



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

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JOHN P. TOLMAN

Vice President and

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April 12, 2007

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

Re: Docket No. FRA-2006-26603

Dear Docket Clerk:

On December 5, 2006, Union Railroad Company (“URR” or “Petitioner”) petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of 49 C.F.R. Part 233. *See* DOT DMS FRA-2006-26603-1 (“Petition”). On February 28, 2007, FRA published notice of the filing of the petition, soliciting comments from interested parties. *See* FRA-2006-26603-2.

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed by Petitioner. Consequently, the petition would have a significant impact upon our members. For the reasons set forth below, BLET opposes granting the requested relief.

Petitioner avers that its railroad “is less than 20-miles long, operating both yard and mainline trackage, the latter consisting mostly of single track. Petition at p. 1. However, Petitioner acknowledges that one of the three public grade crossings on its railroad is not equipped with crossing gates, and that there are nine overhead bridges across its tracks over which vehicular and pedestrian traffic can pass. Id. Further, Petitioner states that maximum track speed is 20 mph, but concedes that “many trains operate at significantly lower speeds due to heavy tonnage or permanent speed restrictions.” Id. Similarly, Petitioner admits that two yards where operations are conducted are accessible to the public. Id.

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We believe the size of the railroad is irrelevant to the proper consideration of the instant petition. What does stand out is the significant potential for injury caused or contributed to by a lack of Part 223-compliant glazing. The public crossing at grade that is not equipped with gates and the nine overhead bridges pose a serious risk to crews from vandals throwing or dropping rocks or other projectiles.

This risk is exacerbated by the slow speeds at which Petitioner's trains operate, because a slower moving target is much easier to hit with accuracy. Indeed, Petitioner admits that many trains operate at speeds significantly lower than the 20 mph maximum authorized speed due to heavy tonnage or permanent speed restrictions. Likewise, even accepting at face value Petitioner's claim that its operations at Clairton and Irvin Works, and at the Edgar Thomson Plant, are inaccessible to the public, these steel plants account for only three of the five locations where Petitioner performs yard operations.

Moreover, the instant petition remarkably resembles a 2004 request by this Petitioner for waiver from compliance with FRA glazing standards applicable to cabooses, which was assigned Docket Number FRA-2004-19260. In that matter, Petitioner also relied upon the size of its operation and, as here, at least implied that complying with FRA's standard was cost-prohibitive. *Cf.* FRA-2004-19260-1 and Petition at p. 2.

FRA's response to the 2004 petition is worth quoting at length, because the analysis and rationale applied by the Railroad Safety Board is equally correct today:

For many years, FRA has had a clear policy regarding railroad safety glazing waivers. In each case where a petition has been approved, upon reaching the life of the glazing or breakage, the non-compliant glazing shall be replaced with material which is compliant. In some isolated cases, the petitioner may obtain permission from FRA to utilize material made to an alternate glazing standard to replace broken or damaged non-compliant glazing. However, replacement of glazing that was either FRA Types I or II with non-compliant material is not in the interest of the general public, nor consistent with railroad safety. In addition, the Union Railroad operates within a major metropolitan area where a high potential for glazing breakage exists, and the railroad environmental hazards for which Types I and II were developed to provide protection.

See FRA-2004-19260-8.

Thus, the standard established by the Railroad Safety Board is that non-compliant glazing may be used only for its life or breakage. The 2004 ruling makes clear that FRA does not intend to grant permanent waivers from compliance with Part 233 for railroads with the size, type or operation and location of Petitioner. That ruling remains as sound today as when it first was rendered. Accordingly, FRA should deny the instant petition for the reasons set forth herein.

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Respectfully submitted,



Vice President and National Legislative Representative

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