

December 31, 2002

Mark K. Ricci, Ph.D., Chairman  
Brotherhood of Locomotive Engineers  
Washington State Legislative Board  
1620 217<sup>th</sup> Ave Ct. E.  
Sumner, WA 98390

**RE: Petition for Adoption of a New Rule Regarding Locomotive Remote Control Operations; Docket No. TR-021465**

Dear Chairman Ricci:

On November 1, 2002, the Washington State Legislative Board of the Brotherhood of Locomotive Engineers (WSLB-BLE) filed a petition requesting that the Commission adopt rules relating to Locomotive Remote Technology. On November 11, 2002, the WLSB-BLE consented to a 30-day extension of the statutory deadline for the Commission to take action on the petition in order to give Commission Staff more time to review the issues raised in the petition.

The WSLB-BLE proposes that the Commission adopt the Federal Railroad Administration's (FRA) Safety Advisory 2001-01 (Safety Advisory). The Safety Advisory contains extensive guidelines on subject areas that include the following:

- Safety Design and Operational Requirements;
- Training;
- Operating Practices;
- Security;
- Inspections and Tests;
- Notification of Remote Control Locomotives; and
- Accident-Incident Reporting Procedures.

The Safety Advisory was issued February 14, 2001, and compliance is in large part voluntary. The WSLB-BLE cites a recent accident in Washington State that involved use of remote control locomotive technology in support of a need for the proposed rule, and asks the Commission to adopt the Safety Advisory guidelines as mandatory standards in the state of Washington.

The Commission recognizes that the FRA guidelines address public safety issues of concern, and understands the WSLB-BLE's concerns regarding whether voluntary guidelines sufficiently protect citizens and property in the state of Washington. The Commission notes as well that the petition acknowledges the existence of potential issues regarding whether the WSLB-BLE proposal is preempted by federal law (*see* 49 U.S.C. §20106). The Commission believes that the most efficient use of resources of all parties is to first address the preemption issue prior to addressing rule language.

The Safety Advisory contains over thirty separate recommendations, many of which have multiple subparts. The FRA developed these recommendations after conducting a lengthy investigation, including a hearing and a technical workshop. During the hearing and workshop, the FRA received testimony and comments from several manufacturers, labor organizations, railroads and their associations regarding "a broad spectrum of opinion concerning the merits of the program requirements, the resultant risks to railroad employees, and the safety of the technology." *See FRA Safety Advisory 2001-01, Supplementary Information – Background section.*

The Commission believes that while the issues raised in the WSLB-BLE's petition are of concern, a thorough review and analysis of the issues underlying the Safety Advisory, including input from other interested persons, should be undertaken before proposing any rules for adoption.

Accordingly, the Commission rejects WSLB-BLE's petition and declines to file the guidelines as a proposal for a new Commission rule. The Commission does so in order to first study the Commission's authority to enter this area, the need for Washington State rules, and the form that any needed rules should take. The Commission has therefore directed the Commission's Secretary to file a preproposal statement of inquiry (CR-101) to

Brotherhood of Locomotive Engineers

Docket No. TR-021465

December 31, 2002

Page 3

investigate whether the commission is preempted from adopting locomotive remote technology rules and if the Commission is not preempted in this area the rulemaking will proceed to consider issues related to rules governing locomotive remote technology.

Sincerely,

Carole J. Washburn  
Secretary