

# PUBLIC SERVICE COMMISSION

Case No. 21-888-01

## HEARING

May 03, 2022

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801-746-5080 | office@advancedrep.com | advancedrep.com

**SALT LAKE** | 159 West Broadway, Broadway Lofts, Suite 100 | Salt Lake City, Utah 84101

**PROVO** | 3507 North University Avenue, Suite 350-D | Provo, Utah 84604

**ST. GEORGE** | 20 North Main Street, Suite 301 | St. George, Utah 84770



BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF LOGAN )  
CITY'S PETITION REQUESTING )  
INVESTIGATION INTO UNION ) Case No. 21-888-01  
PACIFIC RAILROAD COMPANY'S )  
ADMINISTRATION OF ) Presiding Officer:  
AGREEMENTS AND MAINTENANCE )  
PROVISIONS ) YVONNE HOGLE  
)  
)  
)  
)  
)

May 3, 2022

9:01 a.m. - 11:54 p.m.

PUBLIC SERVICE COMMISSION OF UTAH  
HEBER M. WELLS BUILDING  
160 East 300 South, 4th Floor  
Salt Lake City, Utah 84111

Reporter of Hearing: Tamra J. Berry, CSR, RPR

A P P E A R A N C E S

FOR LOGAN CITY:

DANI CEPERNICH  
ROBERT C. KELLER  
SNOW CHRISTENSEN & MARTINEAU  
Attorneys at Law  
10 Exchange Place 11th Floor  
Salt Lake City, Utah 84145  
Tel: 801.521.9000  
rck@scmlaw.com

FOR UPPR:

VICKI M. BALDWIN  
PARSONS BEHLE & LATIMER  
Attorney at Law  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Tel: 801.532.1234  
vbaldwin@parsonsbehle.com

FOR THE UTAH DIVISION OF PUBLIC UTILITIES:

JUSTIN C JETTER  
UTAH ATTORNEY GENERAL'S OFFICE  
Highways & Utilities Division  
160 East 300 South, 5th Floor  
PO Box 140857  
Salt Lake City, Utah 84114

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P R O C E E D I N G S

PRESIDING OFFICER HOGLE: Good morning.  
It's 9:00 on May 3rd, 2022. This is the time and  
date of the hearing to consider in the matter of  
Logan City's petition requesting investigation into  
Union Pacific Railroad Company's administration of  
agreement and maintenance provisions in docket number  
21-888-01.

My name is Yvonne Hogle, and I'm the  
Commission's designated presiding officer for this  
hearing.

Let's take appearances for the record,  
please, beginning with the petitioner.

MS. CEPERNICH: Yes. This is  
Dani Cepernich and Rob Keller for Logan City.

PRESIDING OFFICER HOGLE: Thank you.

MS. BALDWIN: Vicki Baldwin for Union  
Pacific Railroad.

PRESIDING OFFICER HOGLE: Thank you.

MR. JETTER: And good morning. I'm Justin  
Jetter with the Utah Attorney General's Office  
representing the Utah Division of Public Utilities.  
Just a quick note before we get started, we did not

1 file testimony and have not taken a position. We're  
2 a statutory party, and we don't intend to participate  
3 unless something unusual happens today. Thanks.

4 PRESIDING OFFICER HOGLE: Okay, thank you.

5 I have been told that I should remind you  
6 that if you are speaking, in particular your  
7 witnesses into the microphone, please make sure that  
8 they're on and that you turn them off when they're  
9 done speaking, please.

10 And I also know there's some people on the  
11 phone that are also potentially participating here.  
12 And when you put them on as witnesses, make sure that  
13 they state and spell their name so that the reporter  
14 can get them in the transcript accurately.

15 And unless there's anything else, any  
16 other preliminary issues that we need to take care  
17 of, then we can begin.

18 However, let me just ask a couple of  
19 questions for counsel. I didn't see any -- either of  
20 the parties address the recent railroad crossing  
21 maintenance amendments under House Bill 181 that  
22 passed this legislative session. And before we begin  
23 with your witnesses, I'd like each counsel to confirm  
24 that you're aware of this house bill and perhaps that  
25 the impact that the amendments have on this case,

1 please. Beginning with the petitioner. And if you  
2 don't have a copy, I have copies here for you.

3 MS. CEPERNICH: Yes, thank you. We are  
4 aware of this house bill, and we don't believe that  
5 it changes anything in the posture of the petition.  
6 And if anything it strengthens the basis for the  
7 petition because it's consistent with the  
8 administrative rule that is already in place that the  
9 petitioner seeks to enforce.

10 PRESIDING OFFICER HOGLE: Okay. Thank  
11 you.

12 MS. BALDWIN: Yes. We are also aware. We  
13 did not include it in our testimony. We believe that  
14 it's a legal issue as to whether or not it applies,  
15 and we are going to ask for legal briefing after this  
16 proceeding.

17 PRESIDING OFFICER HOGLE: Okay, thank you.  
18 That's good to know. Thank you.

19 Ms. Cepernich, would you like to call your  
20 witness, please?

21 MS. CEPERNICH: Yes. We would call James  
22 Golden, who I believe should be on the phone  
23 hopefully.

24 PRESIDING OFFICER HOGLE: Mr. Golden, are  
25 you on the phone?

1 MS. CEPERNICH: Is it possible for us to  
2 try to reach him at his number that we had?

3 PRESIDING OFFICER HOGLE: Absolutely.

4 MS. CEPERNICH: Is there a way we can do  
5 that through this system?

6 PRESIDING OFFICER HOGLE: I think it would  
7 probably be better for you to contact him via your  
8 phone --

9 MS. CEPERNICH: Sure.

10 PRESIDING OFFICER HOGLE: -- and then we  
11 can take care of it.

12 Let's take a pause here for a bit and wait  
13 to see if Mr. Golden can be reached. And then if not  
14 we can maybe start with your next witness.

15 MS. CEPERNICH: Sure.

16 (Break taken from 9:05 to 9:09 a.m.)

17 PRESIDING OFFICER HOGLE: Okay. Mr.  
18 Golden, do you swear to tell the truth?

19 MR. GOLDEN: Yes.

20

21 JAMES GOLDEN,  
22 called as a witness, having been duly sworn, was  
23 examined and testified as follows:

24

25 PRESIDING OFFICER HOGLE: Okay. You have

1 just been put on the stand. So you will be hearing  
2 from your lawyer now.

3  
4 EXAMINATION

5 BY MS. CEPERNICH:

6 Q. Thank you, Mr. Golden. Did you provide  
7 written direct testimony dated January 28th, 2022 in  
8 this matter?

9 A. I need to confirm the date. But I believe  
10 the date was January 26th, 2022.

11 Q. Great. Thank you.

12 A. Yes, I did.

13 Q. Thanks for the correction.

14 And you're familiar with that testimony?

15 A. Yes.

16 Q. Is that testimony true and accurate?

17 A. To the best of my knowledge, yes, it is.

18 Q. And do you have any changes or corrections  
19 that you would need to make to that testimony?

20 A. I don't believe so.

21 MS. CEPERNICH: So we would move to have  
22 Mr. Golden's pre-filed January 26th, 2022 testimony,  
23 which includes Exhibits 8 and 9, admitted. And I've  
24 provided a copy to the court reporter and to Ms.  
25 Baldwin, and I have additional copies here.



1           PRESIDING OFFICER HOGLE:   Okay.  Thank  
2 you.  Can you tell me what you propose to do with  
3 Exhibits 10 through 12?

4           MS. CEPERNICH:   So we had included those.  
5 They are notices of proposed rule changes.  We were  
6 not sure if they needed to be admitted as exhibits  
7 since they are somewhat akin to law.  But we've just  
8 provided them.  So I don't believe we're going to  
9 admit them unless the commission would like to have  
10 copies of them as exhibits.  I don't believe they  
11 need anybody to authenticate them.

12          PRESIDING OFFICER HOGLE:   Right.

13          MS. CEPERNICH:   Since it is just like a  
14 piece of law.

15          PRESIDING OFFICER HOGLE:   Okay.

16          Any objection to the admission of Mr.  
17 Golden's testimony and accompanying exhibits?

18          MS. BALDWIN:   No.  The Union Pacific has  
19 no objections.

20          But I was wondering if we should take  
21 administrative notice of those rules or if that just  
22 having them is adequate.  It's up to the hearing  
23 office.

24          PRESIDING OFFICER HOGLE:   Sure.  We can  
25 take administrative notice.  Thank you.  Okay.  The

1 Division?

2 MR. JETTER: No objection, thank you.

3 PRESIDING OFFICER HOGLE: They're  
4 admitted.

5 (MR. GOLDEN'S TESTIMONY ADMITTED.)

6 MS. CEPERNICH: Thank you.

7 PRESIDING OFFICER HOGLE: Thank you. You  
8 can proceed. You can call -- he's been -- typically  
9 what we would do is he would summarize, present a  
10 summary of his testimony on the stand.

11 MS. CEPERNICH: Okay.

12 PRESIDING OFFICER HOGLE: And then -- you  
13 know, I know that you're likely unfamiliar with our  
14 process here. So I'm just kind of telling you what  
15 we would do next. So I don't know if you want to do  
16 that or if you just want to let the testimony stand  
17 or --

18 MS. CEPERNICH: I think we're happy to let  
19 the testimony stand, unless you would like to hear a  
20 summary. We could also have the pre-filed testimony  
21 read if you'd like, but otherwise we're happy to just  
22 have it stand with the pre-filed testimony.

23 PRESIDING OFFICER HOGLE: Okay. That's  
24 fine.

25 MS. CEPERNICH: Thank you.

1                   PRESIDING OFFICER HOGLE: Ms. Baldwin, do  
2 you have any questions for Mr. Golden?

3                   MS. BALDWIN: Yes, I do. Thank you.

4                   PRESIDING OFFICER HOGLE: Okay.

5  
6                   EXAMINATION

7 BY MS. BALDWIN:

8                   Q. Mr. Golden, can you hear me okay?

9                   A. Yes, I can.

10                  Q. My name is Vicki Baldwin; I'm the attorney  
11 for Union Pacific. I don't think you were here for  
12 introductions or at least you weren't in the room yet  
13 when we put in appearances. Could you please go to  
14 page 1 of your testimony?

15                  A. Yes. Okay.

16                  Q. At lines 10 and 11 you say that you are  
17 familiar with administrative code R-930-5; is that  
18 correct?

19                  A. That's correct.

20                  Q. And do you have a copy of that in front of  
21 you?

22                  A. I can bring one up on my computer.

23                  Q. Could you please?

24                  A. Uh-huh (affirmative). Okay. I've got it  
25 up on my computer.

1 Q. Okay. If you go to R-930-5-3, sub 7 --  
2 are you there?

3 A. Okay. I am.

4 Q. It defines highway as being "Any public  
5 road, street, alley, lane, court, place, viaduct,  
6 tunnel, bridge, or structure laid up or erected for  
7 public use."

8 Is that correct?

9 A. Yes, it is.

10 Q. So do you agree that the road that is in  
11 question in this case, 1400 North 600 West and also  
12 1800 North and 600 West, that they are considered  
13 highways under the regulations?

14 A. It appears to be so, yes.

15 Q. If you go down to sub 9 in that same  
16 section, it says -- it has the definition of a  
17 highway authority. It says it's either the  
18 department, meaning UDOT, or the local government  
19 entity that owns the highway. Is that correct?

20 A. That is correct.

21 Q. And so in this case would you agree that  
22 Logan City is the highway authority?

23 A. Yes. Logan City would be the highway  
24 authority.

25 Q. And now if you go back up to 930-5-2, it

1 says that the following federal laws and state laws,  
2 et cetera, are incorporated by reference. And it  
3 references the Manual of Uniform Traffic Control  
4 Devices. Do you see that?

5 A. Yes.

6 Q. So do you agree that the effect of this  
7 then is that it makes the terms and the conditions  
8 and the rules and everything in the MUTCD a part of  
9 these regulations; is that correct?

10 A. Yes.

11 Q. Do you have a copy of the MUTCD?

12 A. I don't have a hard copy. I can bring up  
13 an electronic copy.

14 Q. That would be great. Thanks.

15 PRESIDING OFFICER HOGLE: Ms. Baldwin,  
16 before you continue, do you have a copy I can also  
17 look at?

18 MS. BALDWIN: I do not have another copy.  
19 But I can give you my copy as soon as I'm done with  
20 it.

21 PRESIDING OFFICER HOGLE: Okay.

22 THE WITNESS: Okay. I think I'm at the  
23 FHWA home page. So it appears that I'm there.

24 Q. (BY MS. BALDWIN) Could you go to Section  
25 1A.07?

1 A. Let's see, is that under Support?

2 Q. Yes.

3 A. Okay. Wait a second, I need to go down  
4 further. Responsibility for traffic control devices.

5 Q. Could you please read that first sentence?

6 A. "The responsibility for the design,  
7 placement, operation, maintenance, and uniformity of  
8 traffic control devices shall rest with the public  
9 agency or the official having jurisdiction on, in the  
10 case of private roads open to public traffic, with  
11 the private owner or private official having  
12 jurisdiction."

13 Q. (BY MS. BALDWIN) So according to this do  
14 you agree it's the public agency or the official  
15 having jurisdiction, which would be Logan City, who  
16 would have the responsibility for maintenance?

17 A. They would have the responsibility for  
18 maintenance on the road and within the right-of-way  
19 that they have, yes.

20 Q. But doesn't it say it's the responsibility  
21 for traffic control devices?

22 A. It does say responsibility for traffic  
23 control devices. Usually what happens, we do not  
24 enter the railroad right-of-way because they own  
25 that. We have that special permission to go in there

1 and do anything to maintain their structures. So we  
2 maintain the advanced warnings, the traffic striping,  
3 the -- any signs for advance warning, the highway  
4 authority would maintain that. And then the railroad  
5 would maintain what's inside their right-of-way.

6 MS. BALDWIN: I'm going to take give you a  
7 copy when I'm done with it. Can we take  
8 administrative notice of the Utah Manual on Uniform  
9 Traffic Control Devices for Streets and Highways?

10 PRESIDING OFFICER HOGLE: Yes.

11 MS. BALDWIN: Thank you.

12 Q. (BY MS. BALDWIN) Mr. Golden, in your  
13 position are you familiar with the Utah Department of  
14 Transportation Railroad Coordination Manual of  
15 Instruction?

16 A. Yes, I am.

17 Q. Could you please get a copy of that?

18 A. I can bring that up as well. Just a  
19 moment.

20 Remind me again which one you're looking  
21 for. The Utah Manual of --

22 Q. No. It's the Railroad Coordination Manual  
23 of Instruction from the Utah Department of  
24 Transportation.

25 A. Just one moment. Okay, yes. May 2015

1 version?

2 Q. Yes, yes.

3 A. Okay. I've got it.

4 Q. Could you please go to page 21, which is  
5 section 3.2.5 of the manual.

6 A. Okay. Page 21 of the manual, not of the  
7 document. Okay, just a second. Okay. I'm there.

8 Q. Could you please read for me the third  
9 bullet out loud?

10 A. That's under 3.2.5?

11 Q. Yes. That should say "Funding of..."

12 A. It is halfway --

13 Q. It starts with "When a highway authority  
14 widens a highway..."

15 A. Yes, yep. "When a highway authority  
16 widens a highway, the highway authority will fund all  
17 improvements, including but not limited, to passive  
18 and active warning devices, crossing material, and  
19 other improvements as ordered by the UDOT chief rail  
20 engineer in consultation with the diagnostic team."

21 Q. And could you go, please, to the next  
22 page.

23 A. Okay.

24 Q. Could you read the first complete  
25 paragraph at the top of the page into the record?



1           A.       "UDOT will evaluate each crossing project  
2 to determine the extent to which, if any, the  
3 crossing project benefits the respective parties. If  
4 a crossing project is determined not to benefit a  
5 party, the party will not be required to participate  
6 in the funding."

7           Q.       Thank you. Could we please have the  
8 Railroad Coordination Manual of Instruction Utah  
9 Department of Transportation May 2015 entered into  
10 the record as an exhibit?

11                   PRESIDING OFFICER HOGLE: Ms. Cepernich,  
12 do you have any objection to that?

13                   MS. CEPERNICH: No, we do not.

14                   PRESIDING OFFICER HOGLE: Okay. It's  
15 admitted.

16                   (RCMI UDOT MAY 2015 DOCUMENT ADMITTED.)

17                   MS. BALDWIN: Thank you.

18           Q.       (BY MS. BALDWIN) Mr. Golden, could you  
19 please go to page 2 of your testimony?

20           A.       Yes. Let me go back to that one. Okay.

21           Q.       And on page 2 you discussed the master  
22 agreement that is attached to your testimony as Logan  
23 Exhibit 8; is that correct?

24           A.       Yes, that's correct.

25           Q.       Isn't it true that this master agreement

1 is only applicable to federally funded highway  
2 improvements?

3 A. I would -- let me bring up the master  
4 agreement really quick. I believe it does state  
5 that, but I'm not positive.

6 Q. Mr. Golden, if you read the whereas, it  
7 says, "UDOT with the aid of several railroad safety  
8 funds supplied by the federal government desires to  
9 provide for," and then it lists a whole bunch of  
10 stuff.

11 Then it says that "Public highway and  
12 street grade crossings."

13 A. Uh-huh (affirmative).

14 Q. So then it says in the next paragraph, "In  
15 order to expedite the processing of applications for  
16 the installation or improvement of said facilities."  
17 And those said facilities are funds --

18 A. Yes.

19 Q. -- supplied by the federal government. So  
20 do you agree this is only applicable to projects that  
21 are funded by the federal government?

22 A. That's what it appears to say, yes.

23 Q. And so were the roads in question in this  
24 case, were they funded by the federal government?

25 A. I don't know what Logan City -- where

1 their funding came from for Logan City. But I'm not  
2 aware that we had in any section 130 funds in this  
3 project.

4 Q. So this master agreement would not be  
5 applicable in that case; is that correct?

6 A. Yes, that's correct.

7 MS. BALDWIN: Okay, thank you. That's all  
8 the questions I have.

9 PRESIDING OFFICER HOGLE: Ms. Cepernich,  
10 do you have any redirect?

11 MS. CEPERNICH: I have just a few  
12 questions if that's okay.

13 PRESIDING OFFICER HOGLE: Okay.

14

15 EXAMINATION

16 BY MS. CEPERNICH:

17 Q. Mr. Golden, will you turn back or pull  
18 back up the railroad coordination manual of  
19 instruction? Do you still have that on your  
20 computer?

21 A. Yes.

22 Q. And if you'd go to page 21, can you  
23 explain how the bullet points that were discussed  
24 earlier are applied?

25 A. So I read the third bullet about when a

1 highway authority widens a highway. What typically  
2 happens there is any sort of improvements that are  
3 done are funded by either the state, through section  
4 130 funds or project funds, or in the case of Logan  
5 City they fund the project to pay for the  
6 improvements that will be done at a crossing. They  
7 have to submit plans and get an agreement in place so  
8 that they can enter into the right-of-way and have  
9 the work done. Typically that is done by agreement  
10 with the railroad. The railroad provides an estimate  
11 for the amount -- for how much -- as the work is  
12 done, the railroad provides an invoice to the city  
13 with those costs, and then they are reimbursed after  
14 the work is complete.

15 Let me see if that covers everything in  
16 that bullet.

17 And so typically what that funds is that  
18 will fund all of the improvements of that area. That  
19 would include for example if we were adding lights  
20 and gates to a crossing, the local entity would be  
21 required to pay for that with their project, or the  
22 state if they had section 130 funds we would use that  
23 money to pay for that.

24 And then it mentions, you know other  
25 warning devices, so advanced warning signs, pavement

1 striping, all of that is also the responsibility of  
2 the local entity.

3 Q. And --

4 A. And then what typically happens is when we  
5 know a project is happening and it's near a rail  
6 crossing, a diagnostic team is assembled which  
7 includes the local authority, it includes the  
8 designer, the railroad, and then UDOT by rule is  
9 required to assemble that team and be there to  
10 supervise that.

11 The diagnostic review for Logan happened  
12 before I was in this position. And then the review  
13 of the plans and everything I think was all done all  
14 before I came into here. But that was all -- I  
15 believe that process was followed.

16 Q. And does that bullet point on page 21,  
17 does the application include, too, ongoing  
18 maintenance costs?

19 A. It hasn't that I was aware of. And so  
20 when the question came to me, I had to take that to  
21 our UDOT folks to find out how that was specifically  
22 done. I don't think it mentioned maintenance right  
23 there in that -- in that page. But typically that  
24 was not how it was worded, and so that's why I took  
25 the question back to our legal folks to say: Hey,

1 Logan is asking me these questions. I don't have an  
2 answer. Can you guys help me find out?

3 Q. And what was the answer that you received?

4 A. They referred to R-930-5, and I think  
5 section 8. And they said that what the typical  
6 practice had been was that the agreement would say  
7 that UDOT would pay for all of the initial work to be  
8 done, all of the new equipment, and would reimburse  
9 the railroad for that work.

10 And then after that the railroad would  
11 assume the maintenance of their -- of the new  
12 facilities and everything within their right-of-way.  
13 The local government would have to maintain all of  
14 the signs outside of that right-of-way, but the  
15 railroad would be responsible for the maintenance of  
16 the equipment within the right-of-way. And I was  
17 told that that had been the typical practice for  
18 20-plus years, and so that was what I communicated  
19 back.

20 Q. And you were also asked about the portion  
21 that continues onto page 22. And it sounds like you  
22 may have included that in your answer. Was there  
23 anything you'd need to add about that portion that's  
24 on page 22?

25 A. Let me just look real quick.

1           So I would say that that is part of what  
2 the diagnostic team does in those meetings is we look  
3 at, you know, the best way to benefit all parties  
4 involved at a crossing. We try to make it as safe as  
5 possible and also make it as efficient as possible so  
6 there aren't delays. And the entire diagnostic team  
7 is part of that, including representatives from the  
8 railroad, the local government, and then UDOT.

9           MS. CEPERNICH: I don't have any other  
10 questions.

11           PRESIDING OFFICER HOGLE: Thank you.

12           Okay. I have a couple based on what I  
13 just heard from Mr. Golden.

14           You mentioned that it is your  
15 understanding that -- I believe you said this or I'm  
16 paraphrasing -- for 20 years it's sort of been the  
17 practice that Union Pacific would maintain its own  
18 right-of-way. Is that true? Is my understanding of  
19 what you just said correct?

20           THE WITNESS: That is correct. And that  
21 would be Union Pacific or if it's another rail  
22 company. UTA, for example, we work a lot with UTA.  
23 They maintain their equipment within their  
24 right-of-way as well.

25           PRESIDING OFFICER HOGLE: And is that

1 under current agreement? So that's one question.

2 And let me just ask another follow-up  
3 because I think it kind of goes together. Based on  
4 what you're saying, currently Union Pacific Railroad  
5 Company maintains that grade crossing; is that  
6 correct?

7 THE WITNESS: That is correct. They own  
8 the right-of-way, and so they maintain it.

9 PRESIDING OFFICER HOGLE: At its own  
10 expense?

11 THE WITNESS: That was my understanding,  
12 yes.

13 PRESIDING OFFICER HOGLE: Okay. And I'm  
14 not sure that you responded to my other question.  
15 And that is: Is that per agreement or a policy?  
16 What governs?

17 THE WITNESS: Yeah. My understanding was  
18 that R-930-5 was the governing rule or the code that  
19 we referred to on that. I know that on each project  
20 there's typically an agreement that is put together  
21 with that project. And that's where this clause for  
22 maintenance was added and where Logan City basically  
23 brought the question to me saying we haven't really  
24 seen it before. Is this typical? And that's what  
25 started kind of my -- started me down the path of



1 trying to determine how that is usually applied. So  
2 I would say, yes, it's per agreement.

3 PRESIDING OFFICER HOGLE: Okay. So  
4 there's a current agreement that I don't believe I've  
5 seen that governs the current treatment of  
6 maintenance costs at this grade crossing; is that  
7 correct?

8 MS. BALDWIN: If that is the case the  
9 Union Pacific has not seen it.

10 THE WITNESS: So I --

11 PRESIDING OFFICER HOGLE: I'm sorry, Mr.  
12 Golden.

13 THE WITNESS: Well, I was going to say I  
14 believe the agreement was prepared but has not been  
15 signed.

16 PRESIDING OFFICER HOGLE: Okay. Let me  
17 just go back a little bit. I'm assuming that the  
18 current grade crossing has needed maintenance since  
19 it's been there. And I'm just wondering, and you're  
20 confirming for me again, that neither Logan City nor  
21 UDOT are paying for any maintenance costs currently  
22 at that grade crossing within the Union Pacific  
23 right-of-way.

24 THE WITNESS: That's correct.

25 PRESIDING OFFICER HOGLE: Okay. And is

1 this the same with the other grade crossing at issue  
2 here that was discussed by various people in their  
3 testimony? I'm assuming that's true, but I just want  
4 to get a confirmation.

5 THE WITNESS: I would assume so. I'm not  
6 sure what other -- what other grade crossing you're  
7 referring to.

8 PRESIDING OFFICER HOGLE: Let me see, just  
9 a minute.

10 MS. CEPERNICH: If I may I think it's the  
11 1800 North 600 West crossing.

12 THE WITNESS: So further to the north  
13 there in Logan as well?

14 PRESIDING OFFICER HOGLE: Correct. The  
15 same questions would apply there.

16 THE WITNESS: And to my knowledge that  
17 should apply at all locations such as this. There  
18 should be an agreement in place to handle all of  
19 that, especially improvements on the new ones. Many  
20 of these crossings existed previously and have just  
21 been maintained for many years. We're talking mostly  
22 about new crossings that have improvements.

23 PRESIDING OFFICER HOGLE: Okay. So for  
24 the two grade crossings that we're discussing here, I  
25 don't know if you would be able to answer this

1 question, but who built them?

2 THE WITNESS: That's a good question.  
3 There's two parts. Obviously there's the rail  
4 itself, the rail crossing was built. And then the  
5 roadway was also built that creates the crossing. So  
6 the railroad typically will, either themselves or  
7 with their own contractors, build their portion. And  
8 the road authority would then themselves with their  
9 contractors would build their portion.

10 PRESIDING OFFICER HOGLE: Okay. But  
11 you're not sure --

12 THE WITNESS: If that makes sense.

13 PRESIDING OFFICER HOGLE: You're not sure,  
14 right? I mean it makes sense, but...

15 THE WITNESS: On these? Yes.

16 PRESIDING OFFICER HOGLE: Do you know  
17 which came first, the crossing or the railroad?

18 THE WITNESS: I do not.

19 PRESIDING OFFICER HOGLE: Okay.

20 THE WITNESS: I do not know in this case.  
21 I haven't researched that, but...

22 PRESIDING OFFICER HOGLE: Okay. I guess  
23 one final question: Are there any projects that are  
24 currently being built or improved that are under the  
25 master agreement and supplement agreement that you're

1 aware of?

2 THE WITNESS: There's not.

3 PRESIDING OFFICER HOGLE: Okay. I lied;  
4 it wasn't my final question. One last question, and  
5 that is: Why doesn't the current project or the two  
6 projects at issue here, why don't they qualify as  
7 section 130 projects?

8 THE WITNESS: I believe the only reason is  
9 because Logan said there is not -- so UDOT, part of  
10 what we receive money from I think FHWA to fund  
11 railroad improvement projects. That money is about  
12 \$2 million per year and is not nearly enough to fund  
13 all of the projects that need to be done. So when a  
14 local government entity, when they want to do some  
15 work, they may have to fund their own project.  
16 Sometimes they will come to UDOT and ask if we can  
17 help with that. And there are times when we have a  
18 little bit of money that we can give them to help  
19 with those projects. But I do not believe that these  
20 projects had any section 130 funds in them, so they  
21 were funded alone by Logan City.

22 PRESIDING OFFICER HOGLE: Okay. I don't  
23 have any questions. Thank you, Mr. Golden.

24 THE WITNESS: Thank you for letting me  
25 join virtually. That helps me out today, so I

1 appreciate it.

2 PRESIDING OFFICER HOGLE: Thank you.

3 Ms. Cepernich, are you going to call your  
4 other witnesses or --

5 MS. CEPERNICH: Yes.

6 PRESIDING OFFICER HOGLE: Please proceed.

7 MS. CEPERNICH: Mr. Golden had a conflict  
8 a little bit later, so we wanted him to go first.

9 PRESIDING OFFICER HOGLE: Okay, perfect.

10 MS. CEPERNICH: We would call Tom  
11 Dickinson, and he's here present today.

12 PRESIDING OFFICER HOGLE: Okay. Over  
13 here, please.

14 THE WITNESS: I'm new to this, sorry.

15 PRESIDING OFFICER HOGLE: Okay. Is it  
16 Dixon or Dickinson.

17 MR. DICKINSON: Dickinson,  
18 D-i-c-k-i-n-s-o-n.

19 PRESIDING OFFICER HOGLE: Pardon me. I  
20 had Dixon.

21 Do you swear is to tell the truth?

22 MR. DICKINSON: I do.

23 PRESIDING OFFICER HOGLE: Okay, thank you.

24

25

1 TOM DICKINSON,

2 called as a witness, having been duly sworn, was  
3 examined and testified as follows:

4  
5 EXAMINATION

6 BY MS. CEPERNICH:

7 Q. Mr. Dickinson, did you provide written  
8 direct testimony in this matter dated January 28th,  
9 2022? And I'll come hand this to you.

10 A. I'm not sure of the date. But, yes, I  
11 did.

12 Q. And are you familiar with the written  
13 testimony that you provided and are looking at?

14 A. It was pretty detailed, but yes.

15 Q. Is that testimony true and accurate?

16 A. To the best of my knowledge.

17 Q. Are there any corrections that you would  
18 need to make to that testimony?

19 A. You noted a date discrepancy, a typo. Is  
20 that in here, or is that in rebuttal or surrebuttal?

21 Q. It's in the rebuttal.

22 A. Thank you. Then I don't know of any  
23 correction I'd add.

24 MS. CEPERNICH: We'd move to have Mr.  
25 Dickinson's direct testimony, which includes Exhibits

1 1 through 7, admitted.

2 PRESIDING OFFICER HOGLE: Okay.

3 Ms. Baldwin, do you have any objection to  
4 that?

5 MS. BALDWIN: No, no objection.

6 PRESIDING OFFICER HOGLE: Okay. They're  
7 admitted.

8 (MR. DICKINSON'S TESTIMONY & EXHIBITS ADMITTED.)

9 MS. CEPERNICH: Thank you. We're happy to  
10 have his pre-filed testimony stand unless you would  
11 like a summary of that testimony.

12 PRESIDING OFFICER HOGLE: No. I'm fine.  
13 I may have a couple of questions for you later on.

14 But, Ms. Baldwin, do you have any  
15 cross-examination for Mr. Dickinson?

16 MS. BALDWIN: Yes, I do, thank you.

17 PRESIDING OFFICER HOGLE: Okay.

18

19 EXAMINATION

20 BY MS. BALDWIN:

21 Q. Good morning, Mr. Dickinson.

22 A. Good morning.

23 Q. Could you please turn to page 2 of your  
24 testimony.

25 A. I'm there.

1 Q. On this page at the top you say that "The  
2 city commissioned a study of the intersection and  
3 determined it met the criteria and requirements for  
4 signalized traffic control."

5 Is this at 1400 North?

6 A. This is at 1400 North, yes.

7 Q. And what does that mean that it met the  
8 criteria and requirements for signalized traffic  
9 control?

10 A. There's just an evaluation that is based  
11 on the number of vehicles at the crossing. And in  
12 this case the proximity of the crossing to a side  
13 street, it came into play on this one as well. It  
14 was a study performed by a representative of UDOT.

15 Q. So by signalized traffic control, do you  
16 mean like red lights, green lights, and --

17 A. Traffic lights, yes.

18 Q. And those are at the intersection,  
19 correct?

20 A. Yes.

21 Q. Okay. Also on that page you state that in  
22 2011, Logan updated its transportation master plan.  
23 What is the purpose of that document or that plan?

24 A. The transportation master plan is to  
25 evaluate a city as a whole to designate certain



1 functional classifications of travel ways, roadways,  
2 to better alleviate congestion, get vehicles moving  
3 that need to. I hope that answered your question.

4 Q. Yes. That's fine.

5 A. Thank you.

6 Q. So as a part of that master plan you state  
7 in your testimony that "1400 North was designated a  
8 minor arterial roadway."

9 Can you explain what that means?

10 A. That's basically a step down from a state  
11 route. I don't know, it's just based on the amount  
12 of vehicle travel through there, vehicles per day.  
13 And that's how this master plan was developed, based  
14 on not only the current condition but also on future  
15 conditions.

16 Q. So based on what you said, isn't it true  
17 that this master plan and the decision on how you  
18 were going to treat 1400 North going forward, you  
19 mentioned that it was kind of a total community or  
20 city wide?

21 A. This predates my tenure in the public  
22 works division. But typically we'll have -- a  
23 transportation master plan will have public input.  
24 It will be based on modeling both current and future.  
25 It will many times take into account regional

1 transportation needs as well. So the entire county  
2 in this case.

3 Q. So it's meant to benefit the county and  
4 the city?

5 A. The citizens traveling the roadway, yes.  
6 They may be city residents. They may be from Idaho.  
7 Just anyone traveling the city.

8 Q. So the improvements that you made as a  
9 result of this would have been the same regardless of  
10 whether there was a railroad there, correct?

11 A. So can you help me out with that one. I'm  
12 not sure what you're asking.

13 Q. So you have a -- you have your  
14 connection or your intersection?

15 A. (Witness nods head.)

16 Q. And you want to upgrade it, and you want  
17 to put lights and traffic signals. And you determine  
18 what you need to do to make it safe and efficient,  
19 correct?

20 A. Yes.

21 Q. And because there's a railroad nearby, you  
22 realize that it's going to impact that railroad,  
23 correct?

24 A. Yes.

25 Q. But you didn't do it for the railroad, did

1 you? You did it for the community.

2 A. We did it based on the constraints of the  
3 intersection.

4 Q. And whatever you did was to benefit the  
5 community?

6 A. And I'm not a complete expert on  
7 transportation and master plans and signalization and  
8 warrants. I'm familiar with it. However, there's  
9 about nine ways to warrant a signal at an  
10 intersection. It's based on many different criteria.  
11 Many charts are used. They do traffic counts,  
12 headway. They're doing -- it's evaluated on a level  
13 of service need in many cases.

14 And then the ninth -- the ninth warrant is  
15 in regard to the proximity to an rail and grade  
16 crossing for the railroad. And so that's based on  
17 the number of -- the train and the number of vehicles  
18 traveling through that intersection.

19 Q. Also on page 1 you indicate that Logan and  
20 Union Pacific entered into a preliminary engineering  
21 services agreement, correct?

22 A. We did, yes.

23 Q. And that was in December of 2016?

24 A. Approximately, yes.

25 Q. Could you please turn to that? I think

1 it's attached to your testimony as Logan Exhibit 1.

2 A. Oh, here it is. Thank you. I'm there.

3 Q. Could you turn to the second page of that  
4 agreement?

5 A. I'm there. Thank you.

6 Q. Doesn't it mention that the construction  
7 and maintenance agreement that will be entered into,  
8 that would be provided by the railroad and entered  
9 into between the parties twice on that page?

10 A. It says -- yes. It says, "The agency and  
11 the railroad will enter into separate licensed right  
12 of entry construction and maintenance agreement  
13 associated with the actual construction of the  
14 project if the project is accepted and approved."

15 That is one reference.

16 Q. And then at the top of the page, I think  
17 there's another reference.

18 A. "The project may require the railroad to  
19 incur costs for force account activities. Please  
20 prepare the railroad force account cost estimate for  
21 work activities to be provided by your company as  
22 identified in Exhibit A and submit them at your  
23 earliest convenience so that they may be attached to  
24 the railroad generated construction and maintenance  
25 agreement."

1 Q. So it's clear from this agreement there  
2 was going to be a maintenance agreement, isn't it?

3 A. Yes.

4 Q. And if you look at the -- if you go to the  
5 second page, the first full paragraph.

6 A. I'm there.

7 Q. It states "This agreement is intended to  
8 address preliminary engineering."

9 Is that correct?

10 A. That's correct.

11 Q. So there's no reason to expect that this  
12 would have maintenance terms in it or costs or  
13 anything like that; isn't that correct?

14 A. Not by that statement, no.

15 Q. And it already tells you twice that  
16 there's going to be a construction and maintenance  
17 agreement, correct?

18 A. That's referenced, yes.

19 Q. Could you please turn to page 3 of your  
20 testimony.

21 A. I'm there.

22 Q. It states here that: On February 1st of  
23 2017 you held a diagnostic review. Were you a part  
24 of that review?

25 A. I can't remember if I was part of this

1 review.

2 Q. Do you know what the purpose of the  
3 diagnostic review is?

4 A. It's to evaluate the intersection and  
5 develop a plan to proceed with the project and what  
6 elements would be included in that.

7 Q. But it -- so there's no real reason why  
8 maintenance would be brought up at this point, is  
9 there?

10 A. I'm not sure.

11 Q. Could you look at -- do you have a copy of  
12 R-930-5?

13 A. It doesn't look like it.

14 MS. CEPERNICH: Vicki, I have an extra  
15 copy. Do you want me to --

16 MS. BALDWIN: Yes, if I can.

17 MS. CEPERNICH: Mine is only of section 8  
18 actually. Sorry.

19 MS. BALDWIN: I wasn't going to have this  
20 marked, but did you need a copy as well or --

21 PRESIDING OFFICER HOGLE: No. That's  
22 fine.

23 Q. (BY MS. BALDWIN) So do you have R-930-5  
24 in front of you?

25 A. I do.

1 Q. Could you go to R-930-5-5?

2 A. I'm there.

3 Q. And subsection 1, could you read that out  
4 loud?

5 A. It says "The role of the diagnostic team  
6 is to make recommendations to the department for  
7 needed safety improvements at a crossing."

8 Q. And could you go to the next page and look  
9 at subsection 5, where it says "The role of the  
10 diagnostic team is..."

11 A. Yes.

12 Q. And you can read those to yourself.

13 A. A and B?

14 Q. So 5A, B, C, D, E, F.

15 A. Thank you. Okay.

16 Q. Is there any mention of maintenance in  
17 there?

18 A. I didn't see it.

19 Q. Okay. So it really wasn't anything to do  
20 with the diagnostic review to determine maintenance  
21 at that point; isn't that correct?

22 A. Not from what I've read, no.

23 Q. Okay. Also on page 3 of your testimony,  
24 you indicate that on June 6th of 2017, you received a  
25 surveillance report from UDOT. And you have that

1 attached to your testimony as Exhibit 2. Could you  
2 please go to that.

3 A. I'm there.

4 Q. It's a very short report, don't you agree?

5 A. Yes, I do. And I just noticed that it has  
6 me as attending. So that answers that other  
7 question.

8 Q. All right, okay. It gives six specific  
9 recommendations, correct?

10 A. It does.

11 Q. And then it ends, correct?

12 A. Correct.

13 Q. So it seems to be -- would you agree that  
14 the purpose of this surveillance report is really to  
15 give recommendations on the improvement and  
16 rehabilitation project that's specified up at the --  
17 in the background information of 1400 North that will  
18 affect the railroad crossing at 600 West, correct?

19 A. It gives specific recommendations to the  
20 intersection, yes.

21 Q. Okay. And there's no mention of  
22 maintenance.

23 A. I'll have to read it.

24 I don't see any mention of maintenance.

25 Q. So it makes sense that there -- this is a



1 review of what happened in the diagnostic review  
2 where there doesn't seem to be any reason why  
3 maintenance would be discussed. There's real no  
4 reason for maintenance to be discussed in this  
5 surveillance report; isn't that correct?

6 A. According to R-930-5, that's correct.

7 Q. Okay, thank you. On page 4 of your  
8 testimony you discuss -- I'm not sure if this is how  
9 you pronounce it, A-E-C-O-M, is that AECOM or AECOM?

10 A. It's AECOM. It's the consulting firm that  
11 we hired to --

12 Q. So you say both, AECOM?

13 A. AECOM. That's how I pronounce it. I'm  
14 not sure of the exact pronunciation.

15 Q. So you said that you received the report  
16 in September of 2019, correct?

17 A. Where are you, sorry?

18 Q. On page 4 of your testimony.

19 A. Page 4. What line?

20 Q. 77.

21 A. 77. Yes.

22 Q. It says as attached as -- well, you  
23 haven't attached the actual report; is that correct?  
24 You just attached the crossing estimates?

25 A. That's what I have, yes.

1 Q. Okay. Could you go to those crossing  
2 estimates.

3 A. I'm trying to keep up, sorry. Here we go.  
4 Yes, I'm here.

5 Q. On the first page of that at the top,  
6 could you read when the creation date was?

7 A. I'm reading Exhibit 3. Is this material a  
8 force account estimate? Is that the one --

9 Q. Yes. It's Exhibit 3 to your testimony,  
10 yes. The material and force account estimate.

11 A. June 12th, 2019.

12 Q. And at the bottom there's a disclaimer.  
13 Could you read that out loud, please?

14 A. The disclaimer says "This is the  
15 preliminary estimate intended to provide a ballpark  
16 cost to determine whether proposed project warrants  
17 further study. Quantities and costs are estimated  
18 using readily available information in experience  
19 with similar projects. Site conditions and changes  
20 in project scope and design may result in significant  
21 cost variants.

22 Q. So this says it's a preliminary estimate,  
23 correct?

24 A. That's correct.

25 Q. And it was attached to what you called the

1 AECOM report?

2 A. It was provided to me through AECOM, yes.

3 Q. You state on page 4 that Union Pacific  
4 gave final approval. And yet you just read this  
5 disclaimer that says it's a preliminary estimate.  
6 Isn't that correct?

7 A. Correct.

8 Q. So it's not final approval?

9 A. Well, I believe -- let me go back to my  
10 testimony. I may have been referring to the plan  
11 itself.

12 Q. The actual report?

13 A. The actual plan, the design plan that  
14 AECOM prepared. They did all the coordination  
15 between railroad, RailPros. So I believe that's the  
16 reference I'm making is to the plan itself.

17 Q. Well, we actually attached that to Travis  
18 Bailey's rebuttal, and that hasn't been brought in  
19 yet. But if you would like we can go to that at this  
20 point.

21 A. I'll do whatever you ask.

22 MS. BALDWIN: Okay. Would you give  
23 him --

24 MS. CEPERNICH: I'm sorry, I didn't bring  
25 a copy. Oh, your copy? Yeah. Which testimony of

1 Travis Bailey?

2 MS. BALDWIN: It's the rebuttal testimony  
3 of Travis Bailey.

4 MS. CEPERNICH: Is this what you're  
5 looking for?

6 MS. BALDWIN: Yes.

7 Q. (BY MS. BALDWIN) On page 13 of that  
8 report -- could you please go to page 13. And  
9 there's a very short conclusion. Could you please  
10 read that out loud?

11 A. "Conclusion: Over the past months UPRR,  
12 City of Logan, and RailPros have worked together to  
13 resolve the issues of concern for the purposed 1400  
14 North grade crossing. We recommend that the project  
15 moves forward to the railroad signal design phase."

16 Q. So when they say they recommend it moves  
17 forward, that indicates it's not a final approval,  
18 doesn't it?

19 A. I would read it that the design has been  
20 approved and it's moving to the signal design phase.

21 Q. So the railroad has approved maybe one  
22 piece of something. But they have not given final  
23 approval, have they?

24 A. My statement, I believe, says that they  
25 gave final approval of the design.

1 Q. Okay. So could you go to page 5 of your  
2 testimony.

3 A. I'm there.

4 Q. Around 97, 98 you say that you received  
5 the upgrade crossing agreement from Union Pacific on  
6 or about March 19th, 2020; is that correct?

7 A. That's correct.

8 Q. And you have attached that as Logan  
9 Exhibit 4. Could you go to your Exhibit 4?

10 A. I have it here.

11 Q. Now, if you look at that agreement, on the  
12 second page there's section 4 Contractor's Right of  
13 Entry Agreement and Insurance that discusses prior to  
14 the contractor performing any work, this would have  
15 to be done, correct?

16 A. Prior to performing any work within the  
17 crossing area. Yes.

18 Q. And then if you go to page 6, section 11,  
19 it discusses conditions to be met before the  
20 political body can commence work, which would be  
21 Logan City, correct?

22 A. Correct.

23 Q. And if you go to the exhibit that is  
24 attached, Exhibit A1 -- I'm sorry. It's Exhibit B to  
25 the grade crossing agreement. And if you go to the

1 fourth page of that, there is a section that talks  
2 about entry onto the railroad's property by a  
3 political body, and there's a discussion of flagging,  
4 correct?

5 A. Section 8 subsection B, is that what  
6 you're referring to?

7 Q. Yes. And subsection C?

8 A. And C, yes.

9 Q. So you got these before -- you got -- this  
10 was the agreement that you got, correct, proposed  
11 agreement?

12 A. Yes.

13 Q. If you go further back, your Exhibit D to  
14 that is the contractor's right of entry agreement.

15 A. Okay. I'm there.

16 Q. Now, a part of this is also the  
17 maintenance section, correct?

18 A. I'm not sure.

19 Q. Okay. If you go to section...

20 A. Part of the contractor's right of entry  
21 or --

22 Q. No, I'm sorry. If you'll go to back to  
23 the main agreement.

24 A. The main agreement I think you're  
25 referring to is at --

1 Q. It's section 16. Page 8 of the main  
2 agreement.

3 A. Yes. Signal maintenance costs.

4 Q. So in your testimony you say that you  
5 received this agreement in March of 2020. You  
6 received it as a maintenance, but there's a lot of  
7 other stuff in there about whether or not you can get  
8 in and start doing any work, correct?

9 A. That's correct.

10 Q. So at that time you've indicated that you  
11 let your contractor begin work on January 21. So on  
12 March 19th, when you received this, why didn't you  
13 stop your contractor?

14 A. We -- there were other agreements in place  
15 with the railroad. We had several utilities being  
16 installed underneath the tracks. So we were  
17 executing those agreements and the work associated  
18 with them.

19 Q. But you knew you were not going to be able  
20 to do any of this work.

21 A. Any of the -- at the crossing I believe is  
22 how it says it, within the crossing.

23 Q. And knowing that, why didn't you stop your  
24 contractor?

25 A. As far as there was --

1 Q. It had been three months.

2 A. Pardon me?

3 Q. It had been three months.

4 A. It had been three months, yes.

5 There's a lot of funding issues with  
6 municipal money. We had grants that were expiring.  
7 We had permits to enter with neighboring properties  
8 with regard to the project. There was a lot in play  
9 at the moment. It was never intended that we would  
10 do any work within the crossing area without this  
11 agreement. And aside from that there was an  
12 oversight on a couple of signs, I believe that we  
13 adhered to this.

14 Q. But you didn't stop the work, even though  
15 it could have caused safety issues?

16 A. Well, I would say that we never started  
17 the work in the crossing.

18 Q. No, I mean you didn't stop your contractor  
19 from working.

20 A. No. That's correct.

21 Q. Okay. Could your attorney please give you  
22 a copy of our first exhibit, the Railroad  
23 Coordination Manual of Instruction. Could you please  
24 go to page 16?

25 A. I'm there.



1 Q. Could you please go to -- it looks like  
2 it's the third sentence. It begins "UDOT should  
3 initiate early coordination efforts."

4 Could you please read that?

5 A. It says "UDOT should initiate early  
6 coordination efforts with the railroad well in  
7 advance of the RFP being prepared and before the DB  
8 contractor is selected."

9 Q. And DB means defined build, correct?

10 A. According to this document, yes.

11 Q. And could you read the last sentence,  
12 please, of that paragraph out loud?

13 A. "Timely completion and review of structure  
14 and crossing designs and the early execution of the  
15 railroad agreements will ensure the DB project  
16 remains on schedule."

17 Q. Now, you probably haven't seen this  
18 document before, or have you? Are you familiar with  
19 it?

20 A. I am not familiar with it.

21 Q. Okay. But you agree that it sets out from  
22 UDOT's perspective that a contractor shouldn't even  
23 be given a contract until all the agreements are in  
24 place?

25 A. I'm not sure of the entire context of this

1 document, but...

2 Q. Okay. So on page 6 and 7 of your  
3 testimony, you discuss continuing negotiating over  
4 this maintenance provision, correct?

5 A. On pages 6 and 7?

6 Q. You state on line 125 that on April 29th  
7 you responded to the e-mail with the proposed  
8 agreement.

9 A. That's correct.

10 Q. And you state -- later down you say on  
11 May 1, 2020, Mary Schroll from Union Pacific sent an  
12 e-mail.

13 A. That's correct.

14 Q. And on the next page, you referred to  
15 Logan Exhibit 5, which is the series of e-mails?

16 A. Yes.

17 Q. So here you are at the beginning of May,  
18 and you're arguing over this agreement. Why didn't  
19 you stop your contractor from continuing work?

20 A. We -- again, we were installing utilities  
21 and roadway outside that crossing.

22 Q. But you were going to install things that  
23 you knew you weren't going to be able to complete?

24 A. My recollection of the e-mails was there  
25 were statements, several statements that alluded to

1 negotiating in good faith. And we attempted to  
2 continue negotiations, and we didn't think it -- we  
3 thought we'd be able to come to terms. That's why we  
4 did not stop the construction.

5 Q. On page 10 of your testimony you discuss  
6 the emergency rule. Could you please get that  
7 exhibit? I think it's one of the extra exhibits that  
8 your...

9 MS. CEPERNICH: Would you like me to give  
10 him -- so it's 10. And would you like me to give him  
11 11 and 12 as well?

12 MS. BALDWIN: Sure.

13 THE WITNESS: Okay. I have them in front  
14 of me.

15 Q. (BY MS. BALDWIN) I can't remember. I  
16 don't think these were entered into the record as  
17 exhibits, but I think we took administrative notice  
18 of them.

19 So the one that says Utah State Bulletin  
20 on the front, and if go to the -- it says page 84 at  
21 the bottom.

22 A. I'm there.

23 Q. And I'm sorry, go to page -- where it says  
24 83, and it gives you the effective date. What was  
25 the effective date?

1 A. Can you help me find it? Sorry.

2 Q. It's on the right column. There's a  
3 three -- two, rule section catch line, three  
4 effective date.

5 A. Yes. It says July 31st, 2020.

6 Q. Now, everything we've been discussing up  
7 to this point has been going on before this date,  
8 correct?

9 A. Yes. We've talked about March --

10 Q. Well, in fact, the PEA which discussed the  
11 construction and maintenance agreement was signed in  
12 the summer of 2016?

13 A. Yes.

14 Q. And all of these other studies and reports  
15 were all done before July 31st of 2020, correct?

16 A. Yes.

17 Q. And in fact your discussions with respect  
18 to the maintenance was done before this, correct?  
19 You were negotiating the maintenance you talked about  
20 in April 29th, May 1st?

21 A. That's correct.

22 Q. And in fact don't you also mention that --  
23 on page 8 of your testimony, you mention that on  
24 July 22nd you participated in a virtual meeting.

25 A. Yes.

1 Q. So all of this was ongoing before the  
2 emergency rule was put into effect?

3 A. That's correct. We were negotiating in  
4 good faith.

5 Q. And what did the statement -- what did the  
6 rule state before the emergency rule went into  
7 effect?

8 A. I don't have that document in front of me.

9 Q. If you look at page 84 of that, it has the  
10 cross-out and the underline. So if you just read the  
11 crossed-out word and you skip the underlined words,  
12 it will tell you what it means or what it says.

13 A. On page 84 the cross-out?

14 Q. It says 930-5 establishment and regulation  
15 of that grade railroad crossings 930-5 maintenance  
16 subsection 1.

17 A. Yes. Would you like me to read that?

18 Q. Yes.

19 A. It says, "Responsibility for maintenance  
20 is as described in this section unless a -- this is  
21 struck out -- "separate" -- and then underline would  
22 be new text -- "prior signed written" -- and then it  
23 goes back to the original text -- "agreement  
24 applies." So I'll read...

25 Q. Yeah. So read what it would have been

1 before.

2 A. "Responsibility for maintenance is as  
3 described in this section unless a separate agreement  
4 applies."

5 Q. So all of this that we've been discussing  
6 has all gone on before, and this is the rule that was  
7 applicable at that time, correct?

8 A. Yeah. This is the clarification.

9 Q. And why should -- why should the changed  
10 rule be applicable to a project that's been ongoing  
11 since 2016 when you're in the midst of negotiating a  
12 separate agreement?

13 A. If I were to read this --

14 Q. Well, this is the new rule that doesn't  
15 apply while all this other stuff was going on.

16 A. Can you repeat the question, please?

17 Q. Why should it apply?

18 A. Why should this --

19 Q. The new rule.

20 A. This clarification rule?

21 Q. Why should the new rule apply?

22 A. Because it says "Responsibility for  
23 maintenance is as described in this section unless a  
24 prior written -- a prior signed written agreement is  
25 applied." So --

1 Q. But that didn't exist when we were doing  
2 all this other conversation.

3 A. Correct.

4 MS. BALDWIN: Those are all of my  
5 questions.

6 THE WITNESS: Thank you.

7 PRESIDING OFFICER HOGLE: Ms. Cepernich?

8 MS. CEPERNICH: Thank you.

9  
10 EXAMINATION

11 BY MS. CEPERNICH:

12 Q. Mr. Dickinson, can you look at the  
13 preliminary -- I think it's the PEA is how you  
14 referred to it, which is Exhibit 1.

15 A. I've got a lot of documents here, one sec.  
16 Okay. I've got it here.

17 Q. Does that agreement indicate what would be  
18 included in a later construction and maintenance --  
19 or a construction and maintenance agreement?

20 A. Does it have any detail?

21 Q. Yes.

22 A. No, it does not.

23 Q. And does it indicate that provisions in  
24 that forthcoming agreement would require Logan City  
25 to pay an annual lump sum fee for signal maintenance?

1 A. It does not.

2 Q. Will you look at Exhibit 4 to your  
3 testimony for me, which is the draft crossing  
4 agreement.

5 A. I'm there.

6 Q. You were asked about a provision on page  
7 11. Will you turn to page 11. It must be paragraph  
8 11. Yeah, I'm sorry. Section 11 on page 6.

9 A. I'm there.

10 Q. Do you have an understanding of what area  
11 of work or what area this was referring to for the  
12 work?

13 A. The way I read this, it says the crossing  
14 area. So within the crossing.

15 Q. In March of 2020 did you have any  
16 understanding about how long it would take for Logan  
17 City and Union Pacific to reach an agreement to  
18 finalize a crossing agreement for the 1400 North  
19 crossing?

20 A. Say that one more time, please.

21 Q. Yeah. In March of 2020, did you have any  
22 thoughts or expectations about how long it would take  
23 for Logan City and Union Pacific to finalize a  
24 crossing agreement?

25 A. I didn't think it would take this long.



1 There was -- I don't know how much I should expound  
2 on this. But there was a layoff at Union Pacific.  
3 There were some delays with regard to that. COVID  
4 hit right around that time as well. So there's a  
5 whole bunch of things that came to play. But at no  
6 point did we think it would take this long. As a  
7 matter of fact Travis Bailey with AECOM at the time  
8 kind of gave us a risk analysis that says there's --  
9 we expected sometime near this time, but it could  
10 take this amount of time. There was no solid dates.  
11 But it was not my impression it would take forever.

12 Q. Do you recall what the status of the  
13 construction outside of the crossing was in March of  
14 2020?

15 A. I could probably refer to some notes that  
16 I don't have here. I have some project notes from --  
17 that note the progress. I don't have that at this  
18 time.

19 Q. Sitting here today are you able to recall  
20 when the construction outside of the crossing was  
21 complete?

22 A. Sometime near November, December-ish. I  
23 know it was a late paving outside the railroad  
24 driveway of 2020. I don't know that for sure. It  
25 might have even have been December.

1 Q. Can you look at Exhibit 10 that hasn't  
2 been admitted but we have judicial notice. It's the  
3 emergency rule that you were just referring to.

4 A. I'm there.

5 Q. Great. On page 83.

6 A. Okay.

7 Q. Can you read paragraph 4 in that  
8 right-hand column for us?

9 A. Purpose of the New Rule?

10 Q. Yes.

11 A. Yes. "Purpose of the new rule or reason  
12 for the change. This emergency rule change is needed  
13 to clarify the Department of Transportation's  
14 (Department) intent when it originally promulgated  
15 this rule."

16 Sorry for the mispronunciation.

17 Q. That's fine. Can you also read paragraph  
18 5 after that.

19 A. "Paragraph 5, Summary of the new rule or  
20 change. Sub 930-5-8 subsection 1 is changing to  
21 clarify that the purpose of section 930-5-8 is to  
22 assign responsibility for maintenance of railroad  
23 crossings through state-owned right-of-way as  
24 described in section 930-5-8 unless a prior signed  
25 written agreement to the contrary applies. This

1 change also clarifies the department's original  
2 intent was that responsibility," in quotation,  
3 "includes the obligation to perform and pay for the  
4 maintenance."

5 MS. CEPERNICH: Thank you. I don't think  
6 I have any other questions.

7 PRESIDING OFFICER HOGLE: Thank you. So I  
8 do.

9 THE WITNESS: Okay.

10 PRESIDING OFFICER HOGLE: So I think you  
11 were in the room when I asked Mr. Golden about  
12 whether there are any prior agreements or existing  
13 agreements that would dictate the current terms or  
14 responsibilities and obligations for maintenance.  
15 And then from listening to the emergency rule, it  
16 says that unless there's a prior written agreement  
17 this is how it's going to be. And I probably should  
18 have asked you this question, not somebody from UDOT.  
19 But is there a prior agreement that controls the  
20 current maintenance of that grade crossing project?

21 THE WITNESS: I don't have record of one  
22 at 1400 North 600 West, nor do I have one on 1800  
23 North 600 West. I don't have previous agreements to  
24 those crossings.

25 PRESIDING OFFICER HOGLE: Okay. Is it

1 your understanding though that is based on policy or  
2 practice or history that the railroad has been  
3 responsible for maintenance of those particular grade  
4 crossings up to this point?

5 THE WITNESS: I've only been in public  
6 works since 2011. I'm not familiar with maintenance  
7 that the city has performed on those areas. I know  
8 we've done some drainage improvements here and there,  
9 but I'm not familiar with any maintenance we've done  
10 at the crossing.

11 PRESIDING OFFICER HOGLE: You do, however,  
12 discuss a maintenance agreement I believe in your  
13 direct testimony here on line 117, and you refer to  
14 it as at-grade crossing at 1700 South.

15 THE WITNESS: That's correct.

16 PRESIDING OFFICER HOGLE: And in that one  
17 at least, it's actually the city that is responsible  
18 for maintenance. Am I understanding that correctly?

19 THE WITNESS: Yeah, somewhat. That was  
20 executed in 2010. Again it predates me. But that  
21 agreement says that the city will reimburse for  
22 maintenance.

23 PRESIDING OFFICER HOGLE: So the ultimate  
24 responsibility is the city for maintenance costs.

25 THE WITNESS: As a reimbursement. Yes,

1 ma'am.

2 PRESIDING OFFICER HOGLE: Is there a  
3 reason why -- I mean why aren't there agreements that  
4 are in place for those types of costs?

5 THE WITNESS: I'd only be speculating an  
6 answer.

7 PRESIDING OFFICER HOGLE: Okay.

8 THE WITNESS: But Logan City was  
9 incorporated, and then the railroad came through.  
10 And there were some easements and right-of-way that  
11 was negotiated or purchased back in the 1890s. Since  
12 then I don't know of any maintenance or any  
13 agreements that we have or any improvements that  
14 we've done through there. It just predates me, other  
15 than the ones that were trying to seek these  
16 agreements on 1400 North and 1600 West.

17 PRESIDING OFFICER HOGLE: Okay. So who is  
18 responsible for maintenance costs currently?

19 THE WITNESS: I would -- I don't know for  
20 sure. I don't know of any agreement. But  
21 speculating I would say Union Pacific Railroad.

22 PRESIDING OFFICER HOGLE: To your  
23 knowledge the city has not, with respect to the grade  
24 crossings at issue, has not been approached by Union  
25 Pacific to get reimbursed for maintenance costs.

1 THE WITNESS: I found no record in our  
2 finances. But we changed software very recently,  
3 2019-ish. So I didn't have a chance to get back into  
4 the records previous to 2019. But I'm not familiar  
5 with any reimbursement request.

6 PRESIDING OFFICER HOGLE: Okay. Thank  
7 you, Mr. Dickinson. Those are all the questions that  
8 I have.

9 THE WITNESS: Thank you.

10 PRESIDING OFFICER HOGLE: Before we  
11 proceed, I wonder if our court reporter needs a break  
12 and everybody else. I think that might be a good  
13 idea. Let's take a 15-minute break and get back here  
14 at about 10:40, please.

15 (Break taken from 10:24 to 10:40 a.m.)

16 PRESIDING OFFICER HOGLE: Okay. Let's get  
17 back to it.

18 Ms. Cepernich, I thought about something  
19 while we were on break, and that is that we did not  
20 have Mr. Dickinson's rebuttal and surrebuttal  
21 testimony admitted I don't think. Is that correct?

22 MS. CEPERNICH: That's correct. So my  
23 understanding is that would come after Union  
24 Pacific's witnesses, or should we do it now? Is that  
25 the procedure?

1                   PRESIDING OFFICER HOGLE: That is sort of  
2 the process that we use.

3                   MS. CEPERNICH: Sure. Then may I re-call  
4 Mr. Dickinson?

5                   PRESIDING OFFICER HOGLE: Sure.

6                   (Mr. Dickinson returns to the witness stand.)

7                   PRESIDING OFFICER HOGLE: Okay. Mr.  
8 Dickinson, you're still under oath.

9                   THE WITNESS: Agreed, thanks.

10

11

FURTHER EXAMINATION

12

BY MS. CEPERNICH:

13

Q. Mr. Dickinson, did you provide written  
14 rebuttal testimony that I've just handed you dated  
15 April 8th of 2020 in this matter?

16

A. Yes.

17

Q. Is that testimony true and accurate?

18

A. To the best of my knowledge, yes.

19

Q. And do you have any changes other than  
20 maybe to a typo to correct a date that was too many  
21 digits for 2018, do you have any changes or  
22 corrections that you need to make to make that  
23 testimony accurate?

24

A. Not at this time.

25

MS. CEPERNICH: So we'd move to have Mr.

1 Dickinson's rebuttal testimony, which includes  
2 Exhibit 13, admitted.

3 PRESIDING OFFICER HOGLE: Ms. Baldwin, do  
4 you have any objection to that?

5 MS. BALDWIN: I have no objection.

6 PRESIDING OFFICER HOGLE: Okay. It's  
7 admitted.

8 (DICKINSON'S REBUTTAL TESTIMONY ADMITTED.)

9 MS. CEPERNICH: Thank you.

10 Q. (BY MS. CEPERNICH) And then, Mr.  
11 Dickinson, are you familiar with -- did you provide  
12 written surrebuttal testimony in this matter dated  
13 April 25th of 2022?

14 A. I did, yes.

15 Q. And is that testimony true and accurate?

16 A. To the best of my knowledge.

17 Q. Do you have any corrections that you need  
18 to make to that testimony?

19 A. None that I'm aware.

20 MS. CEPERNICH: So we'd move to have  
21 the -- Mr. Dickinson's April 25th surrebuttal  
22 testimony, which includes Exhibits 14 through 16,  
23 admitted?

24 MS. BALDWIN: We have no objections, but I  
25 do have questions on the surrebuttal.



1 PRESIDING OFFICER HOGLE: Okay. Well,  
2 I've been assuming that the division also doesn't  
3 have any objections.

4 MR. JETTER: Yeah, that's correct. No  
5 objections. Thank you.

6 PRESIDING OFFICER HOGLE: For everything  
7 from this point forward; is that correct?

8 MR. JETTER: I think that's right, yes.  
9 Thank you.

10 PRESIDING OFFICER HOGLE: Okay. It's  
11 admitted.

12 (DICKINSON'S SURREBUTTAL ADMITTED.)

13 MS. CEPERNICH: Thank you. And we're fine  
14 to have the testimony stand on the written record.

15 PRESIDING OFFICER HOGLE: Okay.

16 Ms. Baldwin?  
17

18 EXAMINATION

19 BY MS. BALDWIN:

20 Q. I'm now addressing your surrebuttal  
21 testimony.

22 A. Okay.

23 Q. Mr. Dickinson, isn't it true that you did  
24 not notify the Union Pacific when your contractor  
25 started work on the project?

1 A. I don't believe that's true.

2 Q. Do you have any evidence that you did  
3 notify them?

4 A. Within the -- okay. Excuse me. So can  
5 you clarify notified Union Pacific when you started  
6 work.

7 Q. So in your direct you had indicated that  
8 you had your contractor start in January of 2020.

9 A. Correct.

10 Q. And then in March of 2020 you got the  
11 agreement.

12 A. Correct.

13 Q. So in January of 2020 you did not notify  
14 Union Pacific that you had started construction,  
15 correct?

16 A. I don't know when they were notified, but  
17 we did secure observers and flaggers from RailPros,  
18 who was the contractor of Union Pacific Railroad to  
19 install utilities through which we had agreements  
20 with the railroad.

21 Q. In your testimony you talk about -- on  
22 your surrebuttal testimony you discuss on page 3 some  
23 of the safety issues that were raised by your  
24 engineer, Bill Young.

25 A. That's correct.

1 Q. Isn't it correct that you did not send a  
2 copy of this safety memo to Union Pacific?

3 A. I'm not sure who it was sent to. I don't  
4 have a copy of it, but I'm assuming it may have who  
5 it was sent to on it.

6 Q. I believe it does, and it does not include  
7 Union Pacific.

8 MS. CEPERNICH: Would you like me to give  
9 him a copy of that?

10 MS. BALDWIN: Yes, please.

11 THE WITNESS: Thank you.

12 Q. (BY MS. BALDWIN) So do you have a copy of  
13 that letter?

14 A. I have a copy now, yes.

15 Q. Is Union Pacific copied on that letter?

16 A. It doesn't appear to be.

17 Q. Okay. Now, in discussing the safety  
18 issues, isn't it true that you did not have to turn  
19 the traffic signal on once it was installed until  
20 maybe it was interconnected to the railroad's warning  
21 sign?

22 A. Can you repeat that? Isn't is it true  
23 that we didn't have to? That's probably true, yes.  
24 That's true.

25 Q. Okay. So you could have left it as a

1 four-way stop?

2 A. Correct.

3 Q. And in fact you could have changed it so  
4 that you took out stop signs going north/south and  
5 just had stop signs going east/west or vice versa  
6 take out stop signs going east/west and just have  
7 them going north/south?

8 A. We would have probably evaluated it and  
9 then determined what traffic control devices to  
10 install.

11 Q. But before continuing to put in the  
12 traffic signal, you could have taken other measures  
13 that would have reduced safety risks?

14 A. That's a possibility.

15 Q. Okay. So on page 2 of your surrebuttal,  
16 you reference this report that was issued by -- well,  
17 you say issued by RailPros on January 24th, 2019.

18 A. Yes.

19 Q. And do you have a copy of that report? I  
20 think it's attached to the rebuttal testimony of  
21 Travis Bailey. But if you don't have another report  
22 of your own...

23 A. I have it here, yes.

24 Q. Oh, okay. Go page to page 2 of your  
25 testimony.

1 A. The surrebuttal?

2 Q. Yes.

3 A. I'm there.

4 Q. In response to the question, Is there  
5 anything else that led you to believe that Union  
6 Pacific had in fact given approval of the design for  
7 the project, you reference Union Pacific's Public  
8 Project Manual, and you have attached a copy of that;  
9 is that correct?

10 A. Yes.

11 Q. Could you go to that manual?

12 Okay. Could you look at the front of that  
13 manual?

14 A. Yes.

15 Q. Down in the left corner, doesn't it say  
16 "Version 1 July 30th, 2021"?

17 A. It does.

18 Q. So how could you have relied on this in  
19 2019 to assume that the approval that was given was  
20 final approval?

21 A. The question is: Is there anything that  
22 leads you to believe that Union Pacific had in fact  
23 given approval of the design for the project. I  
24 referenced this in my response to that question.

25 Q. Right. But you're saying in the paragraph

1 before that you got final approval in February --

2 A. Correct.

3 Q. -- or January of 2019. But this manual  
4 wasn't produced and issued until 2021.

5 A. Okay.

6 Q. So how did that give you support for your  
7 finding of final approval?

8 A. So question -- line 5 on my surrebuttal  
9 on: What was your prior testimony that Union Pacific  
10 had given AECOM final approval of the design, that  
11 was based on the information in that section. "Is  
12 there anything else that leads you to believe that  
13 Union Pacific had in fact given," that was subsequent  
14 to that initial implied approval. So this is just  
15 in support of that. It is at a later date, but I  
16 don't know how --

17 Q. So you didn't rely it on as it appears  
18 that you did?

19 A. I don't know that this says I relied on it  
20 on my initial. This is just in support of the policy  
21 that's -- the first version from Union Pacific  
22 Railroad.

23 Q. Okay, I'm sorry. It appears that you're  
24 saying that this led you to believe that Union  
25 Pacific had in fact given you approval. So that was

1 my confusion. I'm sorry.

2 A. Okay.

3 Q. Can we go back to the letter that was  
4 attached, the safety letter that was attached from  
5 your engineer?

6 A. Yes.

7 Q. Because we discussed this on page 2 and 3  
8 of your surrebuttal, we discussed that letter. Could  
9 we go back to that letter if you have that letter?

10 A. I'm there, yes.

11 PRESIDING OFFICER HOGLE: Ms. Baldwin,  
12 before you proceed, can you indicate where that is?

13 MS. BALDWIN: Yeah. I think it's with his  
14 direct testimony.

15 MS. CEPERNICH: It was. It's Exhibit 6 to  
16 his direct testimony, the letter itself.

17 PRESIDING OFFICER HOGLE: Thank you.

18 Q. (BY MS. BALDWIN) So if we look at the  
19 second page, there's four paragraphs on that page.  
20 And you discuss those on page 3 of your surrebuttal  
21 testimony.

22 A. Okay.

23 Q. So paragraph 1, the engineer says that  
24 "Currently access across the Union Pacific  
25 right-of-way and tracks is controlled with a yield

1 sign on each side of the tracks attached to a  
2 railroad crossing sign. The existing intersection at  
3 1400 North and 600 West is an all-way stop controlled  
4 intersection." Correct?

5 A. Correct.

6 Q. And then it notes that because of where  
7 the intersection is with respect to the tracks, that  
8 cars could stack up on the tracks, correct?

9 A. That's what it says, yes.

10 Q. So it's not, as you say in your testimony,  
11 the yield signs on the railroad that causes that.  
12 It's the four-way stop that causes that. If somebody  
13 stops at the intersection and there's three cars,  
14 then one of them is going to be on the railroad  
15 track; is that correct?

16 A. That's a possibility, yes.

17 Q. Okay. So it's the stop signs?

18 A. Or the tracks.

19 Q. But the stop signs -- if the stop signs  
20 weren't there --

21 A. Yes.

22 Q. -- they could just go through, correct?

23 A. Correct.

24 Q. So if you were to remove the stop signs  
25 going east/west, there wouldn't be any backup?



1 A. That's a possibility, yes.

2 Q. Okay. So now in fact you've installed a  
3 traffic signal, correct?

4 A. Yes.

5 Q. And you installed it without coordinating  
6 the intersection of that with the railroad signals,  
7 correct?

8 A. It is not interconnected with the  
9 railroad.

10 Q. Okay. And isn't it true that when you see  
11 a green light coming towards the railroad as a  
12 motorist and you have a green light and there's a  
13 railroad crossing, and it says it is 63 feet away,  
14 don't you think that the green light would give the  
15 motorist the idea that the railroad is okay and  
16 there's -- even if it isn't, even if there's a train  
17 coming because you haven't coordinated the green  
18 light with the traffic -- with the railroad signals?

19 A. No. My statement was we didn't coordinate  
20 it with the railroad.

21 Q. Right.

22 A. But we do have a train sensor that we  
23 picked up separately. It's a self-supported system  
24 that's not part of the railroad itself.

25 Q. So your green light does not -- it turns

1 red then?

2 A. That's correct.

3 Q. Okay, okay. Earlier when we had  
4 Mr. Golden on the phone, we were discussing the Utah  
5 Manual on Uniform Traffic Control Devices, and you  
6 don't have a copy unless your counsel happened to  
7 make a copy. And it is incorporated into the  
8 regulation. So it is in itself a regulation. And I  
9 just want to read for you -- it's on page 776 of the  
10 manual. It's section 8C.09. And it says, "Traffic  
11 control signals at or near highway-railroad grade  
12 crossings." And then it says that "Traffic control  
13 signals may be used instead of flashing light signals  
14 to control road users at industrial highway, rail  
15 grade crossings, and other places when train  
16 movements are very slow such as in switching  
17 operations."

18 And then further down it says "The highway  
19 agency" -- that would be Logan City -- "or the  
20 authority with jurisdiction and the regulatory agency  
21 with statutory authority, if applicable, should  
22 jointly determine the preemption operation and timing  
23 of traffic control signals interconnected with  
24 highway-rail grade crossings. By coordination with  
25 the flashing light signal system, queue detection or

1 other alternatives should be considered for traffic  
2 control signals."

3 So isn't it true that you are in essence  
4 using your traffic control signals -- I'm sorry.

5 One more thing says "Traffic control  
6 signals shall not be used instead of flashing light  
7 signals to control road users at a mainline  
8 highway-rail grade crossing."

9 And isn't it true that now your -- the  
10 signals that you have installed are in fact doing  
11 that?

12 A. You will have to reread that. I'm sorry.  
13 That was a lot of information.

14 Q. I'm sorry. "Traffic control signals," and  
15 that's the light at the intersection, "shall not be  
16 used instead of flashing light signals to control  
17 road users at a mainline highway-rail grade  
18 crossing."

19 Now, is that in effect what you're doing  
20 when you have installed your traffic signal without  
21 interconnection to the railroad?

22 A. Can you reread the beginning where you  
23 started on that section? I was wondering what the  
24 authority -- you mentioned authority, highway  
25 authority, department authority having jurisdiction,

1 et cetera. I was just want a clarification on that,  
2 please.

3 Q. "The highway agency or authority with  
4 jurisdiction."

5 So you're the one with jurisdiction over  
6 the road, correct?

7 A. It would be Logan City under the purview  
8 of UDOT.

9 Q. Okay. "Traffic control signals shall not  
10 be used instead of flashing light signals to control  
11 road users at a mainline highway-rail grade  
12 crossing."

13 So is that in essence what you are doing  
14 since you installed your lights without  
15 interconnection with the railroad?

16 A. I would have to look at the definition of  
17 mainline crossing highway as you said.

18 Q. Mainline highway-rail grade crossing.

19 A. Mainline highway-rail -- yeah, I'm not  
20 sure what that is.

21 Q. Okay. Subject to check, I would represent  
22 to you that that crossing at 1400 North is such a  
23 mainline highway-rail grade crossing.

24 A. Thank you.

25 Q. Section -- I'm sorry. Paragraph 4 of the

1 letter from the engineer. This refers to pedestrian  
2 traffic, correct?

3 A. On page 2 then?

4 Q. Yeah. I mean it's paragraph 4 of his  
5 safety...

6 A. There's two 4s, sorry.

7 Q. Yeah, this is the one on page 2. I think  
8 the first one is background. And your testimony  
9 references paragraphs 1 and 4. I think this is what  
10 you were referencing?

11 A. I believe so, yes.

12 Q. Okay. So isn't it true that there was an  
13 issue with pedestrian traffic before anything was  
14 done to this intersection?

15 A. I would agree with that.

16 Q. But isn't it also true that now that  
17 you've put in new pedestrian facilities and  
18 encouraged more pedestrian traffic that you've  
19 actually exacerbated the safety issues?

20 A. I don't know that we've exacerbated the  
21 issue.

22 Q. But you --

23 A. We did do some pedestrian improvements on  
24 the south side of 1400 North. We put an ADA ramp on  
25 the north side of 1400 North adjacent to the tracks.

1 I don't know that we've exacerbated what was already  
2 being used by the pedestrians. They're still having  
3 to go out into the road and cross over the tracks on  
4 a vehicle -- a vehicle pathway to cross those tracks.

5 Q. But you've put in new pedestrian  
6 facilities that would likely encourage people now to  
7 use those facilities?

8 A. We put ADA ramps on both of those corners.  
9 The sidewalk was existing; we relocated it on the  
10 south side. The sidewalk on the north side was  
11 there, and we relocated it as well. So it was  
12 already there. We just -- we just facilitated the  
13 widening.

14 MS. BALDWIN: Okay. No other questioning.

15 PRESIDING OFFICER HOGLE: Ms. Cepernich,  
16 any redirect?

17 MS. CEPERNICH: No, I don't believe so.  
18 Thanks.

19 PRESIDING OFFICER HOGLE: Okay. Thank  
20 you, Mr. Dickinson. I don't have any questions  
21 either.

22 THE WITNESS: Thank you.

23 PRESIDING OFFICER HOGLE: Thank you for  
24 your time today.

25 Ms. Cepernich, you don't have any other

1 witnesses; is that correct?

2 MS. CEPERNICH: No, those are our only two  
3 witnesses.

4 PRESIDING OFFICER HOGLE: Okay.

5 Ms. Baldwin?

6 MS. BALDWIN: We would like to call our  
7 witnesses as a panel, if possible. We have one  
8 witness on the phone and three others here in person,  
9 if that would be acceptable. Their testimonies are  
10 very interrelated, and I think it would be more  
11 efficient. I've checked with both the Division and  
12 Logan City, and they said it would be okay if we did  
13 that.

14 PRESIDING OFFICER HOGLE: Okay. That is  
15 fine.

16 MS. BALDWIN: Then. Could we please have  
17 Lance Kippen, Paul Rathgeber, and Travis Bailey come  
18 up and sit here next to me. And then we have Ken Tom  
19 on the phone.

20 PRESIDING OFFICER HOGLE: Good morning,  
21 everyone.

22 Mr. Tom, can you hear me? Are you on the  
23 phone?

24 MR. TOM: Yes. I can hear you.

25 PRESIDING OFFICER HOGLE: Okay. Thank

1 you.

2 I guess we can administer the oath one at  
3 a time but consecutively if that's okay. Starting  
4 with the gentleman in the yellow tie.

5 MR. BAILEY: Travis Bailey.

6 PRESIDING OFFICER HOGLE: Okay. Mr.  
7 Bailey, do you swear to tell the truth?

8 MR. BAILEY: Yes.

9 PRESIDING OFFICER HOGLE: Okay.

10 MR. RATHGEBER: Paul Rathgeber.

11 PRESIDING OFFICER HOGLE: Mr. Rathgeber,  
12 do you swear to tell the truth?

13 MR. RATHGEBER: I do.

14 MR. KIPPEN: Lance Kippen.

15 PRESIDING OFFICER HOGLE: Mr. Kippen, do  
16 you swear to tell the truth?

17 MR. KIPPEN: Yes.

18 PRESIDING OFFICER HOGLE: Mr. Tom, do you  
19 swear to tell the truth?

20 MR. TOM: Yes, I do.

21 PRESIDING OFFICER HOGLE: Okay. Thank  
22 you.

23

24 MR. RATHGEBER, MR. BAILEY, MR. KIPPEN & MR. TOM,

25



1 called as witnesses, having been duly sworn, were  
2 examined and testified as follows:

3  
4 PRESIDING OFFICER HOGLE: Okay,  
5 Ms. Baldwin.

6  
7 EXAMINATION

8 BY MS. BALDWIN:

9 Q. Do each of you have a copy of your  
10 testimony in front of you?

11 MR. BAILEY: Yes.

12 MR. RATHGEBER: Yes.

13 MR. KIPPEN: Yes.

14 MR. TOM: Yes.

15 PRESIDING OFFICER HOGLE: I'm going to ask  
16 each of you individually whether you have any changes  
17 to your pre-filed testimony. I'll go down the lane.  
18 Mr. Bailey?

19 MR. BAILEY: No. No changes to my  
20 testimony.

21 MS. BALDWIN: Mr. Rathgeber?

22 MR. RATHGEBER: No changes.

23 MR. BALDWIN: Mr. Kippen?

24 MR. KIPPEN: No changes.

25 PRESIDING OFFICER HOGLE: Mr. Tom?

1 MR. TOM: No changes.

2 Q. (BY MS. BALDWIN) If I were to ask you  
3 today the questions contained in your pre-filed  
4 testimony, would your answers be the same? Mr.  
5 Bailey?

6 MR. BAILEY: Yes.

7 MS. BALDWIN: Mr. Rathgeber?

8 MR. RATHGEBER: Yes.

9 MS. BALDWIN: Mr. Kippen?

10 MR. KIPPEN: Yes.

11 MR. BALDWIN: Mr. Tom?

12 MR. TOM: Yes.

13 MS. BALDWIN: Could I move to have the  
14 testimony and at this time we can move to have the  
15 direct, rebuttal, and surrebuttal testimony of these  
16 four witnesses admitted.

17 PRESIDING OFFICER HOGLE: Including the  
18 exhibits?

19 MS. BALDWIN: Including the exhibits.

20 PRESIDING OFFICER HOGLE: Okay.

21 MS. BALDWIN: And they have been laid out  
22 in the copy I gave both to the court reporter and to  
23 the administrative office.

24 PRESIDING OFFICER HOGLE: Ms. Cepernich,  
25 do you have an objection?

1 MR. KELLER: Your Honor, Mr. Keller here.  
2 We don't have any objection. Thank you.

3 PRESIDING OFFICER HOGLE: Thank you.  
4 Okay. They're admitted.

5 (TESTIMONY OF UPRR & EXHIBITS ADMITTED.)

6 MS. BALDWIN: Then I proffer my witnesses  
7 for cross-examination.

8 PRESIDING OFFICER HOGLE: Okay.

9 Mr. Keller, are you ready for your cross?

10 MR. KELLER: Thank you, your Honor.

11 PRESIDING OFFICER HOGLE: Okay. Thank  
12 you.

13 MR. KELLER: I'm going to direct my  
14 questioning primarily to Mr. Rathgeber, if that's all  
15 right.

16 MR. RATHGEBER: It probably depends on the  
17 subject. But sure.

18 Q. (BY MR. KELLER) I hope you can answer  
19 these. So in your direct testimony, Mr. Rathgeber,  
20 you discuss an August 11th, 2010 agreement with Logan  
21 City that did allocate costs for maintenance to  
22 Logan. Do you recall that testimony?

23 A. I do.

24 Q. And as I recall your testimony, you  
25 indicated that that agreement required Logan to

1 reimburse the railroad for the actual costs it  
2 incurred in maintenance; is that correct?

3 A. That's correct.

4 Q. During the long negotiations over the  
5 current crossing agreements, have you ever offered to  
6 have Logan bear the costs of actual maintenance for  
7 crossing -- signal of the crossing?

8 A. So in a roundabout way, yes. The Arena  
9 Unit Cost Calculation that we've provided is based on  
10 what the average is for that signal design system.  
11 And each unit is calculated through a certain number  
12 of components equal to a certain percent of a unit,  
13 right. Some are a full unit, some are less. And  
14 that has been verified by our signal department to be  
15 what it costs us to test and inspect and to replace  
16 in maintenance replacement terms a system like that  
17 over the life of the system.

18 Q. And as I understand it, the offer that you  
19 extended to Logan, was it going to be a standard  
20 11,000 almost \$12,000 a year for that?

21 A. I don't remember the dollar figure, but  
22 that's probably correct.

23 Q. But just back to my first question, you  
24 never offered to have Logan actually pay actual  
25 maintenance -- actual maintenance costs. It's a

1 standardized calculation that the railroad uses?

2 A. That's correct. We could do so, and that  
3 would put the city on the hook for any time it's  
4 damaged by vehicles or knocked down --

5 Q. Right.

6 A. -- with a direct unplanned replacement  
7 cost of anywhere from 18 to \$30,000 per unit.

8 Q. But if that accident didn't happen, it  
9 wouldn't incur that cost, correct?

10 A. Not that specific cost. Which under the  
11 terms of our agreement that we offered, they would  
12 not have the risk of either.

13 Q. Would it surprise you that Logan would  
14 agree to pay -- or would have agreed to pay actual  
15 maintenance costs as they were incurred?

16 A. I would probably say it's a mixed guess at  
17 best. One, we have previously executed agreements  
18 that have that. But from the negotiations that went  
19 forward, it was not offered by the city in any of the  
20 negotiations that we had.

21 Q. It wasn't offered by the railroad, was it?

22 A. It was not.

23 Q. And again, Mr. Rathgeber, I don't want to  
24 put you on the spot. But you're kind of the guy that  
25 has the issues I want to cover. You testified in

1 your rebuttal testimony dated April 11th, 2022, you  
2 talked about Mr. Golden sending a letter to UP to  
3 proceed with construction of the crossing  
4 improvements without requiring Logan City to pay  
5 signal maintenance fees. Do you recall receiving  
6 that letter?

7 A. I did see a copy of it.

8 Q. And did you take any action based on that  
9 letter?

10 A. I referred that to counsel.

11 Q. You did say that it's not uncommon for an  
12 agency not a party to the agreement -- it is uncommon  
13 for an agency not a party to the agreement to insert  
14 itself. Did you note that the letter allowed you to  
15 appeal the letter?

16 A. I do not recall the specifics of the  
17 letter.

18 Q. I'll represent that it does allow you to  
19 appeal. Did the railroad ever appeal that letter?

20 A. Not formally, no.

21 Q. Do you remember the date on that letter?

22 A. I do not.

23 Q. Now I'm referring, Mr. Rathgeber, to your  
24 surrebuttal testimony. And this is talking about the  
25 negotiations with the city and why you believe the

1 city's counteroffers were not reasonable. Do you  
2 recall that testimony?

3 A. I do.

4 Q. And you've -- do you still take that  
5 position today that they're still unreasonable in  
6 their position?

7 A. What was proposed would be similar, if you  
8 put it in kind of non-railroad terms, that if you  
9 went to go make an offer to purchase a \$20,000  
10 vehicle and the payments are \$400 a month, that your  
11 offer was \$80 total upfront to cover the entire costs  
12 of the vehicle. So in our realm that would not be a  
13 reasonable offer. We went through several cycles of  
14 what we considered reasonable offers with things that  
15 we have offered in most of the 23 states that we  
16 operate in regularly over the past at least I would  
17 say since 2003 in my personal experience and well  
18 prior to that, where we would see those as typical  
19 negotiations.

20 Q. And that -- you maintain that position  
21 even today; is that correct?

22 A. We're open to reasonable offers.

23 Q. Okay. Are you familiar with the  
24 administrative rule in Utah R-930-5-8?

25 A. Somewhat.

1 Q. I'll represent to you that this rule was  
2 adopted on July 31st of 2020. And I'll represent to  
3 you that it says this, "Responsible for maintenance  
4 is as described in this section, unless a prior  
5 signed written agreement applies. Responsibility  
6 means the obligation to perform and pay for  
7 maintenance."

8 Sub A says "The railroad is responsible  
9 for the maintenance of all railroad passive warning  
10 devices and active warning devices within the  
11 railroad right-of-way."

12 Do you have that in front of you?

13 A. I do.

14 Q. Was there any prior signed written  
15 agreement that applies to either of the crossings  
16 that are at issue in this case?

17 A. I'm not 100 percent sure, but we're aware  
18 that there was a cross bucket and stop yield program  
19 that was performed between Union Pacific and UDOT. I  
20 don't know the specific terms of that agreement, but  
21 I believe that would apply.

22 Q. Do you have a copy of that agreement?

23 A. I do not.

24 Q. And do you know whether your counsel  
25 submitted a copy of that agreement for this



1 proceeding?

2 A. Likely not because I just thought of it  
3 while we were here, that we had that project in the  
4 past.

5 Q. But is it your position that that governs  
6 the responsibility for maintenance of active warning  
7 devices at this crossing?

8 A. It depends on the terms of what that  
9 particular agreement stated. And our position is  
10 also that the master agreement, if applicable through  
11 those federal funds, would state that the state shall  
12 not interfere with the railroad's right to collect  
13 maintenance from the local jurisdictions.

14 Q. So you disagree with this rule that I just  
15 read you?

16 A. I do not disagree with it. That's how  
17 it's written.

18 Q. Well, why don't you comply with it?

19 A. That would be a question for our attorneys  
20 right now because I believe that's subject to  
21 litigation.

22 Q. But that litigation wasn't commenced  
23 during these negotiations, was it?

24 A. I'm not sure of the timeline.

25 Q. I'll represent to you that it was not.

1 And certainly it hasn't been resolved, has it?

2 A. It has not been.

3 Q. So right now this rule is in place, and  
4 Union Pacific is not complying with the rule; is that  
5 correct?

6 A. We probably are not complying with that  
7 particular language.

8 Q. Thank you.

9 How much has Union Pacific sought in  
10 reimbursement under the 2010 agreement? And I'll  
11 address this as a whole panel, including Mr. Tom.

12 A. Which 2020 agreement are you referring to?

13 Q. I misspoke, if I said 2020. I meant 2010.  
14 The agreement that required Logan to pay  
15 reimbursement to the railroad for actual costs of  
16 maintenance.

17 A. I'm unaware of this what that number would  
18 be.

19 Q. How do you distinguish between maintenance  
20 and repair of the facilities?

21 A. So in general the way we operate in 23  
22 states is we maintain from the end of tie to the end  
23 of tie on the crossing surface itself and the passive  
24 and active warning devices due to labor agreements,  
25 right? That is not to say that we maintain it at our

1 costs in all of those locations.

2 When we do our own work, so if we're going  
3 to go through with a gang or a crew that replaces  
4 rail and just replaces ties, that would not be  
5 something that we would include in something such as  
6 this. It would be if the road authority were to come  
7 to us and say the driving surface on First Street, or  
8 whatever road it may be, is not to our standard as  
9 the road authority, then we would say: Okay, we will  
10 replace or maintain that at your cost.

11 If we have come through in the past, which  
12 would be very typical on some frequent cycle whether  
13 it's eight years, five years, 10 years, it varies by  
14 region, and replace ties and rail, we may have  
15 replaced the surface panel at our cost because we  
16 damaged it while we were replacing rail and tie and  
17 would not see that as something that the agency would  
18 be responsible for.

19 Q. Thank you. And I need to go back. I  
20 didn't -- I maybe moved on a little too quickly under  
21 the -- on the question about how much UP charged  
22 Logan for maintenance on the 210 agreement. Does  
23 anyone else on the panel have any information about  
24 how much that dollar amount might have been?

25 MR. KIPPEN: No.

1 Q. And this again is to the whole panel. Are  
2 you familiar with any other state that has a rule  
3 that is the same as the one I've just read, this Rule  
4 9-30-5-8?

5 A. I'm not aware of one that's worded that  
6 way.

7 Q. And I think you answered this, Mr.  
8 Rathgeber. But was Logan a party to the cross-bucket  
9 agreement, or was that between the railroad and UDOT?

10 A. That would have been between Union Pacific  
11 and UDOT.

12 MR. KELLER: Thank you. I don't have  
13 anything further. Thank you very much.

14 PRESIDING OFFICER HOGLE: Okay. Well, I  
15 have a couple of --

16 MS. BALDWIN: Could I please do some  
17 redirect?

18 PRESIDING OFFICER HOGLE: Of course. Ms.  
19 Baldwin, go ahead.

20

21 EXAMINATION

22 BY MS. BALDWIN:

23 Q. When counsel was asking you questions  
24 about whether or not there was an offer for Logan to  
25 reimburse Union Pacific for annual maintenance, are

1 you familiar with Exhibit 5 of Dickinson's direct  
2 testimony that has the e-mail exchange?

3 A. I believe I have seen those, yes.

4 Q. Here's a copy. And if you could just  
5 read -- this is from Mary Schroll with UP dated  
6 May 1st of 2020. And she lays out three options.  
7 Could you read the third option?

8 And this is on May 1st, the beginning of  
9 the negotiations.

10 A. The third option is "City of Logan/UDOT  
11 revise the draft agreement to be a three-party  
12 contract wherein the City of Logan, or if  
13 subsequently decided UDOT, will reimburse Union  
14 Pacific for annual maintenance."

15 Q. So there was an offer to do annual  
16 maintenance as a reimbursement?

17 A. Correct.

18 Q. Okay. The preliminary engineering  
19 services agreement, are you familiar with that?

20 A. I am.

21 Q. That was signed in 2016, correct?

22 A. Correct.

23 Q. So that would be an existing agreement,  
24 correct?

25 A. That is correct.

1 Q. That agreement is also attached to Mr.  
2 Dickinson's direct testimony as Exhibit 1. On the  
3 second page of that, could you please read what I  
4 have underlined?

5 A. What's underlined is "It is also  
6 understood that if a project is constructed, if at  
7 all, at no cost to the railroad."

8 Q. So if 9-30-5-8 sub 1 as written today,  
9 this would be a prior signed written agreement and  
10 that term would apply, correct?

11 A. That's correct.

12 MS. BALDWIN: Okay. That's all the  
13 redirect I have. Thank you.

14 PRESIDING OFFICER HOGLE: Okay. Thank  
15 you.

16 Can one of you tell me how frequently the  
17 railroad operates the railroad through the crossings  
18 at issue in terms of times per --

19 MR. RATHGEBER: I can look it up if we  
20 need to, if we don't have it.

21 MR. BAILEY: Yes. I can answer that. We  
22 were at a diagnostic for another crossing on this  
23 same subdivision recently, and there are two trains  
24 on Monday and two trains on Wednesday typically. But  
25 trains can operate Monday, Wednesday, Friday on this

1 subdivision. And that volume is not -- it's not a  
2 schedule; it's based on customer demand. So it could  
3 increase or decrease at any point along this line.

4 PRESIDING OFFICER HOGLE: Okay. I  
5 apologize. I thought I heard you say two  
6 inconsistent things. It does operate Mondays and  
7 Wednesdays twice?

8 MR. BAILEY: Correct. Typically, yes.

9 PRESIDING OFFICER HOGLE: But what did you  
10 say it can't operate Monday, Wednesday, Friday?

11 MR. BAILEY: It can operate Monday,  
12 Wednesday, Friday.

13 PRESIDING OFFICER HOGLE: Okay. Any more  
14 specific than that, how many times per day?

15 MR. BAILEY: Nothing more specific than  
16 that.

17 PRESIDING OFFICER HOGLE: At least twice a  
18 week?

19 MR. BAILEY: At least twice a week. Again  
20 the volumes can vary day to day. So even though at  
21 the time of the diagnostic it was two trains on  
22 Monday and two trains on Wednesday, this is a  
23 mainline for Union Pacific and we have the right to  
24 operate at any time according to customer demand.

25 PRESIDING OFFICER HOGLE: And going

1 forward you wouldn't know if there's a change in the  
2 schedule.

3 MR. RATHGEBER: We typically review our  
4 operations almost daily and allow to adjust it based  
5 on whatever -- just as Mr. Bailey stated, whatever  
6 the customer needs are. So there's no telling.  
7 There could be a new development at any time or a  
8 rerouting. We've had several changes in the past  
9 probably five years where we've rerouted on lines  
10 that previously did not use as much as others. We've  
11 seen some go from two trains once a week to 20 trains  
12 a day, and we've seen a reverse. It's 100 percent  
13 based on network needs.

14 PRESIDING OFFICER HOGLE: And that is  
15 Union Pacific's needs, is that true?

16 MR. RATHGEBER: It would be the needs of  
17 all of our customers --

18 PRESIDING OFFICER HOGLE: Customers.

19 MR. RATHGEBER: -- correct.

20 PRESIDING OFFICER HOGLE: So you don't  
21 know or you don't anticipate -- I means like you said  
22 it could be 20 trains a day; is that right?

23 MR. RATHGEBER: It could. That would  
24 be -- I mean it would be if there was a growth  
25 opportunity or a need to reroute, that would be



1 something we would prefer to get more trucks off the  
2 roadways.

3 PRESIDING OFFICER HOGLE: Okay. So, okay,  
4 that's good to know.

5 You, Mr. Rathgeber, right, you're who was  
6 testifying. You've referenced this CFR, specifically  
7 that it stated -- has stated that road crossing  
8 projects are of no benefit to the railroad. And  
9 therefore and in most cases, the railroad shall bear  
10 no cost for these projects. And then you also quote  
11 a definition where you quote the term "preservation,"  
12 and you say which is the definition of maintenance in  
13 23 US code 101(a)(4)(b) and say that it's listed as a  
14 cost of construction, and therefore that maintenance  
15 is really not a project cost to be borne by the road  
16 authority. Is that right? Did you say that?

17 MR. RATHGEBER: No, ma'am it would be not  
18 borne by the railroad.

19 PRESIDING OFFICER HOGLE: By the railroad,  
20 excuse me. I wrote that wrong. But that would be  
21 more consistent of course.

22 So help me understand here. Because I  
23 guess I don't understand how that language sort of  
24 fits with the master agreement that the railroad  
25 entered into in which it assumed responsibility for

1 maintenance costs. Is that --

2 MR. RATHGEBER: Sure.

3 PRESIDING OFFICER HOGLE: -- a different  
4 type of project?

5 MR. RATHGEBER: So the master agreement  
6 specifically covers 130 projects, which is a bucket  
7 of federal funds.

8 PRESIDING OFFICER HOGLE: Right.

9 MR. RATHGEBER: In the past the railroad  
10 had viewed some particular benefit in some of the 130  
11 projects. And as part of the master agreements in  
12 order to get the projects to flow, we created a  
13 master agreement process, and this would have been  
14 back probably in the late '70s for the majority of  
15 them. That concept was if you can get those projects  
16 in, you do what you need to do based on the federal  
17 propitiations based on safety only, not based on  
18 capacity or construction needs.

19 PRESIDING OFFICER HOGLE: Right.

20 MR. RATHGEBER: That we will help  
21 facilitate those projects in a fairly expedited  
22 manner as quickly as a state government and the  
23 railroad can work together.

24 In that, specific in Utah, we should we  
25 would pay the maintenance up front as long as the

1 state is did not interfere with our right to collect  
2 from the local road authority.

3 PRESIDING OFFICER HOGLE: Right.

4 MR. RATHGEBER: And what you have is if  
5 the state is managing the safety program, so they  
6 bring in the capital upfront from the federal  
7 government and they fund the construction and  
8 sometimes they fund maintenance depending on the  
9 state directly at that point, and then it becomes a  
10 negotiation for the local roads. So that the city  
11 may have received the benefit of the federal funds  
12 being used on their roads, and then it goes to, okay,  
13 let's go through what is the maintenance  
14 responsibility at that point.

15 What we saw in some states was the state  
16 or the railroad and the local authority would take a  
17 long time to negotiate the maintenance costs, and so  
18 we said we'll cover that for now, but don't get in  
19 the way of us being able to collect it rather than  
20 saddling that on UDOT.

21 PRESIDING OFFICER HOGLE: Okay. So you're  
22 saying that the master agreement, because it's only  
23 between UDOT and the railroad company, would not --  
24 and I read this in the master agreement -- would not  
25 prohibit the railroad from entering into a separate

1 agreement with the city where then the city would be  
2 responsible for the maintenance agreement; is that is  
3 what you're saying?

4 MR. RATHGEBER: Yes, ma'am. It could be a  
5 separate agreement or a three-party agreement. But  
6 the current master agreement it would make it a  
7 separate agreement.

8 PRESIDING OFFICER HOGLE: What about the  
9 supplement agreement that's attached to the master  
10 agreement? Does that -- is that language in there in  
11 the supplement agreement? Because I thought that you  
12 have your master agreement and then going forward  
13 everything under that master agreement would be  
14 consistent with the supplement agreement which I  
15 don't think has that language, but maybe I'm  
16 forgetting something.

17 MR. RATHGEBER: Well, the way we typically  
18 manage tasks or supplements to a master is the terms  
19 of the master always apply to every task or  
20 supplement that's associated with it.

21 PRESIDING OFFICER HOGLE: Okay.

22 MR. RATHGEBER: So it may not say it  
23 specifically in that supplement, but it's because  
24 we're leaving all of that typically negotiated  
25 language in a masters so we don't have to go through

1 project negotiation for every single project that we  
2 get in a state.

3 PRESIDING OFFICER HOGLE: Okay. So what  
4 you're saying I think is that the master agreement  
5 allows you to separately negotiate with the local  
6 authority regarding maintenance costs.

7 MR. RATHGEBER: Correct.

8 PRESIDING OFFICER HOGLE: And how does  
9 that work with the whole concept of the master  
10 agreement and the reason why you came up with that  
11 concept, which was to expedite the projects? I mean  
12 wouldn't having a separate agreement with the city  
13 where the city is negotiating, much like here. They  
14 don't want to pay for maintenance costs; they don't  
15 think it's their obligation. How does that work with  
16 the whole concept of, you know, having an efficient  
17 and expeditious process to get these projects done  
18 under section 130?

19 MR. RATHGEBER: So in theory the master  
20 agreement would allow the railroad and the -- and  
21 UDOT to go to construction while some of those other  
22 things are being negotiated. When we have it in  
23 isolation without the benefit of federal funds and  
24 there's some other pieces of that tied in, that we do  
25 those separately, right. So if it's a city or county

1 they're not falling under those terms, right, because  
2 they're not under the master agreement.

3 PRESIDING OFFICER HOGLE: Right, okay.

4 Let me see. So I was intrigued by your  
5 testimony about the cross-bucket yield program. Can  
6 you sort of expand on that and tell me how you  
7 thought of it today and maybe not before.

8 MR. RATHGEBER: Yes, ma'am. Several years  
9 ago the National Committee for Uniform Traffic  
10 Control Devices, which is the owner of the Manual  
11 Uniform Traffic Control Device changed the standards  
12 to require the addition of either a yield sign or a  
13 stop sign at every passive device assembly in the  
14 nation for public roads only. And at that point the  
15 federal government said you may utilize as a state  
16 DOT Section 130 funds to implement that program.  
17 Because the responsibility for all traffic control  
18 devices lies with the road authority.

19 In this case they said, railroads, we will  
20 enter into an agreement to get this done state-wide  
21 as it's their responsibility. We would install it  
22 because it was on our physical post. And so in each  
23 state, maybe two, we did not execute those types of  
24 agreements. We had agreements to say this is how  
25 we'll do it between the two of us to provide flagging

1 or whether we would put the new sign on a new post or  
2 construct a new assembly, whichever it was, and they  
3 utilized federal funds to do that.

4 PRESIDING OFFICER HOGLE: And you think  
5 there's something out there, that type of agreement  
6 is out there somewhere that could apply to these  
7 projects that we're talking about here today?

8 MR. RATHGEBER: I believe so.

9 PRESIDING OFFICER HOGLE: Okay. I'm also  
10 curious about the contemplation in the master  
11 agreement that federal funding may not come through.  
12 So -- right? I mean it says -- I guess I was curious  
13 about what happens. If that takes it out of the  
14 section 130, you're under this agreement and  
15 maintenance costs have already been assigned to the  
16 railroad, what happens then?

17 MR. RATHGEBER: As far as if we had, say,  
18 a 130 program and we built it and --

19 PRESIDING OFFICER HOGLE: And you've  
20 already signed, you know, and become obligated that  
21 you are, the railroad, is responsible for maintenance  
22 costs. And then there is a provision here somewhere.  
23 I can't remember; I'll look for it and tell you. But  
24 it says if federal funding doesn't come through or  
25 something like that. I'm curious what happens and if

1 that's ever happened and how you deal with it. I  
2 know that this -- you know, we're talking about the  
3 master agreement. And I believe there's consensus  
4 that the projects at issue are not section 130  
5 projects, but I'm curious about that. Because that  
6 would take them out of section 130.

7 MR. RATHGEBER: Oh, so if the project was  
8 never funded?

9 PRESIDING OFFICER HOGLE: Yes. But you've  
10 entered into an agreement that was signed.

11 MR. RATHGEBER: Right. So if they were to  
12 come back and say "We've lost our funding," the  
13 project would terminate. So UDOT would cancel the  
14 project if they were not able to get the federal  
15 funding.

16 PRESIDING OFFICER HOGLE: I see. So there  
17 would never be a situation where the project is built  
18 and then the funding -- it's not apparent to anybody  
19 until after it's built.

20 MR. RATHGEBER: I can't think of one.

21 PRESIDING OFFICER HOGLE: For the panel?  
22 Questions for the panel?

23 MR. KIPPEN: So it's my understanding  
24 these are UDOT projects, right. So it's my  
25 understanding that UDOT will not execute that



1 agreement, their comptroller the UDOT comptroller,  
2 will not release those funds unless they have  
3 sufficient funds to do that project. It can be  
4 signed by railroad the UDOT engineering. But until  
5 the UDOT comptroller signs it we don't go to  
6 construction. They have to verify that the funds are  
7 in place. Does that answer your question?

8 PRESIDING OFFICER HOGLE: It does. But  
9 then that brings to sort of -- what you said is that  
10 you sign an agreement without having first secured  
11 funding. And the verification comes later; is that  
12 true?

13 MR. BAILEY: Yeah, I can speak to that.  
14 So when I was working on the UDOT side, I was  
15 familiar with the process of the contract going to  
16 the comptroller. We would not issue notice to  
17 proceed to the railroad until after it had been  
18 signed by the railroad and received approval from  
19 FHWA, who is the custodian of the section 130 funds.

20 PRESIDING OFFICER HOGLE: Okay.

21 MR. BAILEY: So that would not be the case  
22 that you would have a project -- a signed agreement  
23 for project that doesn't have funding.

24 PRESIDING OFFICER HOGLE: All right.  
25 Okay. I think that's all I have.

1 Ms. Cepernich, do you have anything else?

2 MS. CEPERNICH: No, thank you.

3 PRESIDING OFFICER HOGLE: Ms. Baldwin?

4 MS. BALDWIN: Just that we would ask once  
5 we have access to the transcript, if we could  
6 schedule legal briefing.

7 PRESIDING OFFICER HOGLE: Shall we do that  
8 now?

9 MS. BALDWIN: Sure.

10 PRESIDING OFFICER HOGLE: Okay. Did the  
11 parties get together to sort of contemplate what the  
12 schedule they'd like to -- would it be all filing the  
13 briefs at the same time or something in response? I  
14 mean, I suppose given the city's, you know, eagerness  
15 to get this done -- well, just so I'm clear, are you  
16 still up against potential permitting going away or  
17 funding or anything that you testified to in the  
18 pre-filed testimony?

19 MS. CEPERNICH: That's my understanding.  
20 But Mr. Dickinson would have more current information  
21 on that, if we'd like to ask. I know some permits  
22 have already expired.

23 MR. DICKINSON: May I?

24 PRESIDING OFFICER HOGLE: Yes. You can  
25 sit there.

1 MR. DICKINSON: So we do have grant money  
2 that's kind of in limbo on the 1800 North project.  
3 We also have some permits to enter into private  
4 property to do our roadway work. Those are -- some  
5 have expired, and some are on the brink of expiring  
6 now. So I'd really like to expedite this and get  
7 this going so we don't have to lose our funding and  
8 we don't have to renew permits.

9 PRESIDING OFFICER HOGLE: Okay. So given  
10 that, Ms. Cepernich and Ms. Baldwin, have you  
11 discussed --

12 MS. BALDWIN: We discussed doing legal  
13 briefing. We talked about that before the  
14 proceeding.

15 PRESIDING OFFICER HOGLE: Right.

16 MS. BALDWIN: But we did not talk about a  
17 schedule. I'm sorry.

18 PRESIDING OFFICER HOGLE: Okay.

19 MS. BALDWIN: But I don't know how long it  
20 takes to get the transcript.

21 PRESIDING OFFICER HOGLE: Well, let's just  
22 assume that it's whatever date, let's count from that  
23 date forward. And right now if you want to break,  
24 get together, and then come back and we can talk  
25 about additional briefing.

1 MS. BALDWIN: Thank you.

2 PRESIDING OFFICER HOGLE: Let's break for  
3 15 minutes.

4 (Break taken from 11:40 to 11:43 p.m.)

5 PRESIDING OFFICER HOGLE: Before we do  
6 that, I did -- I neglected to ask Mr. Rathgeber one  
7 last question. So would you mind remembering you're  
8 sworn in and you're under oath.

9 Going back to the issue of maintenance  
10 costs. Currently under current practice there's no  
11 agreement that applies. How are those paid right  
12 now? How does Union Pacific maintain the two grade  
13 crossings in question?

14 MR. RATHGEBER: In Logan?

15 PRESIDING OFFICER HOGLE: In Logan.

16 MR. RATHGEBER: So from what I've seen so  
17 far, we've gone through with regular tie and rail  
18 replacement programs. That likely is what has  
19 replaced the surface material from the end of tie to  
20 end of tie without being something we would have gone  
21 to the city for because we went through and replaced  
22 it because of our word.

23 The passive maintenance signs are  
24 basically no maintenance to us, unless they're  
25 knocked down. They don't require complex circuitry

1 or batteries lightening arresters that you would get  
2 with active warning devices.

3 PRESIDING OFFICER HOGLE: Okay. So right  
4 now, Union Pacific is responsible or has assumed  
5 responsibility or the obligation for maintenance  
6 costs in those two grade crossings; is that true?

7 MR. RATHGEBER: For their layout as they  
8 were historically, yes.

9 PRESIDING OFFICER HOGLE: And how long has  
10 that practice been in place?

11 MR. RATHGEBER: I would assume since the  
12 beginning, but I'm not sure.

13 PRESIDING OFFICER HOGLE: And when is the  
14 beginning, do you know?

15 MR. RATHGEBER: That's a great question.  
16 That's one of the things we were talking about  
17 earlier is we're not sure who crossed who in that.

18 PRESIDING OFFICER HOGLE: At least can you  
19 give me how many years?

20 MR. RATHGEBER: Longer than I've been  
21 alive. I don't know if that helps anything.

22 MR. DICKINSON: I might be able to help  
23 with that, Ma'am.

24 PRESIDING OFFICER HOGLE: Okay. Can you?

25 MR. DICKINSON: I have found some city

1 records that sold right-of-way to the Union Pacific  
2 railroad dating back to about the 1890s. It was  
3 through Logan city at that point in time, which was  
4 about -- that didn't go all the way up to 1400 North.  
5 I think we stopped around 10TH north at that time.  
6 So I'm assuming it was right around that time when  
7 they negotiated that right-of-way from the county  
8 beyond the city borders at the time.

9 PRESIDING OFFICER HOGLE: That's how long  
10 that grade crossing has existed, is that what you're  
11 saying?

12 MR. DICKINSON: That's when the  
13 right-of-way was established to the railroad.

14 PRESIDING OFFICER HOGLE: Okay. Okay.  
15 All right. I appreciate your continued testimony.  
16 Thank you.

17 Okay. Let's talk briefing. Okay. So who  
18 is going to be the spokesperson?

19 MS. CEPERNICH: I'm happy to. We  
20 discussed doing simultaneous briefing with an opening  
21 brief and a response brief. With the opening brief  
22 being due -- so we were looking at actual dates based  
23 on the idea that the record would be ready about  
24 May 24th.

25 PRESIDING OFFICER HOGLE: Okay.

1 MS. CEPERNICH: AND so we had said Friday  
2 June 7th for the opening brief.

3 MS. BALDWIN: I had June 10th.

4 MS. CEPERNICH: Did I make a mistake?  
5 June 10th. And then June 17th for the response  
6 brief. And I guess if for some reason the record is  
7 quite a bit delayed, we'd have to just push those  
8 dates accordingly. So you know we're going based on  
9 the 24th. So we could just count forward if it came  
10 later. Does that work?

11 MS. BALDWIN: Yes. That works.

12 PRESIDING OFFICER HOGLE: Okay. Well,  
13 thank you everybody for your time today. I  
14 appreciate all the testimony. Thank you for  
15 answering my questions. I'm a novice in railroad  
16 cases, so forgive me if I asked questions that are  
17 obvious to you anyway I'm sure.

18 So if we don't have anything else, I think  
19 we're adjourned. Thank you.

20 MS. CEPERNICH: Thank you.

21 MS. BALDWIN: Thank you.

22 (Concluded at 11:54 a.m.)  
23  
24  
25

REPORTER'S CERTIFICATE

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

I, Tamra J. Berry, Registered Professional Reporter in and for the State of Utah, do hereby certify:

That said hearing was taken down by me in stenotype on May 3, 2022, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said hearing is set forth in the preceding pages;

I certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day of May, 2022.



Tamra J. Berry, RPR, CSR



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