

Agenda Date: December 31, 2002  
Item Number: B2

**Docket:** TR-021465  
Company Name: Petition from the Brotherhood of Locomotive Engineers

Staff: Kim Dobyms, Regulatory Analyst  
Mike Rowswell, Rail Safety Manager  
Scott Barrett, Railroad Inspector  
Larry Berg, Administrative Law Judge  
Jon Thompson, Assistant Attorney General

**Recommendation:**

Deny the petition from the Brotherhood of Locomotive Engineers requesting the Commission adopt new rules relating to locomotive remote technology. Also, direct the Secretary to file a preproposal statement of inquiry (CR-101) relating to the same subject as proposed in the Brotherhood of Locomotive Engineers' petition.

**Discussion:**

On November 1, 2002, the Washington State Legislative Board of the Brotherhood of Locomotive Engineers (BLE) filed a petition requesting that the Commission adopt rules relating to Locomotive Remote Technology. Specifically, the BLE proposes that the Commission adopt the Federal Railroad Administration's (FRA) Notice of Safety Advisory 2001-01. The FRA safety advisory contains extensive guidelines including the following subject areas:

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

The FRA safety advisory was issued February 14, 2001 as guidelines to the railroad industry. Compliance is optional at this point; however, the BLE asserts that compliance with those guidelines should be made mandatory in order to ensure safety to railroad employees and to the general public. The BLE cites a recent accident in Shelton caused by the use of remote control locomotive technology to illustrate the need for enforceable

rules. It requests the Commission to adopt federal advisory recommendations as mandatory Commission rules.

Staff believes the BLE's concerns need to be addressed. However, staff does not believe the petition process allows enough time to fully study the issue and include all affected parties in putting forth new rules for the commission's consideration. In response to staff's concern, the BLE filed an amendment to its petition allowing for an additional 30 days for staff to complete the analysis. Staff is unable to complete its analysis without express input from other stakeholders and interested persons. Commission Staff has discussed with the BLE the possibility of converting the petition into a full rulemaking. The BLE disagrees with staff's proposal and believes the Commission should be able to move quickly on these important safety issues. However, Staff believes the issues are complex and require the full participation and exploration that is accomplished through the standard rulemaking process. Furthermore, Commission Staff notes there are unanswered questions regarding whether or not federal law preempts the Commission from taking the action proposed by the BLE.

**Conclusion:**

Staff believes the petition process is not well suited to this particular request from the BLE. However, staff believes there are safety concerns with remote control locomotive operations that need to be addressed. Staff believes a standard rulemaking process is better suited to address these issues as well as jurisdictional issues. Therefore, staff recommends that the Commission direct the Secretary to send the BLE a letter stating that the Commission denies BLE's petition. Staff also recommends that the Commission direct the Secretary to open a rulemaking to consider the need for rules governing locomotive remote technology.