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January 26, 2007

Docket Clerk
DOT Central Docket Management Facility
Room PL-401
400 7th Street, SW (Plaza Level)
Washington, DC 20590-0001

Re: Docket Number FRA-2006-23685

Dear Docket Clerk:

On May 17, 2006, CSX Transportation (“CSX”) filed a petition (hereinafter “Petition”) with the Federal Railroad Administration (“FRA”) for a temporary, location- and equipment-based waiver from compliance with certain requirements set forth in Title 49 of the Code of Federal Regulations for purposes of further testing of its Communications Based Train Management (“CBTM”) positive train control system. By notice published on December 12, 2006, FRA informed interested parties that it would accept comments concerning those items in CSX’s filing that concerned a waiver from regulatory requirements. 71 FR 74578, 74579.

The United Transportation Union (“UTU”) and the Brotherhood of Locomotive Engineers and Trainmen (“BLET”), a division of the Rail Conference of the International Brotherhood of Teamsters, are filing joint comments concerning the above-referenced petition. BLET and UTU are the duly recognized collective bargaining representatives, under the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*), for more than 10,000 operating craft employees and yardmasters employed by the CSX Transportation, Inc. (“CSX”), all of whom are directly affected by the petition. For the reasons set forth below, UTU and BLET submit that FRA should condition relief upon CSX meeting appropriate alternative standards.

We previously commented extensively concerning the Railroad Safety Program Plan (“RSPP”) filed by CSX in connection with the CBTM system. *See* FRA-2006-23685-3. Our comments were considered by FRA in the conditional approval of the RSPP, which we appreciate, and

DOT Docket Clerk
January 26, 2007
Re: Docket No. FRA-2006-25057
Page 2

those conditions formed the basis for a revised RSPP. FRA-2006-23685-5. We further appreciate the opportunity to participate in the consideration of the instant petition.

While the resumption of CBTM testing underscores that development of the system is in a relatively early stage — and acknowledging that the project has not yet reached the stage where a Product Safety Plan has been filed — we are, nonetheless, concerned that CSX has designated such a significant portion of its submission as “confidential.” This has made it particularly difficult for us to prepare these comments with any degree of specificity and accuracy. It also has complicated our efforts to limit our “comments [to] only on those items requiring a waiver from regulatory requirements,” despite our best efforts to do so. 71 FR 74579.

With respect to CSX’s request for a waiver of Section 216.13, we have two comments. First, to the extent the waiver concerns “non-operation of CBTM equipment installed on-board (whether through malfunction or deactivation)” (*see* Petition at p. 4), we agree that this should not be construed as an unsafe condition requiring special notice for repairs; however, the waiver should include a condition requiring that any crew assigned to such a locomotive be informed of any non-operative condition prior to movement. Secondly, we agree that the waiver should be granted as to non-CBTM equipped locomotives.

We do not oppose CSX’s request for a waiver of Section 217.9 for those provisions relating to the program of operational tests and inspections, and related recordkeeping. Petition at p. 5. However, we note that the “procedures for using CBTM equipment and functions will be issued, refined, and modified during the test program,” and until “it has been determined that CBTM is ready for a production implementation these procedures will not be addressed in the CSXT Operating Rules, timetables, and timetable special instructions.” Id. Since CSX has chosen to declare those documents specifying how procedures will be published and how operating crews will be trained on those procedures as confidential, we respectfully request that FRA carefully review those documents to ensure compliance with Subpart H of Part 236.

As for a similar request for waiver of Section 217.11, our position is slightly different. While we do not disagree that CBTM-related programs of instruction on operating rules, and recordkeeping and electronic recordkeeping requirements, are distinguishable from CSX’s general system for ensuring compliance with Section 217.11, we believe that safety demands at least a parallel system for the CBTM pilot. The assertion of confidentiality with respect to CBTM’s field testing procedures has made it impossible for us to determine whether that safety requirement will be met. We ask that FRA ensure that it is met by attaching an appropriate condition if one is necessary.

We support CSX’s request for a waiver of the Part 218, Subpart D, prohibitions against tampering with safety devices for on-board CBTM equipment for the duration of the pilot. With

DOT Docket Clerk
January 26, 2007
Re: Docket No. FRA-2006-25057
Page 3

respect to the request for waiver of Section 229.7, we do not oppose granting the waiver to the extent that CBTM should not be considered an appurtenance in the application Sections 229.7(a)(1) and 229.7(b). However, we disagree with CSX that “the inspections and tests referenced in this section for compliance with Part 229 regulations are not applicable to CBTM.” Id. at pp. 5-6.

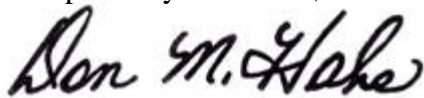
Again, CSX has declared the relevant inspection and testing protocols to be confidential, thereby withholding them from our review, compelling us to request that FRA consider CBTM components as appurtenances in the application of Section 229.7(a)(2). We believe the waiver of Sections 229.7(a)(1) and 229.7(b) are sufficient to authorize movement of a CBTM-equipped locomotive that passes Part 229 muster except as to the CBTM components, and we cannot support a waiver of Section 229.7(a)(2) in complete ignorance of the specific inspection and testing protocols CSX proposes.

In its request for waiver of Section 229.135 requirements pertaining to event recorders, CSX states that “CBTM equipment will operate intermittently during the test program and may produce data that contains anomalies that do not reflect the true operating conditions.” Id. at p. 6. While we do not propose that any CBTM-specific data recorder be deemed an “event recorder” for purposes of Section 229.135, we strongly believe that any “anomalies that do not reflect the true operating conditions” must be captured as they are essential to determining the viability of the system, and request that FRA ensure CSX’s confidential program monitoring elements appropriately include retention and analysis of such data.

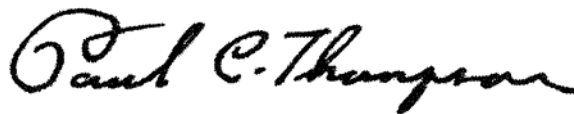
We do not oppose CSX’s request for a waiver of Section 233.9 for the reasons stated in the petition. We do not oppose CSX’s request for a waiver of Section 235.5 if FRA finds CSX’s confidential Section 236.913(j) program sufficient. We do not oppose CSX’s request for a waiver of Section 240.127 on a limited basis, provided the training that will be provided complies with the applicable provisions of Subpart H of Part 236. Lastly, we support CSX’s request for waiver of Section 240.129 for the duration of the pilot.

In closing, we again express our appreciation for the opportunity to participate in this process, and we look forward to working with FRA and CSX in the further development of CBTM.

Respectfully submitted,



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