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June 7, 2004

Carole J. Washburn, Commission Secretary
Washington Utilities and Transportation Commission
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P.O. Box 47250
Olympia, WA. 98504-7250

RECEIVED
REGULATORY DIVISION
94 JUN -9 AM 9:25
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Re: Request for modification of **WAC 480-60-035 Walkways.**

Dear Commissioners:

When the final rule regarding yard walkways was written a note was included with a three-quarter inch or less crushed rock size recommended for switching leads in yards. Because of problems we have been having with the BNSF I recommend that **WAC 480-60-035 Walkways** be changed to include a short new section stating **“Material that is three-quarter inch or less in size is required for switching leads.”**

Over the past twenty years I have conducted hundreds of yard inspections of various railroad yards in Washington State. Almost all the switching leads I examined had crushed material of ¾” minus. Some switching leads are even finished with blacktop. During the process of walkway rulemaking some 5 or 6 years ago UTU members attending workshops became quite distressed when the 1 1/2” rock size was being considered for yard walkways. The reason for this concern was because the railroads had for many years been providing the smaller rock size on switching leads. Because of this concern I made several yard inspections with Mike Rowswell, WUTC Rail Safety Manager. I made a point of showing Mr. Rowswell the smaller rock size on yard switching leads. We even talked to officials at Longview Switching Company regarding the newly installed switching lead consisting of 5/8” minus crushed material.

Since WAC 480-60-035 was adopted we have seen improvement to some yard walkways. But what concerns me is the attitude that the BNSF has developed regarding switching leads. I understand that a very high ranking BNSF official stated, during a SACP meeting last week in Vancouver, that the BNSF would now be using 1 ½” yard ballast on all areas of the yards including switching leads. I find that our worst fears are now becoming reality with that statement and actions by BNSF maintenance personnel where larger ballast was placed on switching leads in some Everett yards. The ballast used may even larger than allowed by WUTC rules.

When WAC 480-60-035 was approved about 5 years ago all yard switching

engines had an engineer on board. Since that time remote control has become quite prevalent in BNSF and UP yards in Washington State. Some smaller railroads have adopted or will soon adopt remote control operations. When the remotes are used, the remaining crewmen on the ground have many more responsibilities and duties to attend to. Walking on the larger 1 1/2" ballast is not nearly as easy to traverse as 3/4" ballast. While I'm comparing ballast size lets do some math. 1 1/2" rocks are 8 times as large as 3/4" rocks in volume measurements. I do realize that smaller rock sizes are included in the ballast, but I do know that that largest rocks allowed on switching leads are sometimes 8 times larger than those now recommended in the note. When only two railroaders are now controlling operations instead of three or four railroaders, they should be free to watch out for possible hazards, including point protection, watching out for other crews, rolling cars, looking at switch lists, talking on the radio, watching the movement of their engine and cars instead of being concerned with walking conditions on switching leads.

I want to point out that switching leads compromise only a very small percentage of walkways in yards. I also want you to know that all the yard switching and lining up of railroad cars takes place on these switching leads. Switching leads is where the work is done. Railroad employees deserve good safe walking areas where they do the vast majority of their work. Please consider my request to change the three-quarter inch or less in size recommendation into a requirement. Until this is done I have a bad feeling that we will be having problems with railroad officials trying to save some money and compromise safety by not following your recommendations. Pertinent background information is also included with this request. Thank you, I am

Very truly yours,



Tom Retterath
Washington State Legislative Director
United Transportation Union

CC: Mike Rowswell, WUTC Rail Safety Manager
UTU Legislative Representatives, Washington State

Agenda Date: December 22,1999

Agenda Item: 3A

Docket: TR-981101

Railroad Rulemaking-WAC 480-60-035 Walkways

Staff: Mike Rowsell, Rail Operations Manager

Karen Caille, Administrative Law Judge

Kim Dobyms, Policy Analyst

Recommendation:

Adopt a walkway rule as set forth in Attachment 1.

Attachments:

Attachment 1: Proposed Walkway Rule

Attachment 2: Small Business Economic Impact Statement (SBEIS)

Discussion:

1. Background:

Staff presented a proposed walkway rule at the September 22, 1999 open meeting for adoption as part of the revisions proposed for Chapter 480-60 WAC. Strong objections were raised to the walkway rule at the Open Meeting, some of which had not been previously considered in meetings with stakeholders. In addition, some parties requested clarification of certain language in the proposed rule. As a result, the Commission directed Staff to hold an additional stakeholder meeting and gather further comments on the walkway rule.

After the September 22, 1999 open meeting, Staff requested further written comments on the proposed rule. In response, the railroads stated opposition to any walkway rule, and the labor unions promoted a more stringent walkway rule than the rule proposed by Staff. At a rule making workshop on railroad operations rules held on September 28, 1999, several hours were set aside for comments on the walkway rule, during which additional concerns surfaced. It became evident that another workshop on walkway rules was necessary, and that the economic impact on small businesses needed to be re-evaluated. Therefore, at the October 13, 1999 open meeting, the Commission continued consideration of WAC 480-60-035 (walkways), and directed Staff to report the status of further efforts at the November 30, 1999 open meeting.

On November 9, 1999, Staff held a workshop to elicit and consider all concerns over the walkway rule, and to attempt to resolve the disputed issues. The workshop was attended by representatives of The Burlington Northern and Santa Fe Railway Co. ("BNSF"), the Union Pacific Railroad ("UP"), the Columbia Basin Railroad, the Palouse River and Coulee City Railroad, and the United Transportation Union

("UTU").

Although the stockholders did not reach consensus at the workshop, the stockholders did narrow the issues. The railroads still reserved the right to question the need for the rule and to raise the issue of preemption. Labor still preferred a more extensive walkway rule.

Staff believes the new rule should be limited to walkways in yards. Limiting application of the rule will narrow the areas of disagreement among the parties, take into account the available evidence of need for a rule, and recognize that experience gained with a limited rule can be used to determine whether a more extensive rule is necessary. Also, the Class I railroads and unions are working on the issue of walkways along mainlines through the Safety and Compliance Program (SACP) sponsored by the Federal Railroad Administration. Although the issue in the SACP involves walkways near dragging equipment detectors, resolution of that problem will provide information and guidance applicable to walkways near switches outside of yards. Accordingly, Staff believes that the issue of walkways near switches outside of yards should be deferred.

Staff redrafted the proposed rule and sent it to all interested parties for further comment on November 23, 1999. Comments were due by December 10, 1999. A survey to measure the economic impact of the proposed rule on small businesses was sent with the proposed rule to all regulated railroads on November 23, 1999. The survey was also due by December 10, 1999.

Surveys were returned by the Columbia Basin Railroad, the Palouse River and Coulee City Railroad, the Mount Vernon Railway and the Cascade and Columbia River Railroad.' The Columbia Basin Railroad also provided comments questioning the need for a rule.

On December 3, 1999, the Commission received written comments from the UTU urging more stringent rules. Both Tom Retterath, the State Legislative Director for the UTU, and Eugene Bevacqua, a Legislative Representative for the UTU, submitted comments. Also on December 3, 1999, Tom Retterath of the UTU showed staff walkways in BNSF yards in Longview and Vancouver. Staff found almost all switching lead walkways used crushed material with a maximum rock size of three-fourths of an inch. In some areas even smaller material was used. As a result of these observations, staff added a phrase in the proposed rule recommending, but not requiring, the use of three-quarter inch rock or less on switching leads in yards.

Carolyn Larson, an attorney representing UP, spoke with Staff about that railroad's technical definition of one and one-half inch rock. The proposed rule was changed to meet the least restrictive of the railroad's standards. It is noted that the differences are minor and should not affect walkway safety or ease of walking.

In a joint letter received on December 14, 1999, BNSF and UP again state their belief that there is no need for a walkway rule and that state action is likely preempted by federal law. However, the railroads believe the draft sent out on November 23, 1999 addresses many of the railroads' concerns. The railroads also suggested additional changes to the rule addressing track drainage as one consideration for selecting walkway materials, and addressing a distinction between temporarily and permanently removed walkways. Staff has incorporated the railroads' suggestions. Staff continues to believe that a rule on walkways is necessary, given the strong request for a rule by the labor unions, the history of complaints registered with the Commission over walkway conditions, as well as standards in BNSF and UP'S own engineering standards.

sieve opening.

15 to 60 per cent of the material will pass through a one-half inch square sieve opening.

0 to 30 per cent of the material will pass through a three-eighths inch square sieve opening.

0 to 10 per cent of the material will pass through a #4 sieve (standard nomenclature in the industry).

0 to 5 per cent of the material will pass through a #8 sieve.

0 to 0.5 per cent of the material will pass through a #200 sieve.

Note: Smaller crushed material is preferable. It should be used where drainage and durability issues do not arise. Material that is three-quarter inch or less in size is recommended for switching leads in yards.

(b) Walkway surfaces may also be made of asphalt, concrete, planking, grating, or other similar material suitable for walking.

(c) Native materials may be used for a walkway surface if the materials provide a surface that is reasonably smooth and safe.

(3) Walkways must not have a grade or slope in excess of one inch of elevation for each eight inches of horizontal length in any direction, unless the geography of the area makes this impracticable.

(4) Walkways must be kept clear of vegetation, debris, mud, and other obstructions that constitute a hazard to railroad employees working on the ground. Standing water must be removed from walkways as soon as reasonably possible.

(5) When walkways are removed or damaged due to construction or emergencies, they must be restored within thirty days after construction is completed or the emergency ends.

(6) Walkways must be sufficiently wide to allow employees to safely perform all duties associated with the use of the walkways.

(7) Walkways on bridges and trestles existing on [effective date of this rule], must not be permanently removed without approval from the Commission. Permission must be obtained by the process set forth in WAC 480-60-020. Walkways on bridges or trestles that are temporarily removed or damaged due to construction or emergencies must be restored within thirty days after construction is completed or the emergency ends.

(8) (a) Unless the Commission identifies a serious safety condition on a walkway, Class I railroads must bring their walkways into compliance with this section within 1 year of the effective date of these rules, and Class n and Class HI railroads must bring their walkways into compliance within 5 years of the effective date of these rules.

(b) If a railroad believes it will experience a serious financial hardship in bringing its walkways into compliance within the time allowed, it must submit to the Commission in writing, an alternate proposal for bringing its walkways into compliance. The Commission may grant an extension of time following a review of the railroad's alternate walkway compliance proposal.