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October 24, 2003

VIA FACSIMILE AND US MAIL

Carole J. Washburn  
Washington Utilities and Transportation Commission  
1300 E. Evergreen Park Drive S.W.  
Post Office Box 47250  
Olympia, Washington 98504-7250

RECEIVED  
RECORDS MANAGEMENT  
03 OCT 24 PM 4: 59  
STATE OF WASH.  
UTIL. AND TRASP.  
COMMISSION

Re: BNSF and UP Comments on Proposed Rules for Remote Control Locomotive (RCL) Operations  
TR - 021465

Dear Ms. Washburn:

While The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) acknowledge that Commission Staff has scaled back on its proposed rules in response to our comments and arguments, the new rules continue to encroach upon an area preempted under federal law. The Federal Railroad Administration ("FRA") has occupied the field and continues to closely review Remote Control Locomotive (RCL)<sup>1</sup> operations. Indeed, as recently as last week the FRA met with representatives of the Class I railroads and railroad employee unions as part of its continuing oversight of RCL operations. Nothing has changed to cause the railroads to alter their views - the topic of RCL Operations is clearly preempted by federal law.

In addition, the Commission Staff should consider postponing further work on this docket pending completion of the new FRA audit. The FRA, the Class I railroads and affected unions

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<sup>1</sup> Within the railroad industry, control of train movements with aid of on-board computers is often referred to as portable locomotive control technology (PLCT). To avoid confusion, we will use RCL - the term used by the Commission in its notice.

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Page - 2

are now compiling the information regarding the safety impact of RCL operations. Attached is a copy of the agenda from an October 17, 2003 meeting of government, union and railroad representatives. The meeting concerned plans regarding implementation of a "Remote Control Locomotive Safety Audit." An interim and final report are planned which will cover safety of "highway rail grade crossings," "assess the safety benefits of RCL operations," review "point protection," and perform operational evaluation within a "Remote Control Zone." The railroads are confident that this audit will confirm our position that use of RCL improves the safety of the workplace. FRA's safety audit will also provide an empirical basis for determining the need for further regulation, if any.

Under the circumstances, this Commission should refrain from taking any official action on this docket until the FRA safety audit is completed. Because all railroads operating in the State of Washington are currently following guidelines and procedures that are consistent with the Commission's proposed rules, this would not adversely affect the railroads, railroad workers, or the public.

If the Commission wishes to press forward, BNSF and UP offer the following comments regarding the specific rules.

Definitions Section:

We appreciate the inclusion of definitions to clarify the rules being considered.

Notice Sections

The first section of the proposed rule deals with reporting requirements. In prior submissions BNSF and UP expressed their belief that prohibiting RCL operations by delaying implementation for even 30 days to give notice is beyond the Commission's power. The BNSF and UP have, however, always been responsive to requests for information and rules requiring 30 days advance notice of new RCL operations. The new rule would increase the reporting period from 30 days to 60 days.

The Commission should be aware that the increasing of lead time for notice makes efficient implementation of RCL operations more difficult for the railroads. Switching from an "Area" to a "Zone" may require little additional training or improvements. Yet the notice rules would delay the implementation for 60 days. From our point of view, this is needless delay. We would request, therefore, that reporting periods greater than 30 days be avoided, and that shorter reporting periods be considered if there is no compelling reason for a 30 days notice.

In response to our comments about crossing definitions, the notice rule was changed to include only public and private vehicular traffic. We understand this to mean crossings that are located outside the yards. To clarify this issue, we would suggest that an exclusion of internal yard crossings be added to the concept of "public and private vehicular crossings."

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Page - 3

In summary, and putting preemption aside, the present rule is far better than that originally proposed. BNSF and UP do not believe, however, that the benefits of an additional 30 days notice outweigh burdens imposed. The existing 30-day notice rule has apparently worked to inform the Commission that RCL operations have been initiated. We also believe that some exclusion of purely internal crossings from the scope of "public and private vehicular crossings" would be appropriate.

### Point Protection

Sections (3) and (4) of the new draft deal with point protection. The Commission Staff should keep in mind that all RCL movements are made in a manner approved by the FRA guidelines and consistent with each railroad's operating practices. Section (3) seeks to control RCL operations at grade crossings. The procedures outlined, however, are already addressed by the General Code of Operating Rules which requires protection when making a shoving move across a grade crossing and treats all remote control movements, regardless of the position of the locomotive, as shoving moves. The safety of all aspects of RCL operations has been continually monitored by the FRA. The FRA has concluded that the point is adequately protected by compliance with the railroad's operating rules and that the leading end movement is adequately protected within established Remote Control Zones by means other than a person riding the point.

BNSF and UP have also provided the Commission Staff with ample information showing that the FRA has determined that the public interest is not advanced by additional rules on RCL operations at this time. The FRA continues to oversee these issues and has recently set as an "Audit Goal" the assessment of safety of RCL operations at grade crossings. The FRA has publicly announced:

Looking ahead, FRA has taken the initiative to conduct a risk assessment of RCL operations and a root-cause analysis of RCL incidents. This research will be extremely helpful in identifying and focusing on any perceived safety concerns related to this technology. FRA has also taken steps to ensure that any accidents/incidents associated with RCL operations are identified and reported to under the provisions of FRA's accident/incident reporting regulation (*49 CFR Part 225*). We will use this data to monitor the future safety of these operations. \* \* \* As with all aspects of railroad operations, FRA will monitor RCL operations closely and, if need be, will take whatever actions are necessary to ensure safety.

FRA's Remote Control Locomotive Operations, Summary (August 2003). Again setting the clear preemption of this area, it seems inappropriate to adopt rules on point protection at crossings or with main lines when the FRA is undertaking a thorough review and reaffirming its intention to "take whatever actions are necessary to ensure safety" of these operations.

### Meeting Rules

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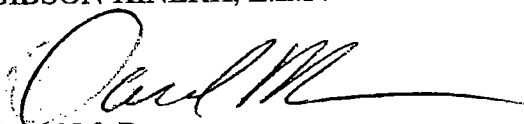
Page - 4

BNSF and UP have always been willing to discuss issues affecting the safety of their respective operations. Is this rule necessary? The Commission can already hold workshops, and has done so on a variety of topics. Rules which serve no purpose should be avoided. In any event, BNSF and UP have no objection to attending workshops to address safety concerns associated with our operations.

If the Commission Staff would like any additional information prior to the workshop, please feel free to contact us.

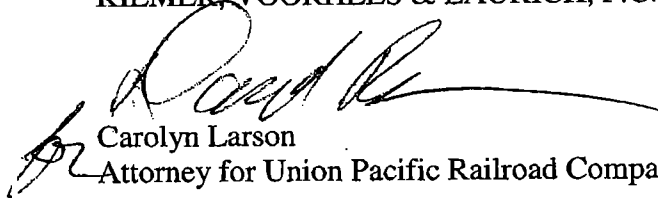
Very truly yours,

GIBSON KINERK, L.L.P.



David M. Reeve  
Attorney for The Burlington Northern and  
Santa Fe Railway Company

KILMER, VOORHEES & LAURICK, P.C.



Carolyn Larson  
Attorney for Union Pacific Railroad Company

/dr

cc: Douglas Werne: (BNSF)  
Carol Harris (UP)

## Remote Control Locomotive Safety Audit

### Purpose

Assess the impact of Remote Control Locomotive (RCL) operations on safety to determine what if any concerns need to be addressed to ensure public safety.

### Schedule

March 2, 2004 six month report  
March 2, 2005 final report

### Audit Goals and Objectives

- Comparison of the rate of accidents, injuries and fatalities involving RCLs with similar operations involving manned locomotives.
- Assess the effects of RCL operations on the safety of
  - highway rail grade crossings
  - hazardous materials transportation
  - urban areas
- Determine unique operating characteristics presented by RCLs
- Assess the safety benefits of RCL operations
- Recommend necessary legislative or regulatory changes

### Tasks

Review Major RR accountable and reportable RCL accidents/incidents

Part 225 audit on reportable RCL only (May 03 - July 03) Start Oct. 6, 2003.

Part 225 audit on accountable RCL only (May 03 - Sept. 03) Begin \_\_\_\_\_

Review/analyze railroad calculation of RCL accident/incident rates (RF & R&D)

Analyze RCL vs. conventional Accident/incident rates

Review RCL Inspection Reports for Accuracy (OP)

Provide RCL Inspection Guidance as Necessary (OP)

RCL Topics

Main track operations (OP and Dick Clairmont)

HRX technologies (Gillera)

Risk assessment (Raslear)

    Foster Miller Information

        Risk Assessment

        Root Cause Analysis

Security of RCL signal transmissions (Hartong)

Electronic magnetic field (EMF) issues (Volpe)(RDV)

FRA RCL inspection activity/findings/violations (OP & MP&E)

RCL operational testing review (OP)

Calendar day inspection practices (MP&E)

Operating OCU while riding on the side of equipment vs. CSX (RF & OP)

RCL training review as compared to required Part 240 training (OP)

Point protection review and alternatives (OP & S&TC)

    Operational analysis, Remote Control Zone (RCZ) signaled and non-signaled track