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**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION HEARINGS BOARD**

CITY OF SPOKANE VALLEY, a municipal corporation,

Complainant,

vs.

UNION PACIFIC RAILROAD COMPANY  
(aka UPRR),

Respondent.

No. TR-210814; 210809

PREFILED TESTIMONY OF ELLIS MAYS

USDOT: 66256C

**GENERAL PERSONAL INFORMATION**

**What is your name?**

Ellis Mays.

**Who is your employer?**

Alfred Benesch.

**How long have you been employed by Union Pacific?**

2.5 years.

**What is your current position?**

Public Project Manager.

**How long have you held your current position?**

2.5 years.

1 **What are the duties of your current position?**

2 I work on all of Union Pacific's ("UP") public projects that are on or near UP right of way  
3 in Washington. As such, I work directly with the road authorities on public projects, such as grade  
4 crossing surface and signal modifications, crossing maintenance, grade separations, quiet zones,  
5 and other public projects.

6 **Did you have any experience in working as a public project manager prior to working at**  
7 **Benesch?**

8 Yes. I have previously been employed by Norfolk Southern where I was the Manager of  
9 Public Projects for 2 years.

10

11 **CONSTRUCTION & MAINTENANCE AGREEMENTS**

12 **Is the Barker Road proposed at-grade rail-highway crossing project a Section 130 crossing**  
13 **safety project?**

14 No, this project is not a Section 130 crossing safety project. Excluding the installation of a  
15 median, this project does not eliminate vehicular hazards at the rail-highway crossing.  
16 Furthermore, this project promotes increased pedestrian use at the crossing. At the time of the  
17 diagnostic, the project was reported to facilitate pedestrians as well as remove the possibility of  
18 rear-end incidents by creating additional lane. We have since learned that this project is actually  
19 a transportation project to connect highways 90 and 290 - two freeways through this north-south  
20 connector road, Barker. As such, the modifications requested by the City of Spokane Valley (the  
21 "City") are progressed for increased traffic volume, not safety.

22 **Does UP routinely include maintenance fees in its Construction and Maintenance**  
23 **agreements?**

24 Yes, UP includes signal maintenance fees in all Construction and Maintenance agreement  
25 wherein the project type or funding do not prohibit their inclusion.

26 //

27 //

1 **BARKER RD. RAIL-HIGHWAY CROSSING PROJECT**

2 **Are you familiar with the at-grade rail-highway crossing project at Barker Road (DOT**  
3 **#662526C)?**

4 Yes.

5 **Could you please describe what a diagnostic is and its purpose?**

6 A diagnostic review is an on-site meeting of the Diagnostic Team. The FHWA Highway-  
7 Rail Crossing Handbook, 3rd Edition defines a Diagnostic Team as "A group of knowledgeable  
8 representatives of the parties of interest (such as the railroad, road authority, State regulatory  
9 agency, where applicable) in a highway-rail crossing or group of crossings who evaluate  
10 conditions at the crossing(s) to identify safety issues.)."

11 **Did you attend the diagnostic in this case?**

12 Yes.

13 **Who makes the determination of the crossing safety devices to be used at a crossing?**

14 Per the National MUTCD Section 8A.01.05, the 'highway agency or authority with  
15 jurisdiction and the regulatory agency with statutory authority, if applicable, jointly determine the  
16 need and selection of devices at a grade crossing.'

17 **Who drafted and sent the diagnostic meeting minutes?**

18 The diagnostic meeting minutes were drafted by the City and submitted to the Diagnostic  
19 Team for comments on July 2, 2020. I provided comments on behalf of UP on July 10, 2020.

20 **What is the purpose of the diagnostic meeting minutes?**

21 The diagnostic meeting minutes memorialize discussions, recommendations, and decisions  
22 from the diagnostic meeting.

23 **When were the diagnostic meeting minutes finalized and sent to Diagnostic Team?**

24 I do not know. To date, I have not received final meeting minutes addressing UP's  
25 comments.

26 **What determinations did the City of Spokane Valley make based on the diagnostic?**

27 The City incorporated all diagnostic team recommendations in their design. All

1 determinations made for the traffic control system, including the railroad traffic control devices,  
2 were made by City.

3 **Did UP participate as a member of the Diagnostic Team to make recommendations based on**  
4 **the diagnostic?**

5 Yes, UP participated as a member of the Diagnostic Team and provided input as indicated  
6 in the meeting minutes.

7 **Did any other agency make recommendations based on the diagnostic?**

8 Yes, the Washington State Utilities and Transportation Commission (UTC).

9 **When did UP inform the City of Spokane Valley of the signal maintenance fees?**

10 Signal maintenance fees were first mentioned in e-mail communications regarding the UP  
11 agreement process on October 19, 2020.

12 **When did UP share the signal maintenance fees to the City of Spokane Valley?**

13 UP shared the signal maintenance fees with the City, along with the other project costs, on  
14 December 7, 2020 via email.

15 **When did UP share the Construction and Maintenance Agreement with the City of Spokane**  
16 **Valley?**

17 On June 24, 2021.

18 **Did the City of Spokane Valley at any time acknowledge the signal maintenance fees**  
19 **provided?**

20 Yes, the City approved the signal maintenance fees, along with the other project costs, on  
21 December 8<sup>th</sup> 2020 via email.

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**DECLARATION**

I, ELLIS MAYS, declare under penalty of perjury under the laws of the State of Washington that the foregoing PREFILED TESTIMONY OF ELLIS MAYS is true and correct to the best of my knowledge and belief.

DATED this 12<sup>th</sup> day of April, 2022.

/s/ Ellis Mays  
ELLIS MAYS

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1 **DECLARATION OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that I  
3 caused a true and correct copy of the foregoing to be served via the methods below on this 12<sup>th</sup>  
4 day of April, 2022 on the following counsel/party of record:

5 Kenneth W. Harper 6 MENKE JACKSON BEYER, LLP 7 807 N. 39 <sup>th</sup> Avenue 8 Yakima, WA 98902 9 Phone: (509) 575-0313 10 Email: <a href="mailto:kharper@mjbe.com">kharper@mjbe.com</a> <a href="mailto:zfoster@mjbe.com">zfoster@mjbe.com</a> <a href="mailto:qplant@mjbe.com">qplant@mjbe.com</a> <a href="mailto:Julie@mjbe.com">Julie@mjbe.com</a> <i>Attorneys for City of Spokane Valley</i>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via E-mail:
11 Washington Utilities & Transportation 12 Commission	<input checked="" type="checkbox"/> <a href="http://efiling.utc.wa.gov/form">efiling.utc.wa.gov/form</a>
13 Jeff Roberson 14 Assistant Attorney General 15 Office of the Attorney General 16 Utilities and Transportation Division 17 P.O. Box 40128 18 Olympia, WA 98504-0128 19 Phone: (360) 664-1188 20 E-mail: <a href="mailto:jeff.roberson@utc.wa.gov">jeff.roberson@utc.wa.gov</a> <a href="mailto:betsy.demarco@utc.wa.gov">betsy.demarco@utc.wa.gov</a>	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via E-mail:

21 /s/ Elizabeth Pina  
22 Elizabeth Pina, Legal Assistant  
[Elizabeth.Pina@lewisbrisbois.com](mailto:Elizabeth.Pina@lewisbrisbois.com)