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September 21, 2004

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

RECEIVED  
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04 SEP 21 AM 11:10  
STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

Re: Response to Recent Comments of the BLET in the  
Rulemaking on Operating Rules Relating to Point Protection  
Docket No. TR-021465

Dear Ms. Washburn:

Recent comments from the BLET in this proceeding, alleging railroad company untruthfulness and "callous disregard for" public safety concerns, require a response. Attached hereto is the statement that Union Pacific provided to the media after the July 11, 2004 New York Times article was published, responding to the serious allegations made in that article and cited by the BLET.

It would be tempting to respond point by point to the false and misleading statements in the BLET's latest submission, but doing so would take us far from the subject matter of this rulemaking proceeding and distract us from the true issue at hand: Whether the public safety is served by the WUTC attempt to regulate the railroads' use of remote control technology and certain conventional switching operations through adoption of rules for point protection that are different from the railroads' own rules. We respectfully submit that it is not, and we look forward to testifying before the Commission at the rule adoption hearing.

Very truly yours,

KILMER, VOORHEES & LAURICK, P.C.



Carolyn L. Larson  
Attorney for Union Pacific Railroad Company

CLL:hvw  
Enclosure

## **Media Statement in Response to July 11, 2004 New York Times Story**

### **Allegations of Spoliation of Evidence**

**RESPONSE:** Union Pacific's policy is clear: We do not destroy information or evidence needed for legal proceedings. In the rare instances when an individual employee intentionally destroyed or altered evidence, the employee was fired. The company also has in place an Ethics Committee to review allegations of misbehavior.

**ACTION TAKEN:** In October 2002, we instituted major changes to our processes to ensure that all conceivably useful materials are kept after every serious grade-crossing accident. The company has decided to install forward-facing video cameras in the cabs of our over-the-road locomotives to further document evidence during crossing incidents.

**BACKGROUND:** A few years ago, the courts began to expand the types of materials they expect us to retain after grade crossing accidents, even when litigation had not been filed. A number of lawsuits were already in litigation, however, resulting in rulings against the company and its prior document-retention policies.

As the article acknowledges, many of its conclusions are based on statements by individuals who are hired to testify against the company in lawsuits. In each instance, there is another side of the story. For example, the article implies that the company cut vegetation after a recent Arkansas accident to make the crossing look better, but we carefully photographed the crossing to document the scene before cutting the vegetation.

### **Allegations of Failure to Properly Report Grade Crossing Accidents**

**RESPONSE:** During the course of the reporter's investigation, we learned that some of our reporting and compliance processes were not as thorough as we expect. When we learned of these breakdowns in our processes, we took immediate corrective actions. Union Pacific's policy is to be 100 percent compliant with all of the many regulations that apply to railroads.

**ACTION TAKEN:** We have immediately changed our procedures to ensure that proper notification is made in the future. We

**initiated a further, comprehensive audit of all reporting requirements to identify and correct any other shortcomings.**

**BACKGROUND:** The article stated that notification of fatalities at crossings to the National Response Center was inconsistent. While we report consistently and properly to the Federal Railroad Administration and state and local authorities, we did indeed fail, in several dozen instances, to comply with a specific requirement that we notify the NRC by phone.

### **Crossing Safety**

**RESPONSE:** No one wants to avoid grade-crossing accidents more than Union Pacific and other railroads. Emotionally, they take a severe toll on our train crews, who have no ability to stop their trains in time to avoid collisions, and on other employees, who feel the human tragedies that so often accompany these accidents. And these accidents occur in communities we serve and are home to our employees and their families. We all feel a sense of tragedy and loss when these accidents occur.

**BACKGROUND:** Union Pacific has a comprehensive grade crossing safety program that includes system vegetation control, installation and maintenance of grade crossing warnings, inspection and maintenance of track and crossing panels, maintenance of locomotive horns and lights, and training and certification of train crews who operate the trains. Union Pacific also has posted an 800 number on all crossings for immediate reporting of and response to stalled cars or other safety risks.

Although, Union Pacific's policy is to conduct its operations in a manner to avoid grade-crossing collisions, it is law in all 23 states in which we operate that motor vehicle drivers must yield the right-of-way to trains. Working internally, as well as with communities, state and federal agencies, and other railroads, we are continually developing and enhancing accident prevention programs.

In the area of public education, Union Pacific is an active participant in Operation Lifesaver. Union Pacific was the original sponsor of this very successful program on highway-rail grade-crossing and pedestrian safety that originated in 1972. This national, non-profit public education and awareness program exists in all 49 continental U.S. states, Canada, Mexico and Argentina. The program reaches more than two million Americans each year with information about how to

avoid accidents. Union Pacific employees voluntarily contribute many thousands of hours each year making presentations to civic clubs, driver education classes and school children.

Union Pacific also sponsors several safety programs in cooperation with law enforcement. These include the Grade Crossing Collision Investigation Program (GCCCI), the Officer-On-Train Program, and the Crossing Accident Reduction Enforcement Program (CARE). The GCCCI program trains local law enforcement agencies in grade-crossing accident investigation and is endorsed by the International Association of Chiefs of Police, National Sheriffs Association and Operation Lifesaver. In the Officer-On-Train Program, police officers ride trains and are able to witness unsafe motorist behavior through the perspective of the train crew. Officers on the ground then intercept and educate motorists about their safety obligations. The CARE program focuses law enforcement on crossings where there have been a number of close calls or violations. Both the Officer-On-Train Program and the CARE program can be used to educate the public about unsafe behavior at grade crossings.

Union Pacific also has developed a program through which the train crew can report unsafe motorist behavior witnessed at a crossing. When identification of the vehicle is possible, Union Pacific will contact the violator by phone or mail. When a bus or vehicle transporting hazardous material is involved, a Union Pacific special agent will make personal contact with the driver or the company.

In addition to these programs, Union Pacific works closely with road authorities and the Federal Railroad Administration (FRA) to close unnecessary public highway/rail grade crossings. Since the beginning of 2001, we have participated in more than 1,250 crossing closures. The operations of Union Pacific's Response Management Communication Center (RMCC) also have a direct impact on public safety. For example, in 2003 RMCC received 2,319 reports of vehicles stalled on Union Pacific railroad tracks - all vehicles were cleared without incident.

The successful results of Union Pacific's approach to grade-crossing safety are evidenced by the statistical data compiled by the FRA and FHWA. Nationwide, the annual number of collisions between motor vehicles and trains declined 76% during the period between 1975 and 2003. Annual deaths, which totaled nearly 1,000 in 1976, declined to 324 in 2003, a reduction of 68%. Union Pacific's results exceed the national trend. The annual number of rail-highway incidents on Union Pacific between 1976 and 2003 decreased by 84%, from 3,049 to

489. The annual number of fatalities from rail-highway incidents on Union Pacific for the same period decreased 74%, from 261 to 68. This improvement is remarkable given an 80% increase in highway traffic at non-grade separated highways from 1975 to 2001 and the fact that average train traffic, relative to the size of the rail network, has increased 30% in the same period. On May 6, 2004, the FRA announced that highway-rail grade-crossing fatalities had declined to a record low in 2003, down 9% from the previous year and down more than 47% since 1994.

Contrast this success with non-rail motor vehicle incidents on our roadways. For almost thirty years, the number of people killed on our nation's highways has remained around 40,000 per year (1976 - 45,523; 2002 - 42,185). Fatal accidents involving large trucks on our highways have actually risen from 4,035 in 1992 to 4,542 in 2002, an increase of 13%. If the freight we carry were on the highways, far more accidents would likely occur.