

**WAC 480-62
RR OPERATIONS RULEMAKING WORKSHOP
TR-981102
May 27, 1999
9:00 a.m. - 4:00 p.m.**

ATTENDEES:

Paul Scott - WASHARP, Washington Association of Rail Passengers
David Reeve - BNSF
Rob Andreotti - City of Puyallup, Public Works
John Haakenson - L.R.C., Port of Benton
Larry T. Martin - Brotherhood of Maintenance of Way Employees
Bruce Noot - U.T.U. Legislative Rep.
Terry Wade - NARCOA
Roger Sackett - NARCOA & PRO
Roy Cross - City of Kennewick - Public Works Director
David Lutz - Columbia Basin Railroad
Carolyn Larson - Union Pacific RR
Tom Foster - Puget Sound & Pacific Railroad
Ed Fisher - Puget Sound & Pacific Railroad
Pat Halstead - BNSF
Eric Shields - Town of Steilacoom
Steve Finch - Yakima Police Department

UTC Staff:

Kim Dobyms
Jeff Goltz
Mike Rowswell
Penny Hansen
Karen Caille
Scott Barrett

Bridge Line:

Tom Kimbrell - UTC Spokane (via bridge line)

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KD: (Introduction - explanation of workshop procedure, review of materials to include proposed time-line and ground rules)

- KC: (Review of rulemaking process & procedure)
- KD: (Explains that whichever team member is most comfortable with a topic will be the one addressing it today.)
- MR: Thank you all for coming . . . The purpose of this meeting is to explore the issues to see what you think the concerns are and what you would like to see changed . . we need to put these rules into good shape so we are serving the citizens of the State . . .
- KD: First issue - clarifying rules. These are subject to the rules that we have put in other chapters. The idea is that when you pick up a chapter of rules you can look at it and at the very least you know where to call if you don't understand it and that it's complete enough that you can read the rule and understand what it's saying to you. On Items A-F we'd like to know what you think about these. I thought maybe one of the items you may have concerns with is Item F which is the compliance policy - putting in rule what the commission's policy for enforcement is. Do you know what the commission's policy is? (No response)
- MR: That's another reason for going through these rules is to layout what we are about and what we're doing so we don't have any hidden agendas. . .
- JG: One of the issues here is on one hand - at the same time the Governor told the agencies to clarify and adopt rules many legislators wanted the agencies to reduce the volume of rules. This is consistent with one of those purposes and really cuts against the other one because one way to do this would be take the definitions, etc. and put those in one chapter at the beginning of all chapters. What is proposed here is to take all those things and put them at the beginning of the rail chapter.
- TF: I think that's a good idea to have that up front - we don't have all those different groups that you discussed. We're going to concentrate on the railroad side so to have this in the front makes a lot of sense.
- MR: I'd like to press the point on the compliance policy. The way we operate in the rail section - we are preempted by the federal government. They have a state participation program and we have three inspectors now that are certified by the Federal Railroad Administration to perform inspections and enforce federal rules. They try to bring people up to snuff for when the feds come out. At some point we become enforcers. If the practice isn't corrected or we can't get the cooperation we need - we will use enforcement techniques. That is the policy that we are going to be adopting here. If cities, railroads or unions have concerns about that, we need to hear that . . . if that isn't working then we need to do some changes and we are open to that.
- RC: Is your intent to get comments on compliance?

- KD: A policy on compliance would be to provide technical assistance before issuing administrative monetary penalties. There could be some other elements that might define how much technical assistance - it's an overall policy statement. We want to hear if we're not doing something correctly we want to hear examples of that.
- RC: How do you get compliance from the railroad companies? Is now the time to talk about that?
- MR: This would be the time to mention that.
- RC: If an agency has an issue and we're not getting a response - what do we do to get compliance? (he's from the City of Kennewick)
- MR: You mean if you have a specific issue and see it as a non-compliance and you want assistance with that? If in fact it is a violation of our rules - we can site them if it is appropriate after you have followed the procedures for filing a complaint with the Commission. Have you called and gotten no response from us?
- RC: No, we've worked within our City ordinances and we aren't getting anywhere.
- JG: If the issue is violation of a commission rule or order then that's where the commission would have jurisdiction. The same thing may be in violation of commission and local ordinances . . .
- RC: I'm thinking this is in violation of both local ordinance and commission rules.
- JG: (explaining process of complaint)
- RC: That's where we are at anyway.
- JG: Again, it's a question of whether the RR is in violation of a provision of law, an order or rule. And maybe that process should be described in reference to the rule.
- MR: Let me give you an example of how we can assist informally (gives example).
- RC: I think the problem we're having is we don't know who the right people are to contact.
- KD: When you talk about identify - do you mean identify at the commission or the railroads?
- RC: The railroads. I think if the railroad company at the management level was aware of what's going on it would probably safe some - they are just not aware.
- MR: That's something that we can do informally on an ongoing basis because it is changing all the time. We can help you with providing that information. Maybe a rule requiring that

would be appropriate at some time if we can't work it out informally. We have recognized the need to provide that information.

KD: Just to give you an idea, the next step is to draft some actual language that people can actually look at and review and comment on.

RC: It was not my intent to come here and complain about one specific issue - it's to set up a better mechanism to work with the railroads to get these problems solved so every time a situation comes up we're not issuing a citation on a daily basis and not getting any response.

KD: Does anyone else want to comment on this set of issues?

LM: I have a comment to follow-up on what he just said - I don't think it's a breakdown going to the management like he's saying, I think it's being stonewalled farther up. The people below them have a certain budget and they are told if they don't stay within it it's going to cost some jobs. It doesn't matter who you go to the stonewalling is going to continue.

KD: Any other comments?

RC: The problem we are having is - weekly there is a problem. We try to communicate with the railroad and we get no response . . . we can't even get someone to come down and look at the problem. I just don't think that it's known at the upper level that this is going on.

MR: By the same token is, what Larry is saying is it could be a structural problem that if there are budget limitations and they may not even have the people or time to respond. It could be just a matter of people becoming aware at different levels.

RC: As I said we, at a municipal level, can implement a penalty very quickly every day and we can't even get them to respond.

KD: I think we'll probably come to that issue . . . we're not going to that right yet because I want to keep on the agenda. We'll move to the next issue.

PH: Notification issue. I have had an opportunity to go around the state and talk to a lot of public people. This key for this is planned railroad events - not emergencies. I need the industry's help, public's help, cities . . . we've received 11 comments and just two comments are opposed the rest are in favor of a possible rule of this notice. I'm interested to hear on the notification issue - if you would support that and if so, what you would like to see the rule do for some of your issues. Who should be noticed? Should the fire dept be noticed? For planned things such as if a railroad plans to cross a blocking for a few days for construction or something like that. What is advanced notification?

What kind of activities do you want to be notified about? Then there's the flip side of that - what if an emergency comes up on the railroad side and how would we handle those types of notifications?

JG: I might add too - if you look at the written comment summary most public agencies support and the company representatives state in effect this is already worked out in the context of state or local permitting agreements. I'd be interested in hearing what the local government response is to that and what the reply of the railroads would be.

CL: In regard to the comments to which Jeff just referred - I know that our comments were directed at the understanding that we were to give advance notice before temporarily closing a crossing to do maintenance work. It wasn't clear from the initial scope of the rulemaking that you were asking for comments about any planned railroad activity. The written summary comments here would apply only to the issue of perhaps closing a crossing in conjunction with construction activities which are covered by the construction and maintenance agreements for crossings.

JG: Tell us more about those agreements. Those are agreements that you are obligated to enter into because of what, or because you just do it? Is that an obligation you have under some provision of law?

DR: I thought the construction maintenance agreements were something we entered into under the direction of the WUTC whenever we do work on crossings. Part of the provisions of the agreement was that there be public notification of a closure, even a temporary closure. The point would then be what other additional notification would be required? Once you notify a municipality then are they then responsible for notifying the appropriate authorities like the fire dept, etc.?

JG: So what you are saying is that some notification is taking place in the normal course of closure crossing and that is a function of agreements that you enter into.

DR: I don't think the agreement is with the local entity . . .

CL: It's probably with whoever has jurisdiction over the street.

DR: I can certainly get a copy of an agreement and send it to you Penny.

TF: Looking back at this notification issue on crossings - that's basically what we've done. We work with the local people to notify them. . . there's a working together and a notification process that is in effect today that I think is working satisfactorily from our vantage point. I see this as a process today that is already going on.

JG: How have you handled this?

- TF: We've dealt with the local people that were either the state or the city or both and handled it locally right there. There is a notification process that almost has to go on.
- DL: I would like to concur with what the representatives have said. It seems like the greatest amount of exposure on this issue is with grade crossing type of construction and that's something that's worked through on a local level or with DOT as far as blocking notification, setting up detours. So going beyond that - if we can at least agree that as far as highway crossings and road crossings there is something that seems to be in place that covers the public's interest as far as notification. What beyond that would be an activity that would require further notification and how is that a safety issue?
- PH: Do you have current processes already for how you work with the cities when these issues come up and if so would you be willing to share those internal procedures with me?
- DL: Briefly - no. I would be glad to share it if we had something written - but there's not a written policy. Like any other citizen of the community if there are things that are going to go that impact the community we can't go in and close a road for a day or a week at a time and not suffer some sort of penalty for that so we would do what's necessary to notify and reroute traffic to take the impact away from the community.
- MR: We have several local communities here and I'm wondering if you had a perspective on things that happen that railroads have an impact that notice would help you in some way?
- RA: I come here a little bit at a disadvantage because I don't tend to work on it on this end for the City. I can't recall off the top of my head where we have had a problem with the railroads on crossing closures - it seems to work well. So I don't have any comment on planned closures.
- MR: One of the reasons where this came up is (gives example of town in Eastern Washington all three crossings closed for 3 months). We're exploring this to see if there is a need - we don't want to be in the position of imposing a requirement that's useless or burdensome. We're seeking input because we've had complaints.
- PH: We haven't decided if we're going to do this or not, we just want the input if it's needed.
- RC: My perspective is - we've had no problem with notification and I would urge you not to pass regulation on something that's impossible to enforce anyway. Even if you pass this regulation and the railroad doesn't comply, what are you going to do?
- MR: If they don't comply, then it goes back to the compliance policy. That's a tool that we can fall back on if there is a perceived problem that goes on. We will enforce it. That's why we want regulations that are important and useful.

- RC: It's our experience that the railroads - once we're going to get the work done the railroad works well with us.
- KD: I have another question for Carolyn and I know you said this once . . . the comments that you sent on the subject of notification did not specifically address what we're talking about here? These were responding to something different?
- CL: It was our understanding that the type of planned event that the WUTC was referring to was crossing closures in conjunction with maintenance work. I'm not sure that's the type of planned event that the cities have been talking about in their written comments.
- KD: Thank you that's more clear - is there anything else that would need notification in addition to a planned crossing closing for maintenance? (No response) Penny did you have any more questions on this issue?
- PH: If you have additional comments on this I'd be interested in hearing them and I'd be interested in seeing the maintenance agreement or contract.
- RA: On notification under emergency situations - I don't know how railroads handle that - but as a city we are heavily mandated by the state I believe to bring up our dept of emergency management. Is there a notification process within the railroads?
- CL: Definitely - the dispatchers and others will know who to notify wherever an incident might occur and those policies are always updated with new phone numbers and other contact information.
- MR: There was an incident in Yakima and I think it involved Burlington Northern (gives example re: possible "hazmat" spill, all numbers out of date). . . I don't know what the best way to pass all of this information is.
- PH: (w/BNSF) Presumably you folks have a web page - every city and town in the state has the capability of accessing it. If you've got a web page I think this is probably the quickest place to put this stuff. I had to make that observation.
- DR: I was going to also mention that there is an 800 number and if you call that number they will get you to whoever you need.
- CL: Union Pacific has a toll free number to and it's 1-888-UPRR COP.
- KD: Those 1-800 numbers are also in the written comment summary under the railroad special police issue.
- TW: I believe that BN has also posted 1-800 numbers on your crossing guard posts at every crossing.

DR: I believe it's the same number.

TF: PSNP does that as well - I don't know that they are all done.

KD: Did anyone else want to comment on this? Next issue is blocking of crossings - let's take a 10 minute break and then we'll come back.

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KD: The next issue is blocking crossing and Mike will handle that.

MR: This is an issue that we heard about years ago . . .there are many places where blocking occurs where it is counter productive to require breaking of the train because it takes longer to take it apart and hook it back up. There are places where trains have to stop. It's kind of a very complex problem and one that requires a lot of thought. We're asking 1) if it's a problem and 2) are there specific types of blockings that are inappropriate that can be solved easily? Those are the questions we have. We understand that it is a major problem from both standpoints. We're looking for help, input and thoughts. Some states have put into place a program where people can petition that a specific crossing never be blocked. It's then designated as an emergency route, etc. Other states have a 5 or 10 minute rule. I'm not sure a blanket rule is going to be effective in our state.

PS: One time I was driving through the town of Edwal - there was a train blocking all the crossings . . . school had just let out and there were homes up above the crossing (tells story of child crossing over train) That is definitely a potentially hazardous situation. It's another reason why these trains cannot block crossings for more than a short period of time.

TF: It is a tough issue. I support pretty much what the Columbia Basin has said here. There's various times just with the switching operation that you're blocking crossings for more than 10 minutes. Most engineers and conductors look at these crossings and they look at the amount of people that are there and they make a judgment. I have an understanding my with my crews that we have a 10 minute rule and I will tell you we have been longer than 10 minutes. No railroad wants to become a bad citizen. I don't think you can legislate this thing - I think each one has its own unique situation. We try to adhere to the 10 minute rule.

MR: Over the last 3 years we have had some complaints where crossings have been blocked for 24 hours up to 40 hours and we are getting requests from citizens to do something about it. We are getting to where we need to do something about it. How can we safeguard these people without unduly having a regulation that goes too far.

DR: I read also in some of the comments the 24 hour block in Dec. 96 - that's the same time we had 40 different slides on our right-of-way, an Amtrak train was derailed, a

locomotive was pushed into the sound and two of our people were hurt - it shut down the operation. When you start talking about that kind of specific we're talking about something that was unusual from our normal operations. I agree that no railroad wants to block crossings and get everyone upset. It's not something that lends itself to a blanket type regulation because there's always going to be a situation where that doesn't work.

- KD: What would you think about a rule that followed the GCOR's and also there was a method to apply for an exemption in a specific situation that would require railroads to come to the commission and apply for the exemption?
- MR: The General Code of Operating Rules provides that crossings will not be blocked for more than 10 minutes if possible. I believe that's the wording. The question always is what does the "if possible" mean.
- DL: The "if possible" takes into account all of the requirements that are in place for crews and these are federal airbrake test requirements, etc. So a crossing may be blocked and there are procedures that the train crew has to endeavor to complete before they move their train. Then you've got to take into account that you're going to have to get around those requirements or think in terms of the additional burden that's going to put on you as a rulemaker or the railroads as being required to comply with that. 10 minutes if possible in this company's opinion is the best standard that we can live by. It's more of a local issue.
- JG: As I understand your comments - we couldn't have a system in state law that would allow localities to adopt rules.
- DL: What I'm saying is - I'm not saying that the local municipalities deal with each crossing specifically that perhaps on a personal basis that municipality approach the operating department of that area and try to work out issues if there's a crossing that has a nursing home or disabled person that can't have a crossing blocked or a private crossing. Perhaps that issue can be worked out locally. You're going to try to write legislation based on anecdotal sort of incidents than really broad ongoing abuse of this right to obstruct a public crossing.
- JG: Am I correct there's nothing in the federal rules on this?
- MR: That's correct.
- BN: Speaking for trainmen - there was a solution a few years ago before we lost the cabooses - we can't back up anymore if everyone is up on the engine. There are solutions but there's not any easy ones.
- TF: Mike your situation that you described in northeastern Washington - was that finally dealt with?

- MR: It's still ongoing. Maybe the approach is that we need to get actively involved in trying to work out solutions on an individual basis to try to come up with solutions more forcefully before going the rule route. Or have a rule like the GCOR that allows us a hook to discuss what does "if possible" mean?
- LM: When you listen to this and you watch the traincrews out there - excuses like airbrake tests, the mudslides on the west coast - that didn't address how crossings could be blocked for 40 hours. There wasn't a problem up there. There's no excuse for this. People have put enough pressure on the railroads to do something. If you have the rule then that's going to give you something to go out and enforce.
- KD: Do the GCOR's have anything in them that say how many crossings in a given area can be blocked at one time?
- MR: The extent of the rule is a crossing will not be blocked for more than 10 minutes if possible.
- JG: The GCOR's are adopted by who?
- MR: The railroads.
- JG: Collectively or some collective way?
- DL: Collectively.
- JG: How often are they updated?
- DR: For BNSF - there is no set schedule. It's based upon what was perceived to be the need for rule changes.
- JG: Do the railroads have the same GCOR?
- DR: I don't think we do - they are similar, but I don't think they are identical.
- JG: But does each railroad have a version of it? Are they required by federal law?
- DR: You do it because you have to have the rules in order to run the railroad but also under 49 CFR 217 I think.
- MR: And they are required to be filed with the Federal Railroad Administration.
- CL: And there are procedures in between time when the rules are actually re-issued for issuing certain changes or specific exemptions for certain areas.

KD: We haven't done the research on this issue as far as what other states do - do you have any information available about that?

TF: Yes we do.

KD: Does anyone else have anything they want to say about crossing blockings?

RC: Is there any legislation that exists

KD: There's a federal participation program I think Mike can speak to that.

MR: As far as an ongoing . . .very few grade crossing separations are funded. The problem is do we put in 20 signals and gates or one separation.

RC: There's a lot of money available to would this be the organization to set up the criteria . . if you need these certain warrants?

MR: The State DOT does have a set of warrants that include grade separation - in cooperation with WASHDOT we are putting together a database . . . there are two questions . . . we tend to concentrate on safety and I will take that as a suggestion to do.

RC: I think somebody has to set up . . I'm thinking of a more general . . . at least that triggers the need

MR: I don't believe there are any such criteria.

RC: There needs to be . . . I can't think of a better agency to set that up

MR: I'm not going to say yes or no because it's something we hadn't thought of. I appreciate the comment and concept and it sounds like it's something that needs to be explored.

MR: The City of Kelso has enacted an ordinance, the City of Seattle, however at the time there is a suit pending - I don't think it's been decided.

(Tape ended . . . missed some discussion here)

CL: . . . there is no federal regulation of the crossing block so you're not talking about the regulation of something that is already regulated at the federal level.

RC: My comment is if there is no federal regulation and the municipal ordinances are not going to be valid I would feel the state definitely should adopt a rule.

MR: Thank you for your comments it's one of the things we are struggling with and why we are asking the questions. A flat rule is difficult and if you pass a rule that is not

enforceable it's never going to be followed or enforced. At the same time if there is a problem it needs to be addressed.

RC: I think most cities would feel that their ordinances would apply. We need something to tell the railroad companies they can only block for so long.

MR: Thank you.

KD: Any other comments on blocking of crossings. We're moving on to remote control train issues.

MR: There is a railroad that is using remote control operations. There have been questions raised throughout the country about this and we are raising questions because they have been raised elsewhere. We have seen the safety videos and procedures in place. One of the things we are thinking about is just being aware of where and when remote control operations are occurring and in what type of situations. If someone else has more information about specific problems we would like to hear about those to see if a rule would be appropriate or needed.

BN: As a laborer I think labor is opposed to this because it actually eliminates somebody and you're down to one person running the whole show. We see it as a danger to the community and other workers. So we are opposed to remote control trains.

MR: I don't know how much of this has occurred elsewhere. Has there been much and what has the experience been with either problems or lack of problems?. Does anyone know?

RS: I'm speaking as a private citizen now. Wisconsin Central is the railroad that has had the remote control operations. From what I have read about it - it has been a totally safe operation and it has only been the opposition of organized labor that has forced that to be shut down in a limited manner right now.

TF: I used to work for the Wisconsin Central. I agree that they are completely safe operations. We are using it on the PSNP today. I'm going to let Ed explain how the operation works - I brought him particularly for this. We notified the FRA. We have had the FRA both from the motive power because the remote control works directly off the locomotive. We had Frank Reynolds out of the FRA - from a mechanical standpoint he went through our rules and procedures on that. We've had Darrell (?) who's the operating person out twice, once with me when I invited him own. The second time he came out on his own and did his own inspection. We see it as a switching vehicle in industries. We use it out at Grays Harbor in the Aberdeen-Hoquiam area. We put it in August of 98. We worked with it just trying to get comfortable with it until January 1st. I might add that this remote control has been extensively used in Canada and also in the European railroads. It is a one man operation but you have to remember you're not talking back to an Engineer - giving an engineer signals as to what to do. This person

handles it all himself. You cannot afford not to be cognizant of safety. The person who operates this has to be a qualified engineer and qualified conductor. We do certain operating practices that are one of the major concerns with that. I'd welcome anybody to come out and see our operation out there.

EF: It's not a new technology, it's been adapted on locomotives since the late '70s (explains history). I brought a box with me. Everything you can do from the cab of the locomotive, behind the engineer's seat, you can do by this box (demonstration to see how it works). The crews who have operated it find it a great tool. The one disadvantage is that you lose feel for the brakes because it's all done visually. We make them come to a complete stop before hooking into a car.

TF: We dealt with that issue.

EF: As far as the feds rules & regulations - they are pretty precise and in detail even to the point that there's regulation on the power of the transmitter. We met and even exceeded their regulations. What's going to get you into trouble is if you don't follow your normal train operating safety procedures.

TF: I think that's the most important point here - this is no different than what we're expected to do today when we have an engineer and a conductor on the crew. All of the safety issues are the same standards that the remote control person must follow.

JG: First of all, what's the status of the federal rules are they adopted or proposed?

TF: We understand that there are rules being developed right now. I don't know if those standards are regionalized or nationwide.

JG: In your view are there some situations where it would be unwise to use remote control or where it would be ok?

TF: I would say where I don't see remote control working is in road train operations - where you go from point A to point B. Where it works the best is in an industry switching. We're at restricted speed and you're always going backwards and forwards. When you get on the road - you're not going to stop most of the time.

JG: What about when you're blocking crossings and you're moving a train around - would that be an o.k. spot?

TF: We protect our point on that - in those situations where we are out there at the crossing - we have a person on the point. There's no moves made where you have what we call a blind shove where someone would push something without being on the point. That's in our rules and regulations that you always have to protect your point. If you are shoving across a crossing that's protecting your point.

MR: Do the federal rules on the crossings and movement over-crossings - do they cover all potential situations where a trainman using the remote control has to have visibility of the crossing?

EF: The same rules apply to a two man crew. If you're shoving making a backwards movement - there has to be a person on that leading car going through a crossing. When he's running remote - he's in the cab and he can see both sides and walk from one side to the other to see across it.

MR: No one is ever out on the ground?

EF: Yes in remote dropping off a car and picking up - he's controlling the engine but he doesn't back up through a crossing blind.

MR: Does he go forward through a crossing blind?

TF: No.

MR: Do the rules cover that situation? The rules assume someone is in the cab . . . now we've got a situation where you're not shoving because the train is going forward. Is there a rule that requires a person to see the crossing when he's on the ground and you are not shoving blind - you're pulling?

TF: That's the same situation. It doesn't make any difference . . . you can't do anything different than what you're required to do with a two man crew.

MR: I'm talking about the wording of the federal rules. I was concerned that maybe the words get in this way on this one.

TF: The point we've taken is - what is the safest way to do this? We've adopted the same rules for the one man that we have for the two man.

MR: I'm not questioning you specifically. I'm talking about the general situation.

EF: One regulation going through a crossing is you have to have the headlights on bright, ring the bell and blow the horn. That is all done by the box. The headlights are automatic with the reverser.

BN: Getting back to what you were talking about - if a guy is setting out and picking up a car he's working down at the other end of the train and nobody is really watching. Your rules cover that and no one should be going across a crossing without somebody watching it on the train end - if he's got two crossings he's watching . . .

TF: We won't say that the person doesn't do a lot of walking. What ends up happening is that

person walks a lot more than a normal two man crew does.

BN: Is that going to lend to somebody taking a short cut?

EF: I understand your point and one thing to keep in mind - we're talking about 3-4 cars where it's not a big thing to make a hook and the remote control operator to walk four cars to block a crossing.

TF: If you set off a car 50 cars deep . . . we don't do that.

BN: That's something we need to address then - how many cars or how many feet?

EF: That's in the federal laws - I think we have a limit of 18 cars, it's actually done by tonage and it falls into your regular operating rules - you do not go across a crossing blind.

BN: Right that comes down to visibility and you can't always see unless you are right there.

TF: We are there.

MR: I'd like to make a comment here. We knew there would be conflicting sides on this and that's good. That's what we want. We need to understand all aspects of this operation to see if there are problems and we're all after the same thing which is safety. At this point I think that the points have been made unless there is something new that needs to be addressed.

CL: I think that we need to define remote control operations . . . I think that's probably something which there isn't any intent to slow the development of positive train separation in terms of that kind of remote control operation. The term needs to be defined so that we know what we are all talking about.

BN: Right.

KD: I think when we started on this we initially didn't know too much about remote control trains except for Scott Barrett and we didn't really know if there were any operating in the state. We were talking about the new technology, remotely driving a train. I have one question that came up on the written comment summary - from the UTU - when the UTU sent in information they gave us fatality statistics regarding power haulage operations - is that remote control operations? Do you know?

TF: I didn't know what that was either - I have never heard of power haulage.

KD: The reason I bring this up is this was the language that was brought in the written comments and it wasn't clear to me if we are talking about the same thing. When you go back to your group if they could send to us the documentation for these statistics and

clarify what that term "power haulage operations" means.

BN: I'll talk to Tom about that.

LM: What are the plans in the future for over the road remote operations?

DR: I don't know anything about the remote control operations for the BNSF other than I know that there are no plans for the State of Washington.

LM: I think the stuff we've seen before have brought out the possibility and I'm not sure if we are talking 4-5 years or even less than that. Two years ago there was a statement in one of the BN magazines that stated they were getting closer to that becoming a reality.

KD: I think it's just an interesting subject but I'm not sure ascertaining what future plans the railroad companies have would be completely productive to our rulemaking so I would suggest you ask that question in a different forum. With regard to the rules - we as a commission need to determine what the safety concerns are and are they addressed and do we need to do rules before the FRA who hasn't done them yet?

LM: But that was the purpose of my question - if in the next couple of years that's going to become a reality then it would be more important to know what their schedule is to know what kind of rules and when you need them.

MR: Is that an issue that should be addressed to your headquarters and see what kind of response we get?

DR: As I said - I don't know of any - as far as I know there aren't any plans in the state of Washington to initiate remote control operations but we'll ask them.

CL: I was told the same thing.

BN: Coming back to your question - should the commission be notified if they plan to - yes I think they should be notified so we can make rules and get them in place beforehand if we need to.

MR: The railroads - as far as - if we require that you notify us prior to initiating remote control operations - is that a problem?

CL: I see it as somewhat as a compliance problem if we don't know who to notify - if there's no one working on that project.

KD: If we had a rule that says - all remote control train operations require advance notification to the commission and there would be a rule book with a notification process - then whoever was going to do that would know.

DR: The issue is . . . getting the rule in front of the right person.

MR: Maybe that's a discussion that we need to have with each of the companies as to how to best get to the people who need to know the information on an ongoing basis. As any large organization it's tough to always know who to contact and how things are going to work.

KD: That's another issue Mike. We're going to break for lunch and pick up on our agenda from there. We'll start at 1:10.

* * * * *

KD: Let's get started - (explanation of conference bridge)

Attendees joining after lunch session:

Eric Shields w/Town of Steilacoom

Steve Finch w/Yakima Police Dept

KD: Motor track cars

MR: Motor track cars used by non-railroad personnel raises issues about safety at crossings and who should be responsible for that safety. When a railroader who has ongoing training is approaching a crossing - that's one factor. But when someone who uses the railroad occasionally approaches a crossing we are concerned whether or not that individual has the training to do what is appropriate according to rules. I heard from the Federal Railroad Administration yesterday that a question about the use of motor track cars on accepted track when carrying a passenger has been a concern around the nation. The FRA is taking the position that motor track cars cannot carry passengers on accepted track.

RS: I did want to clarify the origin of this concern came from the accepted track position from the FRA or where?

MR: No the origin was simply the knowledge that non-railroad people were using tracks for these purposes and could in fact cause problems if they were uninformed at public crossings. We just wanted to explore the issue.

RS: The railcar operators - I guess recreation is the best term for that - are organized in this country. There is a national organization called the Northamerican Railcar Operators Association that has operating rules and instructions for conducting meets. These are numbers of cars. All the cars that are operated must have insulated wheels, and wooden brake shoe holders so you have no insulation when the brakes are applied. You do not actuate any crossing signals or gates. The other primary rule is that highway traffic has the right-of-way and that all track cars must stop and ascertain the condition of the

crossing before proceeding. We have a requirement that all cars be equipped with brake lights. I belong to a more localized group - Pacific Rail Operators - that's one of several west coast groups that has 125 members. We always operate with the permission of a railroad. We also always have an escort from the railroad available - it's always with authority that we're doing it. We would certainly have input from the railroad employee with regard to any rules but the basic rules that we operate under the group - incidentally we have to take an examination just like the railroad employees do. We are also insured nationally through the national organization.

(Tape end / flip over)

TW: . . .flagging - we do not assume the responsibility of directing traffic at a crossing. We normally run at restricted speeds; stop w/in half the distance you can visually see. The railroad employee shares the crossing information in the morning - you have a safety meeting before you depart. We'll run to a crossing that has been determined to be a safety concern - we'll stop and we'll bunch our cars together and we'll put flagmen out and we'll assume the responsibility for the crossing the intersection after all the cars have passed. We don't stop or direct traffic. Once we occupy an intersection we control that grade crossing. No alcohol is allowed by NARCOA rules. It is internally regulated. The railroads do not accept the liability of having us - we assume the liability of educating and protecting ourselves on their property. We are a group of probably 500 and some nationwide - over 50 locally. We have had in my knowledge zero crossing incidents in this region.

RS: You talked about the bunching and flagging across. On low density crossing - the procedure would be to stop and then proceed if no traffic is coming. We have been on some railroads where the escort has had the capability of working the crossing gates and in those instances we will bunch and then they will lower the gates and run us all across at once.

KD: You're acronym - could you tell me what it stands for?

RS: North American Rail Car Operators Association and the other one I mentioned was the Pacific Railcar Operators.

KD: I have another question for the railroads - if an enthusiast or hobbyist wants to get permission to run on your railroads - do you require membership in NARCOA or the PRO?

DL: I can answer that. Typically what these organizations do is approach the smaller railroads for permission. In order to have the liability coverage for the railroad if they are responsible operators - they would have to belong to the national organization to be underwritten by their insurance policy. That membership is in place in order to enjoy the coverage and then - as far as their dedication to their rules and understanding within their

organization they operate at a very high level of responsibility. Speaking from the standpoint of a smaller railroad - it's a pretty big decision to agree to it but they seem to have everything in place. The degree of the flagging and everything that they have spoken to is accurate

KD: Basically the commission's authority is over railroad companies but there's another group that we're interested in knowing how safety information is relayed to them and that's contractors who work for the railroad line who may be operating this rail equipment. Does anyone know what I'm talking about?

RS: Weedsprayers or brush cutters?

KD: Not an employee of the railroad company, but a subcontractor who would have the equipment on the lines. Are they aware of the safety crossing rules, etc.?

DL: They are under the supervision of the railroad that they are on. Typically they are not out there without the company of a railroad employee supervising their activities.

KD: Every situation you can think of there would be a railroad employee?

DL: If they are operating under the rules of the company that are in place - yes.

DR: We have a contract that the contractors sign which would be entitled a C1 contract which would require them to comply with all of the rules of our railroads.

LM: I think the question would go then on contractors - how and to what extent does a railroad go to see what kind of training they have - generally they bring them on and just assign them as an operator with no skill level. They might have a flagmen but if it's a fairly large group they can be spread out over a large area and it does become dangerous because they lack overall training.

KD: Any more comments?

TK: I'm assuming that a shortline railroad that permits motorcar clubs on their property pay a fee - is that an important source of revenue for the shortlines?

TW: Yes we do pay a fee for that - to satisfy the needs for employees wages for the day, for equipment costs for equipment to escort or protect us. As an important source of revenue for a railroad I would have to say "no" because we are such an occasional user.

TK: Kind of another area here - federal roadway and bridge worker rules do they apply to all on track equipment that is non-revenue trained.

TW: I cannot answer that.

- RS: We prohibit getting off the cars on a bridge.
- TK: I think there are several different issues here - contract workers on a railroad - that's probably a totally separate area and issue as opposed to the motorcar enthusiast.
- TW: I totally agree - there is a total different operating parameter for a contractor to access a railroad and work as a second person on that railroad, directed by contractual divisions versus a hobbyist so the rules that would apply would be different.
- TK: I agree and I think it's important that we differentiate between them.
- TW: We always enjoy the process of a railroad escort and he is in contact with a railroad dispatcher or given track warrants for the day for movements. We depend on him to place us in the right place at the right time out of harm's way.
- TK: It's not unusual for you to operate on a track that a train dispatcher is also dispatching trains?
- TW: Unusual - normally it is shortline rail off revenue hours.
- RS: It's never done. I guess at that point our rule is that you follow the direction of the railroad escort because they have the localized rules and are in contact with the train or dispatching system.
- TK: Thank you.
- KD: Any other comments on this issue?
- LM: I think he brought up a good point about the bridge safety. Are you aware of the bridge phone safety equipment and do you carry any of that in case a motorcar would breakdown or stall on a bridge?
- RS: We don't carry any unique equipment to that. We do have a policy against stopping the car or getting off on a bridge. In the event that we have a stall on a bridge all the cars are tow-bar equipped and they would either be pushed or pulled off the bridge.
- TW: I just went recently through a workmen's protection class and if I remember right there was a definition of working between the rails for light work or occasional work on a tressel bridge or overhead. We have planned for a breakdown and we normally enforce a 5 minute rule - if you broke down you are to be towed, moved or pushed in 5 minutes. If we broke down on a bridge we would be obligated to stay between the rail and work safely to move that car.
- KD: Thank you.

MR: I want to make a comment and thank the two people from NARCOA for coming . . . and I hope that you understand that our only goal is to obtain information . . . we are not in a position of wanting to regulate your activities other than as it might relate to a problem with the public. Your information is much appreciated and provides much to our understanding of your activities. What I hear is that a lot of the safety requirements are enforced due to the economic incentive of the shortline railroad. They have to have some assurances or they are putting themselves out in a position where they could destroy their profits for the year. Our concern will be those at the margin. There are times when railroads go out of business and lose revenues and sometimes safety is sacrificed at that point.

KD: At this time we'd like to move into post accident alcohol and drug testing. Jeff Goltz is going to address this.

JG: This is one of those issues where there is substantial question as to whether the Commission is pre-empted by federal law because it is an area where the FRA has adopted a fairly extensive regulation. But if that is the case it is a little bit troubling because going through this it does list a whole list of events that would trigger post-accident testing such as a fatality, a release of hazardous material - but on the other hand they except from that all grade crossing accidents involving a motor vehicle of some kind. I don't quite understand what the rationale is for something at a grade crossing being specially exempted from the other categories where testing is required.

DR: I don't happen to know why but I don't think it makes a difference in terms of the analysis of whether there is pre-emption or not pre-emption.

JG: But there's comfortable pre-emption and uncomfortable pre-emption.

DR: I think it's a realization of the fact that most of the time when there's an accident at a grade crossing it's not because of the train or that the train crew did anything wrong. There's also a recognition that if there's probable cause to believe that there's a violation of a criminal law that there is the option of taking a breathalyzer or drug test. I don't think it totally precludes anyone from being tested as long as it meets the requirements of the criminal law.

JG: What is the practical concern for the railroads or the employees about that testing?

DR: For not doing it?

JG: Why would the railroads or the employees be upset if this exception was repealed by the FRA?

CL: It seems like an unreasonable search issue - if you don't really have probable cause . . .

- JG: But you don't have that issue at non-crossings because there's all sorts of requirements that there be drug testing. I don't know what's inherent about a crossing that makes less probable cause. I would think that if it were just an accident out in the open - the railroad would be less at fault.
- CL: It's easier for me to describe why there's an exception at the crossing than it is for why it's not there for trespassers. It's simply the knowledge that it takes so long for a train to stop and it's not true that if there is a crossing accident you would think it was because the engineer or conductor was using drugs or alcohol. That would be a very unlikely reason why you would have that accident. It's not a matter of both vehicles having an equal opportunity to stop at this crossing like you would with two motor vehicles. To require that the employees be tested for drug and alcohol without any other probable cause . . .
- JG: I would think that all of those arguments are equally valid or more valid for a trespasser.
- DR: I'll agree with that but I think that goes to the point that you shouldn't have testing for a trespasser being hit - not that you should do it every time there's a problem at a crossing.
- JG: But that's not what the rule says.
- DR: Like I indicated before I don't think it makes a difference in the analysis of preemption and I don't think it precludes the possibility of an officer establishing probable cause for doing the testing under state law. In terms of action by the WUTC it's preempted.
- MR: Even if it's preempted that does not preclude the state from requesting a state senator to change the rule so it's a legitimate inquiry and it doesn't stop with the fact that we're preempted. If we felt strongly enough about it we could ask the governor to do something on that level.
- KD: When we were doing the research on this it appeared that the individual railroad companies did have the authority to, at that grade crossing accident, do their own drug or alcohol testing of the train crew or engineer, without probable cause. Is that a correct assumption? If that's true, can the commission request a copy of the results?
- DR: My guess would be that's not true.
- BN: From my experience that is true . . . engineers and trainmen could be and are tested on a routine basis for whatever the reasons they are tested in accidents. Whether the State is privy to that information - I'm not sure.
- DR: What is the rule for testing a UTU employee on the railroad? My understanding is that it either had to be part of a random testing program or there had to be some basis for requiring the testing to be done.

- BN: Right and I thought an accident was that basis.
- DL: You are trying to clarify two different points. One is the criteria for accidents that demand post-accident testing as mandated by the CFR. There are specific incidents that require drug testing. There can also be post-accident drug testing based on probable cause on the judgment of the company which are the things that you have probably experienced, say a personal injury or impact accident. So there are instances of testing that are driven by the company. There are also instances of testing that are mandated by the federal requirements.
- DR: That's consistent with what I understood too. But if there's a crossing accident the question is do we do testing? And the answer is we don't routinely do it unless there is justification for it.
- DL: I think that yes. Unless one of these triggers have been tripped that requires it.
- DR: And this being referring to the CFR.
- JG: Anything at a crossing involving a motor vehicle - there's no requirement. If there's a crossing and there is no motor vehicle then the list applies. If it's a non-crossing and a motor vehicle then the list applies.
- DL: Right but there's also a threshold of damage to trigger - so just a crossing accident doesn't mandate . . .
- JG: Any crossing accident with a motor vehicle no matter how many deaths. If there's an accident not at a crossing and a gallon of hazardous materials spills out - you test. If you're at a crossing and you hit a tanker truck and 10,000 gallons spills out - you don't test. That's the way I read the rule.
- MR: That's the way we all read the rule.
- JG: That's what I don't get about the rule. It doesn't make any sense.
- DL: Isn't there a provision about killing more than 6 people? I thought there was a threshold number.
- KD: What I was referring to was that in the GCOR's that the railroad companies can do that testing for any reason and perhaps we misunderstood that and it's not true. It wasn't tied to any state criteria - it was in the GCOR's that when there is an accident at a crossing railroad companies routinely do that so the question was can we have copies of those results if we request them?
- DL: I think that's spoken to in the federal code that there is some degree of confidentiality of

those test results.

- DR: I'm not sure about the availability of them but I don't believe they are done routinely at crossing accidents. We do represent the BNSF on crossing accidents and I've never seen one where they have done testing of the employees.
- LM: The confidentiality that he brought up is there and only the person being tested has the right to see it. The results might go to his supervisor but that's the extent.
- JG: There's a provision in the code to that effect. It may answer your question.
- KD: Thank you - any other comments or questions on that issue? Hearing none we'll move to our next issue on Pg. 15. This is commuter rail. Something happened from where we first addressed this issue and where we are at now. These are the passenger equipment safety standards that were just passed by the FRA and when we first brought this issue up we thought there were some gaps in there and we think this might address the gaps.
- MR: This is one of those fuzzy ones that we didn't get very far in our discussions in staff meetings and there was a lot of general discussion. If use of commuter rail on heavy rail causes some special concerns in any prospective we're just asking for some input on it. There can be special issues at crossings - I don't know but we're throwing it open for comments.
- PS: Some issues that could be thought of as Mike says - trespassing issues should be addressed. Put up things like fencing along unauthorized areas of the tracks so people can't walk onto the tracks. Consider boarding procedures so travelers don't have to cross the heavy mainline tracks to get to their commuter trains. On time performance is an issue that should be addressed.
- KD: Does anyone else want to speak on this issue? I would point out that we are going to have other opportunities to submit written comments and other workshops. The next round of things that will go out will have more specific language for people to respond to.
- MR: Can I ask a question? Given the way time is flying and we're not going to get to every single issue - maybe we can ask if they have specific issues they would like to address today.
- KD: Our next issue is railroad special police and I know someone did travel to speak on that issue so we'll do that next and then see what other specific interests people have.
- MR: Questions have come up from the City of Yakima with regard to one particular railroad police. The issue has not come up before. The Governor's office contacted us and the City of Yakima Police contacted us. We may or may not have jurisdiction over this, it's something we're still looking at. Again we are going to continue our dialog with the

Governor's office by the way. As a starting point we would ask for any comments you have on this issue.

SF: I'm a lieutenant with the Yakima Police Department and was thrown into this. I'm sure the commission is in receipt of a letter from our city attorney. Yakima Electric Railway is a very short line in the City of Yakima - takes up 2 miles if that. However we have encountered some problems with some of their employees exercising police powers that we are not sure they have the authority to enforce. We've had some problems where they have been doing so off of their property. They are driving vehicles that say police on them but that's about the only markings they have. If you look at the RCW for these folks it's not very specific. It doesn't address what kind of training they have to have, what kind of vehicle markings they have, uniforms, etc.. There are some specific questions that we have and I don't know if this commission is where we need to go or not.

KD: I think this is a good starting point and I think at the very least we can facilitate in some discussions to figure out where the answers need to come from and if rules need to be written - where that should go.

SF: I have copies of the letters authorizing them to have special police powers. It doesn't specify what those powers are.

(Tape ends / flip over)

KD: Is anyone prepared to respond to this issue?

DR: I can talk about a couple of the things - not specifically the company you are talking about. I know that the Burlington Northern Police Department are commissioned by the State of Washington. They are required to go through the State Patrol Academy.

SF: Is that something you require?

DR: I think it's required by the WAC regulations.

MR: I don't think so. The only two people that have input into that is the governor's office and the UTC. Those are where the rules would have to come from and the governor's office doesn't have any at the present time.

DR: I was just looking for it but I don't find a copy of it, but I remember reviewing certain WAC requirements in terms of training for railroad police and I talked to one of our police department officials who said he is talking to officers up in Everett that are part of a group about the training that is required for railroad officers within the state and we were doing so much more training than everyone else that they were talking about cutting back on our training.

- SF: The WAC rules - I'm not familiar with what those say.
- DR: I didn't find it as I looked through here - but my understanding is that they feel they have the authority to enforce a law in the state of Washington even off the property. But as a matter of practice we don't do that.
- SF: Again I don't have WAC rules but I do have RCW 81.60.040 (reads) . . .
- JG: There's a federal statute on this as well that is similar to what you are saying. I guess I would be pretty nervous if I was a special police officer and made an arrest unrelated to the railroad if my authority didn't include that.
- SF: I would too. I guess the problem is I'm not sure they have been told what their authority is and where they are supposed to be. That's our question - are they restricted and if so, to what and what property?
- MR: I think the way it reads as I recall is where they might get the idea that they can enforce general criminal law is it says something about committing crimes upon the property of the railroad. As I recall vaguely, that doesn't mean while on the railroad property you have jurisdiction - it's a crime committed against the property. For example, vandalism, which are listed in that statute as well. We need to ask the legal people what that means in the way of jurisdiction. If there are WACs that are involved then we would like to know what they are.
- SF: While we're not questioning the need to have these things, although to a certain extent we are, the problem that we face is that when we come on a situation and these people are there. Number one, we don't know who they are - we were never notified they even existed. It would be nice to have some coordination if they are going to exist so that we know they are there and who they are. If they are exercising arrest powers and authority we need to know they were trained to do that.
- DR: The only additional thing I found was the code for training - WAC 139-05-195. The person who deals with issuing the ID cards and badges is Rose Feliciano in the governor's office. Bill Stairs number who is with BNSF is (206) 270-3781.
- MR: The UTC's experience with the BN and UP police is that they have been very cooperative with us and with local and state authorities. I think that Bill can help out a lot as to what their procedures are.
- SF: Our understanding was that this particular agency would have to follow the same rules as BN and the other railroads and we've always had good relationships with those railroads in our area. This is something totally different for us to be able to address we need clarification.

- KD: Do any of the other shortlines have special police? (No response)
- MR: According to the governor's office this was the only shortline to request special police. My concern is that this will be a growing phenomenon if there is growing work on railways and growing volume and then attracting some potential criminal activity against those shortlines.
- KD: Or if they have a high trespass problem they might hire someone to chase people out. Would you be agreeable to providing the name of someone who might be able to devote a little time to a small working group to sit down with the governor's office and give us advice if we need rules for this?
- DR: I'm always willing to volunteer Bill Stairs help - his number (206) 270-3781. I'll give him a call too.
- MR: I know that Rosa was anxious to explore this further because she's been put in a position where she would like some input.
- KD: I did go into the internet and I looked up on your employment page the qualifications were for police officers and they seem to be pretty stringent including experience working as a police officer. Maybe that's something the shortlines need to be aware of.
- SF: And when I was talking to you earlier you mentioned that on the phone. Again, I think that's probably an internal BN policy and not something regulated by the state.
- KD: That's why I think they could be invaluable if we decide to recommend to the governor's office they need fashion rules - we would look at what they had done and help guide us in what we would need to have for rules.
- SF: Even if they went with the basic requirements of a reserve officer - they even have to go through a state mandated academy.
- KD: So I'm assuming from your comments that you would be interested in working in this group?
- SF: I would probably be assigned to do that - yes.
- TK: One of my first working experiences was as a special officer for the former Great Northern and then the Burlington Northern. I was an entry-level police officer having had just four years of military police experience prior. I was deputized as a King County Deputy Sheriff and I relied heavily on both the sheriff and police for backup and I can't imagine myself ever wanting to be a police officer without that backup and cooperation. .

I would like to be a part of this workgroup too.

ES: I would simply lend our support to the clarification of police services. When we see things like trespassing or unsafe conditions on the tracks - do we call the local roadmaster or a police officer for those types of things? If we can get clarification on who we call - and when to call and a working definition of the term - we'd like to have it.

MR: One of the hidden agendas which isn't really hidden - is to get local governments and agencies and the respective railroads that go through their town and counties working together more and more and help the relationships foster and grow.

KD: Are there any other comments?

JG: The rules by the criminal justice training commission are in 139-05-925.

MR: These are specific to - requirement of training for railroad special agents.

JG: I'm guessing that the statute assigns that to the governor and they may have delegated that to the criminal justice training commission.

KD: I need to take a 10 minute break so when we come back we'll address specific issues of those in attendance.

* * * * *

KD: The only issue that was brought up during breaks was train speeds - is there anything else? (A few others were blurted out) Probably the most lively one out of this is train speeds and Jeff Goltz is not here yet so we won't start with that. We'll start with petitions for grade crossing improvements.

MR: The thought on Petitions for Grade Crossing Improvements was - could we identify some items that we could avoid having petitions for so that we didn't have to go through a long process and after a while the legal guru's said "no you have to follow the process." So we left it on to do a couple of things - list out all those things that need to be filed with the commission to get permission to do at a grade crossing and secondly to open it up to see if there's something that you can suggest that we can do better or more efficiently on this issue.

LM: What I've seen traveling around is that some of the crossings are deplorable and when you bring it to the attention to the railroads their lack of any desire to show any improvement because of cost. This would also tie in with faster train speeds because of having to slow up so much to go over that crossing.

KD: Which area are we talking about?

- LM: Specifically Bucoda, WA. Getting something done over a number of years - nothing is being done to solve it. They blame it on other things - so at what point and what does somebody have to do to get the railroad's attention that this needs to be corrected?
- MR: Larry you've raised 2 issues - one is addressed specifically to surface standards and then where the responsibility lies for correcting the problem. What kind of surfaces should be on crossings? The other issue has to do specifically with the situation at Bucoda as far as the crossing signals for years. The company put in whole new circuitry system, they have put in special shunts. They have worked continuously but again not visibly to try and correct the problem. Puget Sound Energy recently turned off all the power and the problem immediately went away. But there is a larger issue that is appropriate - is the crossing surface and any other problem that comes up on a crossing - how do you get the attention of the railroad or the UTC and what standards should apply?
- LM: You're right we could debate it because one of the things until they get the proper drainage into that crossing they're going to continue to have problems no matter what else they fix. At some point regardless of the problem or the cost they have to do a full maintenance or rebuild job there to correct it.
- MR: OK - as far as the issue of petitions and making application to the UTC does anyone have any comments about that particular issue?
- DR: Only to say that I did talk to Mike ? who was expressing some frustration over having to put in petitions for what they consider minor things like putting sidewalks in, etc. I don't know what the solution might be to that.
- MR: Thank you Dave and that's an appropriate topic because I think it frustrates cities as well. In the past we had a very efficient way of handling these things by putting everything on one form so there was just a single form. Unfortunately the form got so long. What we can and will do internally is break these up and I think that will decrease the amount of time that everybody has to spend on preparing these things. So your point is very well taken and I think we will work internally to try to address that rather than put it into a rule that we cannot change easily.
- ES: It may already be the requirement for public posting - we would like to see a process where there is a public notification. It would be nice to have that project posted in some manner so that the town and community would have some advance notice of the work that is to proceed.
- MR: We did talk about that a little bit this morning and wrestled with it a bit. There may be some things in place now . . . there are specific notification requirements for specific projects - we're going to look at whether a rule would help or even be responsible.
- ES: It's a benefit to us because whenever we do utility work, streets, etc. we always try to

coordinate with other providers so that we are not digging up the same right-of-way repeatedly.

PH: I had a question on your posting of the notice - were you expecting a board stuck in the ground with detailed information or are you asking for the notification written to city officials?

ES: I'm looking for that post in the ground with some information on it.

KD: Any other comments on petitions? Let's move on to crossing surface standards.

MR: We go out and inspect crossing surfaces and we do notify cities and railroads when there is what we consider an unsafe condition. But there are no real objective standards. The crossing elevation changes with time when you come in and tamp or don't tamp and that throws it out of wack and then the roadway resurfacing people come in and resurface and that throws the crossing out of wack with the roadway. We would like to try to have some standards in force that we could point to and say objectively this is what the problem is. We're hoping road authorities and railroads can point us in a direction.

ES: Again we would like to see standards. When we have 3 crossings in town and each is different from the other - and the response we get is that it meets standards. Well what standards?

MR: Does anyone have an idea of where we can go to talk about standards?

PS: The group that I am a member of that has monthly meetings called the Washington Association of Rail Passengers would be very interested in discussing this issue.

DR: I know that there are internal standards for what they do for their own crossings. My concern is that when you start doing rulemakings is that we end up being frozen by rules that limit innovation. Still I don't know what the specific standards are and how they are applied and I think that we can probably find those somewhere for people who are interested.

LM: Yes they do - I happen to have a book out in my car that has them in there.

MR: The MUTCD does not have standards for railroad crossings.

TK: I agree with the speaker in that all the class 1 railroads have engineering manuals that approach crossing surface from the sub-grade of the rail through the ballist, etc. It's already a complete document that we could use/borrow and find useful.

DR: I don't know if this would be an appropriate place to break into a smaller group and try to get those standards out there and look at them to see if we need to do anything.

- MR: I think a working group of interested parties would be helpful and I think shortlines would need to participate in such a group.
- DL: From a smaller properties standpoint this would be such a broad area - I don't think that we couldn't agree on engineering standards but I think what we would be particularly interested in protecting ourselves on the responsibility aspect and not being suddenly handed a very large burden of maintenance . . . then whoever is making that adjustment would probably have to bear the responsibility of the adjustment. We just really want to be protected as far as going into something that's going to be difficult for us to live up to from a cost standpoint.
- MR: That's an outstanding point - we will be doing an SBEIS as a result of whatever we do here and one of the things we have to address in that is what would be the impact. We want to have something that is workable for all parties.
- DL: Whether you have 80 miles of track or 2000 miles of track - the down side of the cost is the maintenance.
- CL: I have a question for Mike about what has been the problem when the UTC goes out and inspects now. Has it been a problem in providing that notice when you don't have a specific standard?
- MR: The problem is in deciding when to send out a notice to a railroad and how do you train people to identify a problem. There are extremes - the other problem is that although we get quite a bit of cooperation we go back out a couple years later and the same defect exists that we identified as needing to be corrected. That's partly a tracking problem on our part which we are correcting. If we can we want to be able to say you are out of standard and what that standard is and you need to bring it up to this level.
- RC: We don't go out and look for a problem - we wait for the public to report it. Usually when they do and we get ahold of you folks - you come down and look at it, you agree that it's a problem and it gets fixed. Sometimes the timeliness of getting it fixed is a problem. Generally speaking we haven't had any problem with agreeing there is a problem or who's responsible for fixing a problem.
- KD: If we did attempt to put together a small group to see if we could come up with some standards - is there someone that we could contact?
- DR: I could certainly find someone who could participate.
- KD: How about David Lutz could you recommend someone that could represent a shortline interest?
- JH: (Indicates interest) John Haakenson.

DL: You might approach Tom Foster.

KD: And he's with the shortline in Aberdeen?

DL: I would be reluctant because I don't have an engineering degree - the class 1's have their own standards and I'm sure that AREA probably has some specific engineering standards. It seems like it's more of a recording issue but not a compliance issue.

KD: We have left procedures for implementing whistle bans, train speeds, trespassing and passenger carrying vehicles.

KD: Let's do train speeds - Jeff Goltz will introduce this and tell you what the rule of the commission is.

JG: The commission has authority where there are unique conditions. There is some case law on that subject but we really don't have a good grasp on it. The suggestion has been that we ought to have some generic rules on it. The proposal was that staff was not going to address this in this proceeding and that the purpose of the notice was to hear what people think.

DR: That's right - don't address it.

PS: In the next 15-20 years they are talking about increasing the train maximum operating speeds to between 110-125 mph between Vancouver BC and Eugene, OR . I know it's a long drawn-out process. Why they can't get up to those speeds in certain areas and have the DOT or rail branch ask for money to make the necessary improvements like closed crossing, etc. Because I understand the maximum allowable limit is up to a 109 over grade crossings.

LM: I don't think that right now with the curves and everything out here and without a specific track for the passenger train they can go at those speeds. The elevations and the track structure itself is not suitable for freight trains and passenger trains at that speed.

PS: The Talgo trains are supposed to be able to go between 30-40% faster through curves, etc. There is a certain radius where they would have to slow down.

LM: But I think you are mainly referring to the flatter the land and the straighter the track is. Once you get into curves, the elevation and what you can operate a freight train on cannot be anywhere what you would need.

KD: Would anyone be opposed to us taking this issue off of our agenda? We really believe that the commission's only local role is to address unique local conditions and we are pre-empted from everything else. Is there any opposition? (No response) Let's do procedures for implementing whistle ban requests.

- MR: The state statute which allows whistle bans to be placed in effect only says that the ordinance will be given to the UTC for comment. Now to make comment we need to learn some facts and we do study engineering drawings and that type of thing. The federal way of doing rules is a little different than our rules – here we try to talk about it in advance. So with that background, what can we do or what would you like us to do in the area of whistle bans given the constraints that we have?
- LM: Roadway Workers Safety Rules specifically uses the whistle as a safety requirement. To limit that would be detrimental to the crews we have working out there.
- ES: We do have requests from the community to impose an ordinance that would put into effect a whistle ban. What we are looking for are some standards that we would put into an ordinance. What else should we be looking at so that when that ordinance is submitted to you for comment I guess we have some sort of heads up. In addition, there's the statement that the crossing would be equipped with "supplemental safety measures". We're looking for some definition of what those measures are.
- CL: The federal statute does give some examples of what are considered supplemental safety measures including double gates on either side of the crossing. Another is to have a median barrier between lanes of traffic.
- MR: Those are the two that I'm aware of right now that they are either requiring or looking at. There's one study that has been done in Spokane County where they put up a 2 foot high median barrier so that people cannot go around the gates and get trapped and it did cut down the violations to a point where the FRA and railroad agreed that it was acceptable to stop blowing the whistle there. Yakima is proposing also a whistle ban that will have a similar type of approach. Nothing prevents totally - but it cuts it down.
- TK: Another device that is being explored is a whistle that is specifically at the crossing instead of on the train. It just warns the people at the crossing.
- MR: That is a project somewhere back in the midwest they are doing that - and they have found that the amount of noise and sound is reduced. There are some downsides to that so it's under discussion.
- DL: Given the statistics that are offered by Mr. Reeve and Ms. Larson is it reasonable to expect that the community that institutes the whistle ban accepts liability in the event of an accident at a crossing?
- MR: I don't know the legal answer to that.
- DL: Is that even a reasonable way to approach?
- DR: What I wanted to say is that on behalf of our organization we believe that there should

not be any limitation for safety reasons.

KD: Any more comments on this issue? (No response) That leaves us with two issues that we want to get through today - passenger carrying vehicle rules and trespasser rules. Trespasser rules might be a new issue - unless there's a subject here that you are talking about.

PS: In a way it's tied in with safety issues, much like crossing protection and whistle bans. Just like there's penalties for running red lights - these penalties have to be enforced by laws. If they catch you trespassing - you should be fined.

MR: I'm not sure that we can develop rules that would make things any different than what's in the law now. The law that applies to railroad rights-of-way is the general trespass law which is subject to a lot of exceptions and defenses and notification requirements. There's also a very strong history in our state that is whether right or wrong many people believe they have a right to walk along a railroad right-of-way or cross it. People do not understand that a railroad right of way is private property. It becomes an education problem. Law enforcement refuses to enforce a trespass law that is cumbersome and they will not enforce a law against their neighbors and friends and relatives that they perceive as government trying to prevent access to a resource. As far as a rule goes and a rulemaking I'm not sure there is anything we can do.

DR: I agree - I don't know if there's anything you can do as far as a rulemaking. There are other examples of this too (gives examples. . .)

MR: It's a difficult problem and I don't have an answer.

KD: Passenger carrying vehicles - I need to make one correction in the item that was sent out to you - on the top of Page 5 there's a WAC reference in there to 296-24-065 and that is a repealed WAC. It was replaced by 296-24-06145 and it does include some blood borne pathogens. The first aid kit requirements in L&I - there's a recommendation rather than what you must have.

MR: We are required by law to have these rules - it's not an option. What we are proposing here is that instead of having separate rules that are set out as if they are different we went through and 2 staff members identified the sections of our rules that are the same as Title 49 CFR rules and what we are proposing is where that works is to adopt those rules so that everyone is playing by the same rules. Almost all passenger carrying vehicles used today are contract carriers that are governed by the UTC. We don't want to change them but if you think we should we certainly want to hear that.

CL: Just as clarification I do see in the statute where it says the UTC "shall adopt such rules as are necessary" to ensure . . . Now that there is 49 CFR that has comprehensive rules that may not have been in existence at the time this statute was enacted it could be that

independent rules are no longer necessary.

MR: That's a possibility.

KD: There are a couple of items that are not in CFRs and I only point them out because we've done them in other industries in the commission. That is we require anti-spray devices (mudflaps) and we allow drivers to be 18 rather than 21 which is what the federal rules require. The North American Uniform out of Service Criteria - that's alliance that we adopted by reference - it's not federal. It's the criteria that our inspectors do to put vehicles out of service if they don't meet the standards and exactly what those standards are.

BN: It's my understanding that the crew shuttle services are out of state and that limits their liability and we were wondering if this commission was looking at anything like that. We believe that their liability is \$1 million per accident and that won't go very far if there's a lot of injuries. Was it in the scope of this?

MR: Anything is within the scope.

BN: It was our belief that these vans are registered out of state so they work in this state with Oregon plates and we thought that their coverage was \$1 million per accident. We thought this was a little low for the state standard and there should be some other higher standard or some other liability should be looked at.

KD: We're not sure what that is - but at our next meeting we will have an expert available to answer that question. As far as the company that is operating with Oregon plates, if they are not crossing state lines in their for-hire business I believe they need to be registered in this state and they need comply with our rules and regulations. If that is inaccurate the attorneys will let us know. So whatever our rule is it should apply and if not, it defaults to the federal rules if they are crossing state lines.

BN: And these rules are what is the liability - where does the liability stand because if it happens in this state and it's an out of state company there might be a limit there?

MR: I think we've got the question and it's certainly one to look at.

BN: You said you were going to address blood pathogens - you were going to include rubber gloves - is this what you are talking about?

KD: I believe they do have some of that in there already. Appendix II "first aid kit guidance" (reading) - that's all we were really thinking about.

BN: I think the gloves are a good idea and the plastic mouth receptacle . . . and it doesn't cost

much to include them in a first aid kit. Do we have a chauffeur license then for these guys that are shuttling people?

KD: On the charter contract rules there is a requirement for what class of driver's license they need to have based on the weight of the vehicle. Is that what you would recommend that they need to have a chauffeur's license?

BN: I'm looking for what you require also to drive other passengers - a contract vehicle in this state.

JH: That's all spelled out in the CDL requirements . . .

LM: I have one question on that - on driver's daily hours of service where it says that driver will not be required to drive for more than a maximum of 10 driving hours without a following minimum of 8 consecutive hours rest - there's nothing in there that states how long he would be on duty and I think that's important.

KD: Here again I don't know exactly what the parts of the CFR address but at our next workshop we'll have someone here that knows them well. There is drivers hours of service and I think it's probably different than this because this is an old rule.

LM: I just want to relate that some of this stuff between state laws and whether you have your CDL license - if you're not driving on a federal highway - then there are two different sets of rules.

BN: Meaning limbo time and driving time where a guy would be on duty but not actually driving

KD: Some of the reference that you gave to us - one of them had to do with the hours - the safety act and hours of service act - do you know what I'm talking about?

DR: I know what the hours of service act is.

KD: Would those pre-empt what we are talking about here?

DR: I'm not sure I'm hearing everything as it is intended. With respect to the independent contractor I think that's covered by something entirely different than what we are dealing with here. As to the BNSF people there are requirements under the federal regulations with regard to the commercial driver's license they have in terms of how many hours they can drive within a week. I know they are different than what is in this rule. The requirements in terms of testing and audits is different.

LM: CDL covers when you are driving on federal highways - if you are driving and not on a federal highway then the state laws are the ones you are governed by.

DR: That's not how I understand it. My understanding was when we are dealing with a certain kind of vehicle that is used in interstate commerce - that vehicle is covered. I don't know of any vehicle that we have that is designated as an intrastate vehicle as opposed to an interstate vehicle.

LM: What I'm talking about is these crew haulers and things like that and when we sat in on those meetings with the companies it's never been clarified as to which ones of those rules they would come under.

(Tape ends / flip over)

CL: . . . these rules govern vehicles that are specifically operated by the railroad.

MR: We don't have authority as the railroad section under our railroad statutes to control contract carriers - those are covered by other laws.

KD: The commission has another set of rules that covers those types of carriers. This chapter of rules only apply to railroad company employees who are employed to do this crew cab.

LM: The confusion comes when you call up the DOT and try to ask them these questions and get a straight answer from them.

KD: WSDOT role is very different from our role. I think this probably hasn't been a very satisfactory discussion on this issue but we will have another workshop and we will take this issue up again.

LM: I have one more question then - on the liability of railroad owned vehicles - the insurance that they are covered under per accident. Is that covered through you or somebody else?

KD: I don't know the answer.

MR: That's not something we've addressed and maybe we should. It's a legitimate question but I don't know the answer. If you're talking about a major railroad they are probably self-insured for the most part.

DR: We have a policy that covers the mandatory minimum insurance for passenger vehicles and then we are self-insured for anything over that. I don't know if there's any other special insurance coverages. I know we have an umbrella policy for over \$10 million or something.

LM: I don't think he's saying - there's minimum standards and that's all they have to meet and once again you have so much paid per individual and per incident.

MR: It's got to be a L&I rule or FILA rule that has nothing to do with us.

LM: FILA is a fault finding thing so if the railroad isn't at fault or the individual isn't at fault - that is what my question had to do with.

MR: I don't know - if it's a contract carrier you can sue the contract carrier. If it's an individual and that person's at fault - then that person can be sued. That's an assumption on my part.

BN: That was one of the questions we had was the underinsured or no insured individual - while you are riding with an employee of the railroad and a no-insured person hits you through no fault of the railroad - no we feel that some of the guys feel they are not covered adequately.

MR: We will ask that question to our attorneys.

DR: Certainly the individual workers can get an endorsement for that kind of thing possibly.

KD: We are out of time and I want to thank everyone for coming. An overview of what we are going to do next: Before we draft our rules we are going to have another workshop to address these issues - I'm thinking the first part of June - hopefully it won't take all day. Then staff will send out draft rules for comments and then we will hold another workshop after those are done. This proposed rulemaking schedule asks for written comments after we mail the 2nd discussion draft. I want to make it clear that we will accept comments at any time during the drafting stage. We'll do the next workshop here - and you got an idea of how the conference bridge works and everyone is welcome to participate on the conference bridge if you don't want to actually come to the meeting.

PH: The conference bridge has limited lines that we can open it up and in the notice of the workshop will be a note to you if you want to choose that method you have to contact us and reserve a line.

KD: Any questions about the process?

MR: Thank you for all of the input and time you took to come here and listen or address the issues . . . it is invaluable to us and everything that was said will be taken to heart and we will try to respond to every question.

END

