

Agenda Date: October 13, 2004

Item Number: C2

**Docket:** TR-041051

Subject: Petition from the United Transportation Union

Staff: Mike Rowswell, Rail Safety Manager  
Ann Rendahl, Administrative Law Judge

Legal Counsel: Jonathan Thompson, Assistant Attorney General

**Recommendation:**

Deny the petition from the United Transportation Union requesting the Commission to amend WAC 480-60-035 to require the use of a specified size of crushed rock for walkways on switching leads in railroad yards. Also, direct the Secretary to file a preproposal statement of inquiry (CR-101) relating to the same subject as proposed in the United Transportation Union's petition.

**Discussion:**

On June 9, 2004, the Washington State Legislative Director for the United Transportation Union (UTU) filed a petition requesting the Commission to modify WAC 480-60-035 to require that crushed rock used for walkways on switching leads in yards be  $\frac{3}{4}$  inch or less in size. The union asserts that the current rule, which specifies that crushed rock must not exceed  $1\frac{1}{2}$  inches and only recommends rock that is  $\frac{3}{4}$  inch or less, is leading to a deterioration of walkway surfaces on switching leads rather than the intended improvement.

This matter is a petition for rulemaking. As such, the Commission must deny the petition or file a CR-102 Notice of Proposed Rulemaking within 60 days of the filing of the petition. (In this matter, the petitioner agreed to extend the period the Commission to take action until the end of October.) Another alternative is to deny the petition and direct the filing of a CR-101 Preproposal Statement of Inquiry.

Staff believes the UTU's concerns need to be addressed. Smooth, firm walkways are important to prevent repetitive motion injuries, and to eliminate tripping hazards. However, staff does not believe the petition process allows enough time to fully study the issue and include all affected parties before suggesting that the commission consider a change in existing rules.

The  $1\frac{1}{2}$  inch rock size standard adopted in 2000 for the current walkway rule was a

compromise. Railroad management assured Staff that the standard would be treated as a minimum, and that smaller material would be used unless there was a good reason not to use it, such as drainage problems. The following note in the rule was intended to convey that approach:

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

The UTU asserts that experience shows that railroad management is ignoring the suggestion and treating the 1½inch standard as the only option. Staff believes that full participation of all interested parties is needed to determine statewide practices, to learn the potential cost and other impacts of requiring a smaller size rock, and to resolve any issue surrounding the need for the smaller size rock to prevent injuries.

**Conclusion:**

Staff believes the petition does not afford sufficient opportunity to review necessary aspects of this particular request from the United Transportation Union. However, staff believes there are safety concerns with walkway construction and maintenance practices that need to be considered. Staff believes a standard rulemaking process is better suited to address these issues. Therefore, staff recommends that the Commission direct the Secretary to send the United Transportation Union a letter stating that the Commission denies its petition. Staff also recommends that the Commission direct the Secretary to open a rulemaking to consider the need to amend walkway rules to require a smaller size rock for switching leads in yards.