



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

National Legislative Representative

September 11, 2007

Docket Clerk
DOT Central Docket Management Facility
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, Southeast
Washington, DC 20590

Re: Docket No. FRA-2007-27322

Dear Docket Clerk:

On July 2, 2007, Union Pacific Railroad Company (“UP” or “Petitioner”) petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of various railroad safety regulations set forth in Title 49 of the Code of Federal Regulations. *See* DOT DMS FRA-2007-27322-6 (“Petition”). On August 13, 2007, FRA published notice of the filing of UP’s petition, soliciting comments thereon from interested parties. 72 FR 45296.

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 on UP. Consequently, the instant petition would have a significant impact upon our members. For the reasons set forth below, BLET respectfully requests that the waiver to be granted in this matter provide the clarity or conditions concerning the regulations addressed herein.

Preliminarily, we wish to restate our long-held position that positive train control (“PTC”) technologies such as those being tested by UP can provide a significant improvement in safety and a reduction in risk when employed as an overlay for existing systems and operations. Moreover, we have been particularly interested in the PTC project on UP, and commented jointly with the United Transportation Union in 2006 concerning UP’s Railroad Safety Program Plan (“RSPP”). *See* FRA-2006-24002-3. We also have been monitoring this docket, and note with approval the collaboration between FRA and UP in the evolution of UP’s notice of product development, leading up to the instant waiver request, which is intended to facilitate testing of UP’s Communications Based Train Control (CBTC) and the Vital-Train Management System (V-TMS).

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That being said, however, there are certain aspects of UP's petition that require either further clarification or the imposition of conditions by the Railroad Safety Board so that the current level of safety is assured. We will address these issues in the order in which they appear in the petition.

UP seeks a waiver of 49 CFR Section 217.11, detailing FRA's requirements governing a railroad's program of instruction on operating rules and associated recordkeeping. Specifically, UP seeks an exemption for tests and demonstrations of CBTC/V-TMS equipment and procedures from the requirements for instruction and recordkeeping. In support of this request, UP states as follows:

During the CBTC/V-TMS test and demonstration phase, procedures for using CBTC equipment and functions will be refined and modified. Until such procedures are defined in the Program Safety Plan and/or associated documentation, they cannot be addressed in the GCOR or Union Pacific System Special Instructions. CBTC/V-TMS is expected to have minimal impact on the operating rules.

Petition at p. 5.

UP's rationale is valid as it pertains to Section 217.11. However, we note that Subpart H of Part 236, which sets forth the standards for processor-based signal and train control systems, includes detailed training requirements specific to locomotive engineers and other operating personnel. *See* 49 CFR § 236.927. These requirements are reflected in Version 4.3b of UP's RSPP in Section. *See* FRA-2006-24002 at p. 55. The waiver should clarify that any relief granted with respect to Section 217.11 does not change the obligation flowing from Section 236.927.

UP also seeks a waiver from compliance with Part 218, Subpart D, which contains FRA's prohibition against tampering with safety devices, for onboard CBTC/V-TMS equipment, to the extent that CBTC/V-TMS equipment on board a locomotive shall not be considered a "safety device" subject to the provisions of this subpart at any time during the test and demonstration phase. UP represents that CBTC/V-TMS tests and demonstrations require flexibility in installing, removing, turning on, and turning off the onboard equipment, and that it also needs the flexibility to permanently disable or remove CBTC/V-TMS equipment in the event that a revenue service system is not implemented. Petition at p. 6. We support this request, provided that appropriate safeguards are in place to ensure that locomotive engineers and other crewmembers are informed on a timely basis whenever the status of the system has been changed.

Waiver is further requested by UP for CBTC/V-TMS-equipped locomotives to the extent that non-operation of CBTC equipment installed on board, whether through malfunction or deactivation, shall not be construed as an unsafe condition subject to Section 229.7. Additionally, waiver is sought for non-CBTC/V-TMS-equipped locomotives operating in CBTC territory to the extent

that the absence of CBTC/V-TMS equipment onboard shall not be construed as an unsafe condition subject to this section. As justification for this request, UP states the following:

The CBTC test program requires flexibility in installing, removing, turning on, and turning off the on-board equipment. UPRR also requires the flexibility to permanently disable or remove CBTC equipment in the event that a production system is not implemented. Whether or not CBTC equipment on board a locomotive is functioning, the train remains subject to the safety provisions of the existing method of operation.

Id. As with the request for waiver of Part 218, Subpart D, this relief should be conditioned on the existence of appropriate safeguards to ensure that locomotive engineers and other crewmembers working CBTC/V-TMS-equipped locomotives are informed on a timely basis whenever the status of the system has been changed.

UP also seeks a waiver of Section 229.135 — governing event recorders — to the extent that CBTC/V-TMS equipment on board a locomotive shall not be considered an “event recorder” during the test and demonstration phase. Id. UP’s rationale is that

CBTC/V-TMS equipment by design will operate intermittently during the test and demonstration phase. The data accumulated by the onboard CBTC/V-TMS equipment will be used to develop and refine CBTC functions. Such data can be expected to contain anomalies that do not reflect true operating conditions but by analysis will contribute to achieving necessary objectives in the CBTC/V-TMS design.

Id. at p. 7.

This request for relief is appropriate and justified. However, this aspect of the waiver raises two issues the Railroad Safety Board must consider. One is that the locomotive consist must still be Section 229.135-compliant, irrespective of the presence of CBTC/V-TMS equipment on board. The other is that — to the extent the locomotive engineer and/or other crewmembers may have access to and, perhaps, rely upon “data ... contain[ing] anomalies that do not reflect true operating conditions” — appropriate training and warnings should be provided to prevent a crew from acting on inaccurate information concerning operating conditions.

UP also seeks relief from having to provide a “Signal System Five-Year Report” as mandated in Section 233.9 for the test and demonstration phases, claiming that “imposition of the [Section 233.9] requirements during the test and demonstration phase would be an unnecessary paperwork burden.” Id. Given the close scrutiny and oversight FRA plans for the test and demonstration phases, we agree that reporting during this period is redundant. However, those phases should be included in the first Section 233.9 report filed after revenue operations commence.

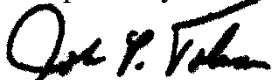
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Section 235.5 requires that an application be filed whenever a block signal system, interlocking, traffic control system, automatic train stop, train control, or cab signal system or other similar appliance or device is (1) discontinued, (2) decreased in limits, or (3) modified. UP's waiver requests an exemption for CBTC/V-TMS from the requirements of this section during the test and demonstration phase because of the need for flexibility in installing, removing, modifying, turning on and turning off the CBTC/V-TMS equipment, and also if UP decides to permanently disable or remove CBTC/V-TMS equipment in the event that a revenue service system is not implemented. Id. This relief should be conditioned on the existence of appropriate safeguards to ensure that locomotive engineers and other crewmembers working CBTC/V-TMS-equipped locomotives are informed on a timely basis whenever the status of the system has been changed.

UP also seeks relief from two provisions of FRA's locomotive engineer certification rule during the test and demonstration phases: Section 240.127, which sets forth criteria for examining skill performance; and Section 240.129, detailing the criteria for monitoring operational performance of certified engineers. UP's justification is that criteria and procedures for performance evaluations do not yet exist; they will be identified and defined during the test and demonstration phases. Id. While we support granting relief as to these provisions, we would urge the Safety Board to condition relief upon UP correlating refinements in its training processes with development of criteria and procedures for performance evaluations.

We acknowledge that the scope of relief sought in the instant petition is relatively narrow and, indeed, it could be argued that some of the points we raise are implicit in the manner in which the requests are limited. Nonetheless, in our view an abundance of caution requires that the first PTC test and demonstration on UP proceed with absolute clarity as to what relief is — and is not — granted. We appreciate the opportunity to comment in this matter, and look forward to working with FRA and UP in the upcoming testing and demonstration.

Respectfully submitted,



Vice President and National Legislative Representative

cc: Grady C. Cothen, Jr., Esquire, FRA Deputy Associate Administrator for Safety Standards and Program Development
Robert M. Grimaila, UPRR Chief Safety Officer
All Affected UP General Chairmen
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