

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**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 PEGGY  
YGBUHAY

USDOT: 66256C

**GENERAL PERSONAL INFORMATION**

**What is your name?**

Peggy Ygbuhay.

**Who is your employer?**

Union Pacific Railroad Company (“UP”).

**How long have you been employed by UP?**

28 Years.

**What is your current position?**

Manager of Industry and Public Projects.

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

5 years.

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

2 Working directly with road authorities on projects such as at-grade crossing elimination,  
3 crossing improvement and modification projects, maintenance, grade separation, quiet zone, and  
4 other public projects.

5  
6 **PROJECT MANAGEMENT/PHASES**

7 **Would you please generally and briefly describe the process for how UP works with the road**  
8 **authorities and municipalities on at-grade crossing projects.**

9 An agency will contact UP via our contact center, and the contact center will coordinate  
10 with the agency to execute a reimbursement agreement for preliminary engineering services. A  
11 Public Project Engineering Consultant (PPEC) is then assigned to the project and coordinates with  
12 the agency to perform a diagnostic, signal/surface design, and estimate. Once the estimate is  
13 approved by the agency, UP and the agency will create a draft Construction and Maintenance  
14 ("CM") Agreement for the work that is agreed to be performed. Once both UP and the agency  
15 agree on the draft, both sides will execute the CM agreement and the PPEC will coordinate  
16 internally with various departments to schedule the work.

17  
18 **WASHINGTON STATE INFORMATION**

19 **How many public, at-grade crossings currently exist in the State of Washington?**

20 275.

21 **How many open ongoing at-grade crossing projects does UP currently have in the State of**  
22 **Washington?**

23 UP has 39 open project proposals from agencies that are currently pending design review,  
24 agreement preparation, and construction. The types of projects pending are modifications to  
25 existing at-grade crossings.

26 //

27 //

1 **PRELIMINARY ENGINEERING AGREEMENT**

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

3 Yes.

4 **What is the purpose of a Preliminary Engineering Agreement ("PEA")?**

5 For UP to be reimbursed for preliminary engineering costs by the Agency for the Agency's  
6 proposed project affecting UP property.

7 **On what date did UP send the PEA to the City of Spokane Valley (the "City")?**

8 On or around August 29, 2019.

9 **Did the Preliminary Engineering Agreement for this project include terms or provisions**  
10 **regarding maintenance fees?**

11 No. The PEA does state that the project will be of no cost to UP; however, it does not  
12 distinguish any specific costs.

13 **Did the City acknowledge that it understood the terms of the for the Barker Road project?**

14 Yes.

15 **Is it true that pursuant to the PEA, the City agreed that UP may withhold its approval for**  
16 **any reason directly or indirectly related to safety or its operations, property issues, or effect**  
17 **to UP's facilities?**

18 Yes.

19  
20 **CONSTRUCTION AND MAINTENANCE AGREEMENTS**

21 **What is the purpose of a Construction and Maintenance Agreement?**

22 The purpose of the CM Agreement is to set forth the terms and conditions of the work to  
23 be performed at the crossing. This includes contractors' right of entry to UP property, safety  
24 requirements, insurance obligations, indemnification, and so forth.

25 **On what date did UP send the CM Agreement to the City?**

26 On or about June 24, 2021.

1 **Did the CM Agreement proposed to the City include terms or provisions regarding**  
2 **maintenance fees?**

3 Yes.

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

6 \$8,670.

7 **How does UP calculate crossing signal maintenance costs?**

8 UP calculates crossing signal maintenance costs pursuant to AREMA recommendations.  
9 AREMA is the American Railway Engineering and Maintenance-of-Way Association that  
10 publishes the recommended practices for railway engineering infrastructure including track,  
11 structures, communications, and signals. AREMA assigns a unit cost per item for maintenance.

12 **Are signal maintenance costs calculated consistently in all jurisdictions?**

13 Yes.

14 **What is the proposed cost apportionment for the maintenance costs in the CM Agreement?**

15 UP bills agencies only for labor and material used. Monthly maintenance inspections are  
16 required under 49 CFR 234.261, and this apportionment is based on AREMA's recommendations.  
17 Generally, these fees include electricity, ordinary scheduled and unscheduled maintenance and  
18 repair work, and technology upgrades. These fees do not cover extraordinary work and major  
19 replacements, rehabilitations, or rearrangements.

20 **Is it common for UP to wait until a project's CM Agreement phase to address maintenance**  
21 **fees?**

22 Yes. As part of UP's design process, the maintenance fees are calculated once we have an  
23 approved front sheet for distribution. Having a fully approved preliminary design allows our team  
24 to accurately calculate the annual cost of maintenance related to a crossing upgrade or installation  
25 based on the type of circuitry required for that specific location.

26 **At what phase does UP approve a project?**

27 After the CM Agreement is executed, because this approves a final work order for

1 construction reimbursement.

2 **Did UP approve the Barker Road at-grade crossing project?**

3 No, because a CM Agreement was never executed by both parties.

4 **Why didn't UP approve this at-grade crossing project?**

5 The City would not agree to the maintenance fee provision in the CM Agreement.

6 **Do you know when the subject of signal maintenance was raised with respect to the Barker**  
7 **Road at-grade crossing project?**

8 Ellis Mays shared the signal maintenance fees with the City, along with the other project  
9 costs, on December 7, 2020 via email, and signal maintenance costs were presented to the City of  
10 Spokane Valley in the C&M Agreement on June 24, 2021.

11 **When did the City respond UP's proposed CM Agreement?**

12 The City responded to UP's proposed CM Agreement in a letter dated June 30, 2021 to  
13 Casey Moore of UP's Real Estate Department, requesting removal of signal maintenance fees.

14 **Has the City ever agreed that future projects may not proceed until UP and the City agree**  
15 **on the plan for such projects, including cost allocations?**

16 Yes. Section 12 of the CM Agreement dated February 17, 2017 between the City and UP  
17 for reconstruction on the north side of the track and installing new pavement markings on the south  
18 side of the track at Barker Road (DOT #663526C) specifies that future projects at Barker Road  
19 crossing involving substantial maintenance, repair, construction, renewal and/or demolition of the  
20 Roadway (Barker Road) shall not commence until UP and the City agree on the plans for such  
21 future projects, including cost allocations.

22 **What happens if a CM Agreement is not in place at the time construction is planned to begin?**

23 Construction cannot occur without a CM Agreement, as this is the document that approves  
24 the work, allows for entry onto UP property, grants license/easement for the road or improvements,  
25 sets responsibilities, and funding terms. Unfortunately, agencies sometimes set their letting dates  
26 before even providing concept plans to the railroad and place themselves in a precarious risk  
27 situation with their contractors.

1 **Are there times where construction is necessary even if the project does not have a formally**  
2 **signed intergovernmental or agency agreement, i.e., a Construction and Maintenance**  
3 **Agreement?**

4 No. A CM Agreement must first be in place.

5  
6 **RATIONALE FOR ALLOCATION/APPOINTMENT**

7 **Will UP derive an ascertainable benefit from the proposed project?**

8 No, in fact, the proposed project increases traffic volume, therefore increasing frequency  
9 of traversal by crossing users and causing degradation of the underlying track structure at an  
10 increased rate. In addition, the proposed project also increases the width of the roadway to  
11 accommodate the increased traffic. The increased width further degrades the underlying track  
12 structure. Both traffic volume and increased size in crossing surface increases surface maintenance  
13 costs exponentially. Furthermore, crossing surface to accommodate a roadway impedes railroad  
14 drainage, increases the footprint of a burdensome easement, reduces our ability to fully utilize our  
15 own property, and decreases the commercial opportunities for the railroad in the area. CFR 646  
16 defines when the railroad receives a benefit, which is only when the road authority constructs a  
17 grade separation while closing an at-grade crossing that is equipped with active warning devices.  
18 The CFR reflects the results of studies performed by the USDOT.

19 **What are the minimum standard requirements to be followed for testing signal devices?**

20 Signal systems must be tested monthly, quarterly, annually, as required by the CFR 49 Part  
21 234. Depending on the crossing size, physical location, and other factors, testing may take  
22 anywhere from a few hours to a few days.

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

25 Around 20 years.

26 **What other types of maintenance are generally done at at-grade crossings throughout the**  
27 **year?**

1 UP performs vegetation control, surface maintenance, and surface replacements at its at-  
2 grade crossings.

3 **What is the average cost of labor for each of these types of maintenance?**

4 Costs will vary by the type of maintenance and the crossing itself, i.e. the physical attributes  
5 of the land and the crossing material.

6 **What is the average cost of materials for each of these types of maintenance?**

7 Costs will vary by the type of maintenance and the crossing itself, i.e. the physical attributes  
8 of the land and the crossing material.

9 **Which states, municipalities, and agencies does UP have maintenance cost-sharing**  
10 **agreements with?**

11 We have local agency cost-sharing agreements in 21 of the 23 states we operate in. We  
12 also have negotiated template agreements in 22 states and are currently working on a template  
13 agreement in the 23rd state in which we typically have less than one project annually.

14 **Does UP collect money for signal maintenance from other parties pursuant to agreements in**  
15 **similar crossing projects in UP's system?**

16 Yes. We collect millions of dollars per year in signal maintenance from states, counties,  
17 cities, federal agencies, and private parties.

18 **Why does UP collect money for signal maintenance from other parties?**

19 The federal government, via CFR and other means, has stated that road crossing projects  
20 are of no benefit to the railroads, and in most cases shall bear no cost. Additionally, the CFR also  
21 states that "preservation," which is the definition of maintenance in 23 USCA §101(a)(4)(B) 101,  
22 is listed as a cost of construction. The cost of maintenance varies by each location, and the AREMA  
23 unit costs have been the standard for decades. The railroad must inspect each crossing monthly,  
24 with some quarterly and annual activities, as dictated by USDOT via FRA. This is a real cost, as  
25 is the cost of replacing components that are damaged by roadway users, weather events, and the  
26 eventual end of life replacements.

27 **Who are some of the other parties UP bills for signal maintenance?**

1 Cities, counties, federal Agencies, quasi-governmental/public agencies, industries,  
2 commercial entities, and other private parties. In essence, whomever the road authority is for that  
3 location. This would be consistent with MUTCD that the responsibility for maintenance of traffic  
4 control devices is with the road authority.

5 **How does UP collect the money it bills for signal maintenance?**

6 Some are annually billed, some are billed as work is performed, some are lump sum by  
7 agency by year, and some are upfront lump sum to cover replacements, as dictated by the  
8 negotiated agreements.

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

10 Maintenance payments are allocated to the signal maintenance team for maintenance. This  
11 could be a reimbursement for as performed work in some instances, or via the annual payments  
12 that are allocated to the maintenance team. The AREMA unit costs have not been updated since  
13 the early 1990s, and the annual lump payment therefore is likely lower than an actual cost option.

14 **When UP's crossing signal devices are damaged or destroyed by third party, who pays for  
15 the repair or replacement of the devices?**

16 It depends on the language in the agreements in place in that state. In some instances, for  
17 example in Utah, UP will pursue collection from the party who damaged the crossing if they can  
18 be identified, and if the party remains unidentified, UP has the right via our Utah Master  
19 Agreement to negotiate terms of replacement with the road authority for some locations. If no  
20 agreement exists, UP replaces as expediently as practical. A typical gate mechanism alone cost  
21 \$8k. Add other components such as lights, the gate arm, wiring, gang labor, and testing, and costs  
22 are typically around \$18k per mechanism replaced. If a cantilever or cabin is impacted, it is  
23 significantly more cost. Even if we look at only the gate arm being knocked off by an imprudent  
24 roadway user, the costs can range from \$1,200 for the arm plus the \$200-400 labor, plus resulting  
25 train delay.

26 **Does UP have a policy regarding projects that propose to widen crossing surfaces to  
27 accommodate additional traffic volume?**



1 Yes. UP's policy provides that a major roadway reconfiguration or change in use will be  
2 reviewed as a new crossing by UP. UP endorses the United States Department of Transportation's  
3 goal of reducing the number of at-grade crossings through consolidation, elimination, grade  
4 separation, and the restriction of projects proposed to widen to accommodate additional traffic  
5 volume.

6 **What is the estimated annual cost to UP maintenance for this project's proposed crossing**  
7 **surface?**

8 UP's annual surface maintenance cost is estimated at \$3,020.

9 **DECLARATION**

10  
11 I, PEGGY YGBUHAY, declare under penalty of perjury under the laws of the State of  
12 Washington that the foregoing PREFILED TESTIMONY OF PEGGY YGBUHAY is true and  
13 correct to the best of my knowledge and belief.

14  
15 DATED this 12<sup>th</sup> day of April, 2022.

16  
17 /s/ Peggy Ygnuhay  
18 PEGGY YGBUHAY

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:gplant@mjbe.com">gplant@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)