1476 N 600W.	Ste/Unit#	# of Units	
	Project Value:	\$5000.00	Check one: <input type="checkbox"/> Contract Value <input checked="" type="checkbox"/> Estimate	Location ID:	
	Tenant/Project Owner:	Union Pacific Railroad	Cell Phone:		
	Tenant/Project Owner Address:	Phone:			
	City:	State:	Zip:	Email:	
	Building Owner:	Cell Phone:			
	Building Owner Address:	Phone:			
	City:	State:	Zip:	Email:	
	What type of work are you doing? (Check or circle all that apply.) A permit is required for ANY NEW work! New work is not a MISC permit.				<input type="checkbox"/> Residential <input type="checkbox"/> Commercial
Brief description of work: New Pole Mount Power Service					
MECHANICAL	<input type="checkbox"/> FOR COMMERCIAL BLDGS: Structural review required for new roof top units.				
	<input type="checkbox"/> Replace furnace <input type="checkbox"/> New gas service <input type="checkbox"/> New gas line <input type="checkbox"/> Replace gas line <input type="checkbox"/> New or Replace gas appliance <input type="checkbox"/> New furnace <input type="checkbox"/> New ductwork <input type="checkbox"/> New AC-ground <input type="checkbox"/> New A/C-roof Are you replacing existing A/C unit? Y N				
	REQUIRED INSPECTIONS - 1) Gas line pressure test. (Work cannot be covered without an inspection.)				
	Mech Contractor:	Phone: ()		Utah Lic.# 667562550	
Contractor Address:		Email:			
ELECTRICAL	Contact Light & Power at 435-716-9700 prior to work.	<input checked="" type="checkbox"/> New Service 200 Amps 240 Volt <input type="checkbox"/> Add meter to service _____ Amps _____ Voltage <input type="checkbox"/> Service Change <input type="checkbox"/> Service Upgrade from _____ Amps to _____ Amps _____ Voltage <input type="checkbox"/> New receptacles <input type="checkbox"/> New fixtures - list here: <input type="checkbox"/> New wiring Describe:			
	REQUIRED INSPECTIONS: 1) Prior to being covered. (Work cannot be covered without an inspection.)				
	Electrical Contractor:	Geary Electric		Phone: 435 764-2190 Utah Lic.#	
	Contractor Address:	379 S. 200 W. Smithfield		Email: Cort Geary@gmail.com	
PLUMBING	<input type="checkbox"/> Water heater <input type="checkbox"/> Water Closet <input type="checkbox"/> Bathtub <input type="checkbox"/> Sink <input type="checkbox"/> Grease Trap <input type="checkbox"/> Roof Drain <input type="checkbox"/> Floor Drain <input type="checkbox"/> Other				
	REQUIRED INSPECTIONS: 1) Plumbing test, drain, & water, prior to being covered. (Work cannot be covered without an inspection.)				
	Plumbing Contractor:	Phone: ()		Utah Lic.#	
	Contractor Address:	Email:			
<p>This permit becomes null and void if work or construction is not commenced within 180 days, or if construction is suspended or abandoned for a period of 180 days at anytime after work is commenced. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work shall be complied with, whether specified herein or not, the granting of this permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction and that I make this statement under penalty or perjury. By signing this agreement I understand that plans must remain on-site and the address must be clearly marked to get an inspection.</p> <p style="text-align: center;">24-hour notice is required in order to schedule an inspection.</p>					
Applicant's signature		Date			
For Office Use Only: # Units		Zone	GF Y or N	Historic Dist review Y or N	
Plan approved by:		Date	P&Z approval	Date	

ELECTRICAL - MECHANICAL - PLUMBING APPLICATION

Workspace:

<i>Office Use Only</i>		Impact Fees	Qty	Unit Charge	Total Cost
Residential Miscellaneous Permits		Fire & EMS		x	
<input type="checkbox"/> Electric Service Change (C999)	\$30	Light & Power		x	
<input type="checkbox"/> Gas Line Pressure Test (MISC)	\$30	Parks & Rec		x	
<input type="checkbox"/> Furnace, AC, or Water Heater Only-replace (MISC)	\$30	Transportation		x	
<input type="checkbox"/> Mechanical Replacement-Furnace & AC (MECR)	\$45	Wastewater		x	
<input type="checkbox"/> Any 2 Items-replace (MISC)	\$45	Water System		x	
<input type="checkbox"/> Commercial Permits fee based on project value - \$30 min.		Land Disturbance			
Report Code Application Type	Building Val. Calc.	Construction	Data Code	Sq. Ft.	Occupancy Group
Valuation of Work \$	Description	Type			
<input type="checkbox"/> Plan Check Fee (65% of Permit) <input type="checkbox"/> Paid					
Building Permit Fee					
Electric Permit Fee					
Mechanical Permit Fee					
Plumbing Permit Fee					
Other:					

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