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June 11, 2004

Carole J. Washburn, Commission Secretary
Washington Utilities and Transportation Commission
1380 S. Evergreen Park Drive, S.W., P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket # 040151

Sent VIA Electronic Transfer Format

Dear Commissioners:

The Washington State Legislative Board, Brotherhood of Locomotive Engineers and Trainmen appreciate the opportunity to provide comments on Proposed Rulemaking (CR-101) in this docket filed with the Code Reviser under statement of inquiry docket #040151.

Now a year and a half into this discussion of railroad safety in Washington State, the WUTC appears focused generally on point protection in an attempt to craft a rule that is understandable and enforceable under Washington State law. In the recent call for written comments, the Commission requests specific information variously discussing definitions of drop, kick, and shove; railroad applications of General Code of Operating Rules (GCOR) 6.5, and railroad applications of GCOR 6.2.1. The BLETT provides comments on these requests below.

Definitions

For over 150 years, the railroad industry has relied on a tacit understanding of the terms "drop," "kick," and "shove" to operate trains. Railroad culture provides an immediate understanding of these terms for new workers as common building blocks in railroad operations. Just as "is," "and," or "the" are not defined in the GCOR, the railroads are

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correct that drop, kick, and shove are also not defined in the GCOR. Recognizing the clarity the Commission brings to this discussion of railroad operating safety, the definitions offered by the Commission are descriptive of the tacit knowledge railroad workers understand of these work practices. As with all federal or state regulations, the railroads may extend these definitions to incorporate additional descriptors; however to date, the railroads have not deemed that necessary. As a minimum working definition, the Commission classifications are understandable and useable for engineers and trainmen operating trains in Washington State.

GCOR 4.5

The WUTC staff suggests a minimum safety net for railroad operations to avoid collisions between conflicting train movements. Drawing on GCOR 4.5, the commission prudently suggests using the minimum necessary part of that rule to assure railroad worker and public safety.

The Commission Staff's proposed rule does not prevent the railroads from extending additional requirements of that rule to accommodate conditions beyond the concerns documented by the Commission Staff. In addition, the exception proposed by the WUTC staff appears to incorporate the wording adopted by the UPRR effective (4/1/04). Logically speaking, it is clear that "a crew member must provide protection for the movement" for the railroad to be "reasonably certain that neither people nor equipment could be in the way when cars or engines are shoved." While semantics are an important element of the regulatory process, the use of semantics to impede the process of the WUTC to address serious public safety issues in railroad operations should be identified and avoided.

After careful examination of the multiple railroad operations throughout the state, the BLET has not identified any existing railroad operations currently abiding by railroad operating rules that would be stopped by the application of the rules proposed by the WUTC. However, this investigation has identified numerous examples of railroad operations that were inconsistent with both railroad operating rules and WUTC proposed

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rules. These anecdotal observations are consistent with the statistical analysis of observed work practices previously provided for WUTC consideration.

GCOR 6.32.1

WUTC Staff asks for examples of railroad operations that would not be allowed by the draft rule presented at the May 12, 2004, open meeting. The rule suggested by the staff is consistent with the application of the rule in the General Code of Operating Rules and the BNSF railroad. UPRR suggests that an exception is applied at locations when "remote control moves are made over a gated crossing equipped with cameras." Under WUTC proposed rule (4) "the warning required in subsection (3)" is not required when crossing gates are in the fully lowered position, or it is clearly seen that no traffic is approaching or stopped at the crossing." Since the UPRR exception goes beyond the requirements of WUTC Staff, there is no part of this rule that can be construed to impede the application of UPRR rules effective 1/4/04. The Commission Staff has modeled a rule that provides exception for the UPRR rule application.

Finally, the FRA has submitted an Interim Report on the Safety of Remote Control Locomotive Operations. If this audit had provided credible results, the safety of remote control operations would prove to be favorable. However, the BLET through its internal research department and from external research sources as well as two independent law firms have not been able to confirm FRA conclusions in the report of road crossing protections. In addition, independent researchers have not been able to reproduce the safety conclusions suggested by the interim report. Further, the methodology employed by the FRA is problematic, given independently gathered information in the industry. With all of these concerns in mind, the BLET is in the process of reaching some clarification from FRA on many of these issues. The change of FRA Administrators has delayed this process for this current WUTC request to provide written comments in TR-04/151. The BLET will apprise the Commission of changes as they develop over the coming months.

Initial correction word here is based on discussion with WUTC staff about a possible typographical error in the staff document.

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Having said this, the present work of WUTC is on General Point Protection, and the Interim Report of RCL Operations does not directly address the concerns of Docket #080151. However, the FRA Interim Report does present a paradigm of railroad safety inconsistent with Labor's understanding of worker and public protection. In the report, the FRA speaking of point protection suggests, "...one solution would be to require an RCD to protect the point each time there is an RCL train movement, this practice would greatly reduce the speed and efficiency of RCL operations." (p. 12). This statement betrays a paradigm that efficiency is of greater importance to the railroads and the FRA than the safety of railroad workers or the citizens of Washington State. Over 150 years of operating experience has taught railroad workers in the United States that in general railroad operations, every train movement requires point protection every time.

For Labor generally, worker and public safety exists on a continuum between life and death. For the FRA and the railroads, worker and public safety exists on a continuum between life and operating efficiency. The BLET continues to encourage the WUTC to place worker and public safety on a continuum that will save lives in Washington State.

Thank you for your attention to these important safety issues in Washington State.

Respectfully submitted,

Mark K. Ricc, Ph.D., Chairman
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