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May 31, 2007

Mike Gleason, Chairman  
William A. Mundell, Commissioner  
Jeff Hatch-Miller, Commissioner  
Kristin K. Mayes, Commissioner  
Gary Pierce, Commissioner

Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission

**DOCKETED**

JUN 15 2007

DOCKETED BY

Re: Alteration of Bowie crossing by installation of a second mainline track,  
and proposed settlement in lieu of an Order to Show Cause

Dear Chairman Gleason and Commissioners:

The purpose of this letter is first to offer Union Pacific's written apology to the Commission for its inadvertent double-tracking of the crossing located at Central Avenue in Bowie, Arizona, DOT 741 403J, without application to the Commission. Union Pacific had no desire or intention to test the Commission's jurisdiction with respect to this crossing. Indeed, fully understanding that it will need the Commission's approval to alter the other 42 public crossings involved in this phase of the Arizona portion of its double-track project, Union Pacific would never have intentionally ignored the Commission's jurisdiction with respect to this one crossing. Doing so would clearly have been contrary to Union Pacific's own best interest. Instead, this serious mistake was caused by a lack of communication within Union Pacific's Engineering Department. Union Pacific also proposes herein a settlement in lieu of the Commission issuing an Order to Show Cause in connection with this matter. Union Pacific recognizes there is no excuse for what occurred, and it accepts full responsibility for the premature alteration of the crossing.

Union Pacific's Engineering Department is organized into two separate departments for new construction, Design and Construction. The Design Department is responsible for obtaining necessary environmental and crossing permits. The Construction Department oversees the actual work. A contractor is hired by the Construction Department to perform the grading and drainage work and is also responsible for obtaining permission for road closures, including providing signage and detours as necessary. Union Pacific's own employees install rail and associated track and crossing structures and signals.

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Union Pacific's construction crew had been working between Bowie and San Simon, installing a second mainline track in an area that has no public crossings. When the construction crew came to the Bowie crossing, Union Pacific's contractor obtained the closure permit from Cochise County to close Central Avenue temporarily so the second track could be installed through the crossing. Union Pacific's contractor obtained permission for the closure permit on May 11, 2007. Also on that date, Union Pacific's contractor contacted fire and ambulance services to notify them of the temporary closure of Central Avenue. After making those arrangements, the Construction Department and contractor believed all necessary approvals and permits had been obtained, not realizing that no approval had been sought from the Commission to alter the crossing itself. The necessary concrete ties to be placed in the crossing were not available until May 14, 2007. When they did become available on May 14, 2007, Union Pacific's construction workers proceeded to install the second mainline track through the Bowie crossing without seeking Commission approval. A timeline of events regarding the improper installation is attached hereto as Exhibit 1.

During construction, emergency access was available approximately 0.6 miles to the east across a temporary construction crossing. The Fire Department stationed emergency equipment on both sides of the main line. Also, public access was available utilizing a private road crossing approximately 9 miles to the east of Bowie.

David Orrell, Union Pacific's Director of Construction, conducts monthly construction calls with Design and Construction personnel to discuss any possible issues concerning construction, including crossing construction. During these calls over the last several months, the erroneous assumption was made that all permits had been obtained, when in fact only the environmental permit issues were resolved, not approval from the ACC to change the crossing. This is the first such incident that has occurred in Mr. Orrell's eight-year tenure as Union Pacific's Director of Construction. He and Union Pacific are committed to making sure it will also be the last.

On Friday afternoon, May 18, 2007, Mr. Orrell discovered for the first time that Union Pacific had installed a second track at the Bowie crossing without Commission approval. Mr. Orrell directed that no trains be allowed to travel on the new track across the crossing, and that a derail be placed west of the Bowie crossing to prevent any railroad equipment from traveling on the new track across the crossing. These measures were completed by Friday night, May 18. Both of these steps will remain in place. The gates and lights at the Bowie crossing are fully functional for the existing main line.

The settlement Union Pacific would propose in lieu of an Order to Show Cause has four components: 1) Union Pacific's apology; 2) filing a belated application with the Commission as soon as possible; 3) a self-imposed monetary penalty; and 4) a change in Union Pacific's internal procedures to prevent a similar inadvertent occurrence. As to the first element, Union Pacific has

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apologized herein, as well as publicly in several stories carried in the news media during the week of May 21, 2007. If the Commission desires additional apologies, Union Pacific will provide them.

Concerning the second element of its settlement proposal, Union Pacific intends to file, as soon as possible, a belated application with the Commission for approval to install the second mainline track at Bowie. That application will concern only the Bowie crossing because Union Pacific's error has already resulted in installation of the second track there. In that application, Union Pacific plans to provide detailed information with respect to the Bowie crossing similar to the information Union Pacific plans to present later in an open meeting with respect to the other 42 Arizona public crossings currently being progressed in this phase of the Arizona portion of its double-track project.

As to the third element, Union Pacific would propose to pay the maximum civil penalty of \$2,000 per day, pursuant to ACC Regulation R14-5-116. Union Pacific would propose that the civil penalty run from May 8, 2007 (the first day Union Pacific was positioned in terms of crew and supplies to build through the Bowie crossing, and the Union Pacific supervisor made the decision to start building toward the Bowie crossing, which would have included building across that crossing), through the date an application is submitted to the Commission for the alteration, probably June 1, 2007.

Union Pacific's violation was unintentional. However, Union Pacific recognizes that it was also serious. Union Pacific intends to demonstrate that understanding to the Commission, and that it is making every reasonable attempt to do what it can to correct this unfortunate mistake.

Concerning the fourth element of the settlement proposal, Mr. Orrell and Union Pacific have also instituted changes to the monthly construction meetings that will be used to ensure that this kind of occurrence will not happen again. For example, the Manager of Industry and Public Projects for Arizona will participate in all construction meetings, and will have the responsibility for advising Union Pacific's contractors and track construction crews of the status of permits and approvals for any public crossing to be altered.

These changes, which Union Pacific instituted immediately after discovering the mistaken construction at the Bowie crossing, are shown in the exhibits attached hereto. Exhibit 2 is the current revised project detail screen. It shows the assignment of the Manager Public Projects and the locking in of that assignment. Exhibit 3, the previous Construction Project Status sheet dated May 11, 2007, shows no specific mention of crossing approval. This has been corrected in Exhibit 4, the revised and current Construction Project Status sheet dated May 25, 2007, showing the addition of the category of "Regulatory Authority - Crossing Modification." The revised Status sheet also shows that regulatory authority is the responsibility of the Manager Public Projects, and that no such authority has been obtained (0%). The Regulatory Authority item was simply added to the bottom of the previous table. That does not reflect in any way the importance Union Pacific places on obtaining authority from the Commission, nor any priority in

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which each task must be completed before any construction can proceed. Each task will be examined at the monthly construction meetings until they all show 100%, reflecting that all necessary elements for construction to proceed have been satisfied.

Thank you for your consideration of this letter and proposal.

Sincerely,



Tom Ogee  
AVP Engineering Design

Enclosures

## EXHIBIT 1 - TIMELINE

The train which had the ties which we laid though the Bowie crossing was the WAOBOT-11. The following is the timeline for laying ties with the Track Laying Machine:

**April 13:** WAOBOT-11 arrived at Bowie, with concrete ties. Train was parked & not worked due to gangs involved in switch installation and prep work for Track Renewal machine in New Mexico.

**April 17:** Track Laying Machine laid 2636 ties which tied in to switches at Karro Control Point (CP). No more ties were laid off train and TLM was not used again until May 10<sup>th</sup> due to cancellations of curfews to install switches at Bowie CP. The Bowie CP is located west of Bowie approximately one mile. At this point the TLM had not moved to the Bowie universal crossover to begin laying ties east.

**May 08:** Switches for Bowie CP installed. These switches would be used to lay concrete ties through Bowie towards a transition where construction of the new main line changes for the south side to north side. (This is the first date UP was positioned in terms of crew and supplies to build through the Bowie crossing. The supervisor on this date made the decision to start building toward the Bowie crossing, which would have included building across that crossing.)

**May 09:** Wood tie panel built off East switch at Bowie CP to allow TLM to begin laying ties east.

**May 10:** Tie train (WAOBOT-11) & TLM switched & prepped for laying ties east of Bowie CP.

**May 11:** TLM laid 800 ties from MP 1096.75 to MP 1097.05. UP personnel contacted County Sheriff's Department, Bowie Fire Department and Emergency Services (Willcox) about the closure of Central Ave. on May 13<sup>th</sup>. Permission was given by all agencies.

**May 12:** TLM laid 1699 ties to MP 1097.80 (laid thru 2-#11 switches for set out track).

**May 13:** TLM laid 1082 ties to MP 1098.30, just short of Central Avenue crossing which is at MP 1098.5. We had problems switching the TLM and concrete tie cars, closure of Central Ave. was delayed one day. All agencies were contacted about the delay, re-scheduled closure for May 14<sup>th</sup>.

**May 14:** Bowie Central Ave. crossing was closed at approximately 08:15 hrs. TLM laid 1198 ties to MP 1098.75. Central Ave. crossing was reopened at approximately 14:30 hrs.

**May 15:** No ties laid with TLM.

**May 16:** TLM laid 845 ties to MP 1099.10. Train is empty at this point.

**May 17:** Tie train pulled from dead track and departed toward plant as WBOAOT-17.



## CONSTRUCTION PROJECT STATUS

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Date :11-May-07

TASK NAME	TASK NOTES	%Com	Start	Finish	Rev St	Rev Fn
<b>165.16 *****</b> <b>LORDSBURG SUB</b> <b>LUZENA-SAN SIMON/2ND</b> <b>ML/LORDSBURG SUB</b> <b>MP 1091.8 - 1112.6</b> <b>Critical Project</b>	<b>W.O. AUTH EXP REM</b> <b>PI:</b> <b>OE:</b> <b>OTH:</b> <b>AFE Requested Date: 08/31/2005</b>					
	Physical Pct Comp Financial Pct Comp:					
	WO 55292 PID 53940 BUD 06CP010		40.19%	09/26/05	01/01/08	09/01/05

### BUDGET INFORMATION

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	Authorized											
	Actuals											
Difference												
Prepare Form 30	Sent for final 09/08/06									07/26/06	09/08/06	
Preliminary Design										09/01/05	05/15/06	
Survey	By Hanson-Wilson (Aerial)									03/03/06	04/28/06	
Track Design								02/01/06	04/15/06	04/21/06	08/01/06	
Permitting										04/15/06	07/15/06	
Bridge Design								09/26/05	12/30/05	09/26/05	08/11/06	
Culvert Design								09/26/05	09/01/06	09/28/05	08/11/06	
Utilities Relocation	utilities complete									10/18/06	03/30/07	
Grading/Subballast								06/01/06	09/01/06	07/31/06	05/31/07	
Bid/Contract								04/15/06	06/01/06	06/01/06	07/31/06	
Bridge Construction	Phase 1 - includes culverts							08/07/06	01/01/08	08/07/06	03/30/07	
Gang Schedule - Track Construction	build in 3 phases									12/01/06	07/31/07	
Track Construction	phase 1 - Karro / San Simon										04/29/07	
Track Construction	phase 2 - Bowie / Karro										07/10/07	
Track Construction	phase 3 - Luzena / Bowie										08/07/07	
Track TOTO	Grading 95% Complete							12/31/06	12/31/06	06/01/07	08/07/07	

Fri, May 25, 2007 03:10:18 PM

CONSTRUCTION PROJECT STATUS											1	
											Date :25-May-07	
TASK NAME	TASK NOTES				%Com	Start	Finish	Rev St	Rev Fn			
<b>165.16 *****</b> <b>LORDSBURG SUB</b> <b>LUZENA-SAN SIMON/2ND</b> <b>ML/LORDSBURG SUB</b> <b>MP 1091.8 - 1112.6</b> <b>Critical Project</b>	W.O.	AUTH	EXP	REM	NOH	Carry Over	QSP Proj		Y			
	PI:				Year	AUTH	EXP	REM				
	OE:				Bud							
	OTH:	AFE Requested Date: 08/31/2005				Material Onsi Date: 12/02/06						
WO 55292 PID 53949 BUD 06CP010	Physical Pct Comp: Financial Pct Comp:				48.00%	09/26/05	01/01/06	09/01/05	08/07/07			
BUDGET INFORMATION												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Authorized												
Actuals												
Difference												
Prepare Form 30	Sent for final 09/08/06				100.00%					07/26/06	09/08/06	
Preliminary Design					100.00%					09/01/05	05/15/06	
Survey	By Hanson-Wilson (Aerial)				100.00%					03/03/06	04/28/06	
Track Design					100.00%	02/01/06	04/15/06	04/21/06	08/01/06			
Permitting	Corp / County Flood Plain				100.00%					04/15/06	09/25/06	
Bridge Design					100.00%	09/29/05	12/30/05	09/28/05	08/11/06			
Culvert Design					100.00%	09/28/05	09/01/06	09/26/05	08/11/06			
Utilities Relocation	utilities complete				100.00%					10/18/06	03/30/07	
Grading/Subballast					99.00%	06/01/06	09/01/06	10/02/06	05/31/07			
Bid/Contract					100.00%	04/15/06	06/01/06	06/01/06	08/31/06			
Bridge Construction	Phase 1 - includes culverts				100.00%	08/07/06	01/01/06	10/02/06	05/31/07			
Gang Schedule - Track Construction	build in 3 phases				25.00%					12/01/06	07/31/07	
Track Construction	phase 1 - Karro / San Simon				95.00%						04/29/07	
Track Construction	phase 2 - Bowie / Karro, on hold pending approval				60.00%							
Track Construction	phase 3 - Luzena / Bowie				10.00%						08/07/07	
Track TOTO	Grading 95% Complete				0%	12/31/06	12/31/06	06/01/07	08/07/07			
Regulatory Authority - Crossing Modifica	MPP-James Smith Central Ave. @ Bowie, AZ				0%							