



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

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February 15, 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-2006-26435

Dear Docket Clerk:

On November 15, 2006, BNSF Railway Company and Norfolk Southern Railway (hereinafter “Petitioners”) jointly petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the various requirements of Title 49 of the Code of Federal Regulations “to initiate [Electronically Controlled Pneumatic] ECP pilot train operations.” *See* DOT DMS FRA-2006-26435-1 (“Petition”). On January 16, 2007, FRA’s Railroad Safety Board conducted a public hearing concerning the petition.

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 the railroads operated by the Petitioners. Consequently, the instant Petition would have a significant impact upon our members. BLET respectfully requests that FRA dispose of the Petition as set forth below.

At the outset, we again commend FRA for conducting a public hearing on this important matter, and appreciate having had the opportunity to participate. The testimony of Petitioners’ witnesses was most enlightening, and the questions posed by the Safety Board both satisfied our concern that the Petition be carefully scrutinized and helped clarify numerous issues for us. As FRA knows, the BLET has a long and proud history of promoting and working to advance the implementation of technologies that enhance railroad industry safety. We recognize the potential benefits of ECP brake systems, both for our members and for the industry as a whole.

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That said, we wish to reiterate a pair of observations from our hearing testimony that, in our view, form the foundation for appropriate consideration of the Petition. One is that the Safety Board's review of each request for relief should focus on the following elements: (1) whether the regulation from which relief is sought prevents ECP from moving forward; (2) whether the regulation from which relief is sought is so prescriptive that compliance is impossible; and (3) whether the regulation from which relief is sought is inapplicable, given the way that ECP technology operates. Stated more simply, is a particular request operationally necessary, or does it merely provide Petitioners a convenience?

The other concerns the fact that implementation of ECP will begin on a small scale, on limited routes and for specific trains, and with no expansion plan yet developed or identified. For at least the foreseeable future, ECP trains and conventional trains will be running side-by-side. One day, a locomotive engineer will operate an ECP train. The next day, perhaps, that same engineer will operate a conventional train.

An engineer may operate an ECP train for two or three days in a row and then go a week without seeing one again. We urge FRA to exercise caution by avoiding creating different standards that are not absolutely necessary from an operational standpoint, but exist just for the sake of operational convenience and/or economic savings. Establishing different standards when they are not absolutely necessary elevates the potential for human error flowing from confusion if someone inadvertently applies the wrong standard at the wrong time, with the possibility of a very serious negative safety outcome.

It is within this framework that we respond to the instant Petition. Except where superseded or otherwise noted, our written and oral testimony from the public hearing is incorporated by reference herein. Also, we wish to state our complete concurrence with the positions espoused by the United Transportation Union in this proceeding.

Before turning to the specific items enumerated in the Petition, we find it necessary to preliminarily comment on additional information provided by the Petitioners and the manufacturers. With respect to frequency of tests and inspections, Petitioners claim as follows:

ECP trains should be allowed to run from initial terminal inspection to destination without an intermediate inspection, regardless of the mileage. This performance-based technology supersedes the need for a scheduled inspection based on the amount of mileage that can be accumulated within the boundaries of the U.S. rail system.

FRA-2006-26435-6 at p. 3.

Petitioners propose an inappropriate standard. ECP waivers — and eventual ECP regulations, for that matter — should not be based upon performance-based technology, they should be

based upon performance-based data. Petitioner's argument presupposes that the performance of the equipment will reflect in the long term what its designers have planned. A performance-based standard is valid only to the extent that the product demonstrates through extensive testing and use that it is reliable.

The position of the Petitioners is equivalent to requesting waivers to implement a positive train control system based upon the designs of the electrical and software engineers. It has been FRA's consistent policy to require all new technologies to undergo rigorous testing, so that data can be collected from which the actual performance of the technology can be gauged. Petitioners' position with respect to frequency of inspections and testing — echoed in its post-hearing comments regarding foundation components (id.) — is inappropriate at this stage and FRA should reject the proffered arguments.

Another subject that remains unclear to us is what Petitioners intend. The Petition filed with FRA specifically states that the intent is to "initiate ECP pilot train operations." FRA-2006-26435-1 at p. 1. Further, Norfolk Southern ("NS") Manager of Car Administration Sigler testified that the purpose of the Petition was to "proceed with a pilot project." FRA-2006-26435-14 at p. 39. However, NS Senior General Attorney Corcoran stated that the waiver was sought "in order to begin implementation of" ECP. Id. at p. 10. Similarly, Wabtec Director of Business Development Kull referred to "initial ECP train implementation." Id. at p. 25.

Subpart F of Part 232 was promulgated specifically with ECP in mind. *See* 49 CFR § 232.501. However, Petitioners essentially seek a waiver from the entirety of Subpart F. We oppose Petitioners' request that FRA waive the Section 232.505(e) requirement that they file a Pre-Revenue Service Acceptance Testing Plan. Indeed, had Petitioners complied with this requirement, many of the questions that arose at the public hearing — and remain unanswered to this day — should have been addressed. It is inconceivable that Petitioners would decline to submit a plan, and yet propose that their petition serve as the basis for ECP rulemaking. FRA cannot regulate on the basis of proffered articles of faith; the safety equivalency must be demonstrable, and submission of the plan must be required.

Moreover, this requirement is the power brake equivalent of the requirements of Subpart H of Part 236, and we frankly fail to see how appropriate testing can be conducted and appropriate oversight exercised without an approved plan. Finally, as FRA has noted, certain elements of relief may be granted only pursuant to 49 U.S.C. § 20306. Petitioners are not entitled to the benefits of that consideration unless and until they have complied with the requirements of the FRA regulation that provides FRA with an objective basis for its determination.

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Furthermore, whether the waivers are sought for a pilot or for an implementation of, presumably, long-term ECP operations is a question of substance, rather than semantics. In fact, as we stated in oral and written testimony, both the August 2006 Booz | Allen | Hamilton Report and the October 2006 Report of the AAR's Railway Technology Working Committee indicated that the state of the technology is such that a pilot program was the appropriate next step. *See* FRA-2006-26435-14 at p. 119; FRA-2006-26435-5 at p. 1.

Petitioners seek relief from numerous safety-critical FRA regulations. Indeed, the philosophical underpinning of the Petition is a shift from prescriptive regulation to a performance standard. Unfortunately, however, Petitioners have not provided any performance data to support such a shift. In fact, New York Air Brake Systems Engineering Manager McLaughlin testified that even foreign data concerning mean time to failure from international applications of ECP is still being compiled. FRA-2006-26435-14 at p. 102.

Accordingly, our view is that relief should be limited to those items necessary for a pilot project to proceed, with appropriate, conservative conditions to ensure safety, especially where no performance data has been provided, and only after Petitioners have complied with Part 232, Subpart F. Unfortunately, Petitioners' lack of clarity on this question and their failure to submit a Subpart F plan make it difficult to discern what relief really is needed. This is most troubling, because Petitioners clearly intend to bootstrap the relief granted by FRA into permanent conditions that will apply to all future ECP operations.

Indeed, the Association of American Railroads ("AAR") went so far as to file post-hearing comments that appear to push FRA in the direction of using the instant process as a mechanism for establishing ECP regulations in advance of initiating a rulemaking. *See* FRA-2006-26435-15. We are unable to respond to AAR's comments for several reasons, including (1) the fact that they were submitted a mere ten days prior to the close of the comment period, and (2) AAR's citation of at least three of its standards (S-486, S-4200 Series, and S-4230) without providing same for the record places us at a tremendous informational disadvantage. Nonetheless, we are firmly convinced that Petitioners and AAR are advocating unwarranted haste.

We fully anticipate that mature ECP brake regulations are unlikely to bear a great deal of resemblance to current air brake regulations. It appears to us, however, that Petitioners and AAR are proposing a course of maximum relief at the present time, in the hope that ECP will perform as anticipated by the industry; a sort of "trial and hope there is no error" tack. This approach is similar to the one urged by AAR in its 2005 petition seeking to replace current annual and biennial brake test requirements for electronic locomotive brake systems with a performance standard developed in a waiver test program conducted by CSX Transportation. In that matter, the Safety Board expressly rejected the notion that performance levels in one place or under one set of cir-

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cumstances, *per se*, provides a sufficient basis for automatic, broad relief. *See* FRA-2005-21613-4 at p. 2.

Thus, we urge the Safety Board to limit relief to those elements necessary for ECP to make its safety case, and not allow those who wish to proceed with the business case to do so unless additional relief is earned via performance. In our opinion, proceeding in this matter will lead to disposition of the various waiver requests in the following manner.

Petitioners' request for waiver from compliance with the Section 229.21 requirement for a daily locomotive inspection, substituting in lieu thereof a "Trip Inspection," should be denied. Other than differences in brake control systems and train brake monitoring, locomotives used in the ECP pilot will be indistinguishable from locomotives used on conventional trains. Moreover, this issue currently is being handled by the Railroad Safety Advisory Committee's Locomotive Safety Standards Working Group, and Petitioners' inclusion of this item of relief was improper for that reason.

Waiving the daily inspection requirement will have no effect whatsoever on how defects will be handled when they are discovered. The purpose of the daily locomotive inspection is to ensure — at least once each calendar day — that there are no federal defects in any of the various locomotive subsystems at the time of the inspection. Waiving this requirement will expose locomotives in ECP service to an unacceptably lower standard of inspection, while denying the request will not impair in any way ECP operations.

Petitioners' also seek broad relief from Section 232.15, which governs movement of defective equipment. Petitioners essentially seek to keep all cars in service until such time at the total number of operative brakes a given train falls below 85%. We acknowledge that the ECP system is designed to (1) stop a train when the number of operative brakes falls below 85% and (2) thereafter will permit movement at no more than 20 mph. However, the broad relief requested raises safety concerns and may skew the performance data necessary for FRA to validate the safety case for ECP.

That said, we believe it is appropriate for FRA to grant relief from this provision limited to (1) only those defects that are unique to ECP and cannot be repaired at the location where the defect is discovered, and (2) waiving the § 232.15(a)(7)(ii) limitation of movement to a repair facility on a connecting railroad. We further urge FRA to require Petitioners to submit to FRA written information concerning the locations of all ECP repair facilities — similar to the process

set forth in Section 232.207 — and to mandate that no change to the list of repair facility locations may be made without written prior notice to FRA.¹

With respect to Section 232.103(d), Petitioners make several requests. We oppose granting relief from the requirement that 100% of the brakes must be effective and operative prior to departure after a Class I brake test for several reasons. Granting this request would establish a different standard for ECP that is not operationally required, and is a convenience rather than a necessity.

Furthermore, if ECP is to be fairly evaluated, and if an accurate cost benefit analysis is to be made, ECP and conventional operations should mirror one another to the maximum extent possible; waiving the 100% requirement automatically introduces a bias in favor of ECP. Finally, if the enhanced braking capability if ECP is used to institutionalize a lower standard of effectiveness and operability, an operational nightmare will ensue for locomotive engineers, because there will be no consistency of performance by any train when a trip begins.

As we stated in our written public hearing testimony, FRA should grant Petitioners' request for "the flexibility to pick up ECP cars set out with defective brakes on ECP or conventional trains as long as 85% of operative brakes are maintained," provided such pick-ups are not made at a location where repairs could be made.² This limited relief is appropriate for expediting the movement of defective cars to repair facilities without diminishing safety. Concerning Petitioners' request for similar relief when ECP cars are set out for repairs not related to the braking system, we believe relief would be inappropriate and should be denied.

With respect to waiving the piston travel requirements set forth in Section 232.103(g) in favor of the manufacturer's specifications, relief should be granted based on Petitioners' and the suppliers' representations that appropriate stencils will be applied to cars, but expressly conditioned on appropriate training being provided to all employees who will be subject to the alternate specifications.

¹ Petitioners' representatives testified at the public hearing as to the likely locations where these facilities would be located. Written confirmation of the initial locations, as well as advance written notice of any change(s), is necessary in order for FRA to exercise appropriate oversight.

² Representatives for both Petitioners testified at the public hearing that a policy would be established to prohibit dispatching a car with an ECP brake defect from a terminal that has ECP repair capability. *See* FRA-2006-26435-14 at pp. 61-62. We strongly believe such an important safety requirement should not be left to corporate policy; rather, it should be a condition included in any waiver FRA may grant. Given Petitioners' representations on this question, such a waiver condition should not be objectionable.

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With respect to requirements governing dynamic brakes, Petitioners greatly narrowed the scope of the relief being sought in their public hearing testimony:

we would like some relief that if indeed we had a lead unit on an ECP train that we happen to trigger the noncomplying part of the dynamic brake requirements, let's say in the middle of the trip, rather than lose the locomotive and then the train, we'd like to be able to continue on to the end destination.

FRA-2006-26435-14 at p. 68. *See also* FRA-2006-26435-6 at p. 3.

It appears to us, then, that Petitioners are requesting only a waiver of Section 232.109(f), which provides as follows:

(f) If a locomotive consist is intended to have its dynamic brakes used while in transit, a locomotive with inoperative or deactivated dynamic brakes or a locomotive not equipped with dynamic brakes shall not be placed in the controlling (lead) position of a consist unless the locomotive has the capability of:

- (1) Controlling the dynamic braking effort in trailing locomotives in the consist that are so equipped; and
- (2) Displaying to the locomotive engineer the deceleration rate of the train or the total train dynamic brake retarding force.

If Petitioners intend "end destination" to mean the train's final terminal, FRA should grant the requested relief. However, under no circumstances should an ECP train be dispatched from an initial terminal with an inoperative dynamic brake on the lead locomotive. Further, this limited relief should be granted only if FRA denies that portion of the Petition that seeks relief from the 100% effective and operable brake requirement. Also, as we noted in our written public hearing testimony we support testing and research designed to gather data in order to identify an appropriate modification of the "miles-per-hour-overspeed-stop" rule set forth in Section 232.109(j) for ECP-equipped trains.

Petitioners seek relief from the requirements of Section 232.111(b)(3) and Section 232.111(b)(4), claiming that "the ECP technology provides this information in real time to the crew" and, therefore, the regulatory requirement "is not necessary." We disagree with Petitioners' analysis, which is misleading. To the extent that the locomotive-mounted ECP monitor indicates the number and/or location of cars with cut out or otherwise inoperative ECP brakes, the system appears to fulfill a portion of Section 232.111(b)(3).

However, the manufacturers note that the

ECP train initialization process provides the means for the engineer to manually input the total train consist to supplement the automatic polling and sequencing process. As an example, if only 98 cars are found as active by ECP, and the engineer inputs the train as being 100 cars, the display will show only 98% operable brakes.

FRA-2006-26435-8 at p. 3. Thus, it appears that — at least in some situations — obtaining the correct information from the ECP self-diagnostic and monitoring system depends upon manual input by the locomotive engineer. Accordingly, Petitioners have failed to demonstrate that even the portion of Section 232.111(b)(3) pertaining to the number and/or location of cut out cars is alternatively fulfilled by the ECP monitoring system.

Furthermore, this subparagraph also requires that the information provided must include “the location where [cars with inoperative brakes] will be repaired.” Likewise, Section 232.111(b)(4) mandates that if a Class I or Class IA brake test is required prior to the next crew change point, the location at which that test shall be performed must be provided to the crew. The ECP system does not provide this information; indeed, this request assumes FRA will grant waivers requested concerning other regulations. Because we oppose the granting of those portions of the petition, we oppose granting relief for these requirements.

Petitioners also seek to eliminate the requirements set forth in Section 232.205(a)(2), (a)(3), and (a)(4), that a Class I brake test and inspection be conducted (1) when the consist has been changed by other than adding or removing blocks of cars and removing defective cars, (2) when the train has been off air for more than four hours, and (3) when a unit or cycle train has traveled 3,000 miles since its last Class I test and inspection. The basis for this request is that the locomotive-mounted ECP monitor makes this test unnecessary.

We oppose this request, because it is not operationally necessary. Furthermore, the system does not and cannot convey — as Petitioners and the manufacturers concede³ — all of the information that is discerned when a proper Class I test and inspection is performed pursuant to Section 232.205(c).⁴ The purposes for which a re-test is required when a train has been off air for more than four hours are not eliminated when a train is ECP-equipped, and we can think of no conditions that could be imposed that would adequately ensure safety if relief was to be granted.

³ The manufacturers acknowledge that the ECP self-diagnostic system is limited to brake pipe, reservoir, and brake cylinder pressures. *See* FRA-2006-26435-8 at pp. 1, 4; FRA-2006-26435-14 at p. 23.

⁴ In this regard, we draw the Safety Board’s attention to the extensive treatment of this subject in the Statement of Richard A. Johnson, General President, Brotherhood Railway Carmen Division Transportation•Communications International Union filed in this matter, with which we wholeheartedly concur.

Petitioners also request that the 75 psi requirement set forth in Section 232.205(c)(3) be modified to 60 psi, and that the piston travel requirements prescribed in Section 232.205(c)(5) be waived. We oppose the former request because (1) it is not operationally necessary, (2) it would raise the potential that a train could depart less than fully charged, and (3) as we noted concerning Section 232.103(d), establishing different standards for different equipment sets that will be operated side-by-side, when they are not operationally required, is a recipe for confusion and injects an unnecessary risk. Further, we note that the manufacturers state that they

[r]ecommend retaining existing pressures, as needed to maintain full pneumatic back-up performance. ECP can operate with less than 75 psi brake pipe, but will have increased risk of low reservoir alarms during service applications. The incremental time for system testing to go from 60 to 75 psi brake pipe (to the end of the train) is typically on the order of a few minutes, and not worth the risk of failing initialization tests at lower pressures.

FRA-2006-26435-8 at p. 4.

As for the piston travel waiver request, we believe FRA should apply the same standard as will be used concerning Section 232.103(g). Namely, relief should be granted in favor of the manufacturer's specifications, but such relief should be conditioned on (1) publication of those specifications in the same manner as the § 232.205(c)(5) requirements, and (2) appropriate training for all employees who will be subject to the alternate specifications.

Petitioners seek two specific items of relief concerning Section 232.205(c)(4). One parallels its request with respect to Section 232.103(d), and seeks the elimination of the 100% effective and operable brake requirement; we oppose this request for the same reasons previously set forth. The other seeks the elimination of the requirement that brakes remain applied for at least three minutes during a retest. This request is not operationally necessary and should be denied. Moreover, a proper Class I test and inspection easily could take more than the three minutes specified in the rule.

Petitioners also seek to waive in its entirety the Section 232.207 requirement that a Class IA brake test and inspection be performed at least every 1,000 miles. We oppose this request for many of the same reasons previously stated: relief is not operationally necessary; the ECP monitoring system does not convey all of the information gleaned from the inspection; different standards for different equipment sets that will be operated side-by-side that are not operationally required provide a recipe for confusion and introduce unnecessary risk.

Petitioners further seek relief from numerous provisions of Section 232.209. With respect to subparagraph (a)(1), Petitioners "requests FRA waive the off-air for 4 hour requirement relying instead on ECP self-diagnostics." This request contains two elements. The first concerns relief from the requirement for a Class II brake test and intermediate inspection whenever a car or solid

block of cars has been off air for more than four hours; we oppose granting relief from the four hour requirement for the reasons set forth by FRA in enacting the requirement in its January 17, 2001 Final Rule.

The other element pertains to the use of ECP self-diagnostics. With regard to this alternative approach, we recognize that a Class II test and inspection is not as rigorous as a Class I test and inspection. If the ECP locomotive monitor provides sufficient information to replicate the Class II test and inspection in its entirety, and FRA permits the use of the monitor in lieu of physical observation, then Petitioners should be able to comply with subparagraph (a)(1) by these alternative means and no waiver would be necessary.

Petitioners also seek to perform Class II tests and inspections with a minimum brake pipe pressure of 60 psi, rather than the 75 psi, in the application of subparagraphs (b)(1) and (b)(2). We oppose this request because (1) it is not operationally necessary, (2) it would raise the potential that a train could depart less than fully charged, and (3) as we previously noted, establishing different standards for different equipment sets that will be operated side-by-side, when they are not operationally required, is a recipe for confusion and injects an unnecessary risk. Also, this request is contrary to the testimony by witness Kull of Wabtec:

I think again from a pure technical viewpoint, to maintain the same back-up pneumatic capability, you still want to operate, have the train dispatch with at least 75 psi at the end of the train.

See FRA-006-26435-14 at p. 88.

Additionally, Petitioners have asked that FRA waive the requirements of paragraphs (c) and (d). We believe that a waiver of paragraph (c) is unnecessary if the end-of-train device that will be used is functionally equivalent to the device in use on the companion conventional trains; otherwise relief should not be granted. With respect to paragraph (d), we oppose the request because (1) the rule is not operationally necessary, and (2) establishing different standards for different equipment sets that will be operated side-by-side, when they are not operationally necessary, is a recipe for confusion and injects an unnecessary risk.

We also oppose Petitioners' request that the Section 232.211 Class III brake inspection requirements be waived in their entirety, because (1) the rule is not an impediment to ECP operations, (2) waiver of the rule would raise the potential that a train could depart less than fully charged, (3) establishing different standards for different equipment sets that will be operated side-by-side, when they are not operationally required, is a recipe for confusion and injects an unnecessary risk. For the same reasons, and because it is contrary to the manufacturers' recommendations, we oppose Petitioners' request that FRA waive the 80 psi requirement set forth in Section 232.217(c)(3).

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Petitioners further request waiver of the Section 232.305 single car air brake test. We oppose this request for the following reasons. First, it has not been established to our satisfaction that the ECP self-diagnostic system fulfills all the requirements of the single car test. Second, to the extent ECP is designed to foster a performance-based regulation in the future, the proposed operation should be the proving ground for ECP's performance; a comparison of single car air brake test data and ECP self-diagnostic data is necessary to demonstrate the performance of ECP's self-monitoring system. Third, the rule is not an impediment to ECP operations. And, fourth, establishing different standards for different equipment sets that will be operated side-by-side, when they are not operationally necessary, is a recipe for confusion and injects an unnecessary risk.

In written comments filed on January 26, 2007, Petitioners provided further explanation for this item of relief, claiming that “[u]ntil there is sufficient data to indicate a need for periodic testing, there should be no requirement for periodic testing.” FRA-2006-26435-6 at p. 2. Petitioners have placed the cart before the horse. Performance standards must be established on proven performance, not speculative future performance. Indeed, Petitioners argument here is almost identical to one advanced by AAR in its petition for extended testing intervals for electronic locomotive braking systems — that performance data and experience from one railroad should automatically be extended throughout the industry — a premise that FRA rejected. *See* FRA-2005-21613-4 at pp. 1-2.

Petitioners also seek a waiver from compliance with all of the requirements set forth in Part 232, Subpart E, which govern end-of-train devices, or “EOTD.” Subpart E provides lengthy requirements including design standards, performance standards, operational limitations, and inspection and testing criteria for EOTD, which need not be addressed in detail at this time, because the ECP EOTD should meet every safety standard contemplated by Subpart E, and relief should be granted only when a specific component falls outside the relevant Subpart E standard.

Further, such relief should be narrowly conditioned so as to provide an equivalent level of safety. For example, the manufacturers note

that in an operating train, when there is an ECP equipment or other failure leading to an individual car being cut-out, the pneumatic back-up remains active and cut-in. This maintains the ability for emergency braking to still be initiated from the locomotive pneumatically (by dropping the brake pipe), which will apply to all cars which remain pneumatically cut-in.

FRA-2006-26435-8 at p. 2. Thus, an EOTD approved for ECP service should be required to meet the same standard for the identical conventional train with respect to the capability to initiate an emergency application from the rear of the train. Petitioners have made no showing that the rule is an impediment to ECP operations, and — as with several other requests — we have a

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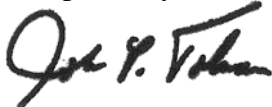
concern that establishing different standards for different equipment sets that will be operated side-by-side, when they are not operationally necessary, is a recipe for confusion and injects an unnecessary risk.

Lastly, we note that Petitioners have yet to provide responses to numerous questions posed by FRA. With respect to the list of questions and issues raised by FRA prior to the public hearing (*see* FRA-2006-26435-4 at pp. 4-8), the public docket reflects only responses to some of the questions by the manufacturers; no responses have yet been provided by the Petitioners. Further, when questioned at the public hearing as to how communication will be made indicating when the last time a car or block of cars received its proper inspection, NS witness Sigler responded that the answer was "something we'll have to give you in writing." *See* FRA-2006-26435-14 at p. 78. That answer apparently has not yet been provided.

The same is true concerning how far beyond 3,000 miles Petitioners proposed to operate their trains without an inspection (*id.* at pp. 83-84), which we oppose for the reasons set forth earlier. Similarly, the Hearing Officer requested more detailed information on plans for electronic recordkeeping (*id.* at pp. 107-108), which has not yet been published in the public docket, if it has been provided. No approval of any waiver should occur unless Petitioners provide answers that are open to public scrutiny and comment.

Obviously, much more needs to be done before FRA is in a position to make a full decision concerning what waivers are necessary for this ECP project. We firmly believe that the next step is submission of the plan required by Subpart F of Part 232. It also is imperative, in our view, that Petitioners provide detailed responses concerning outstanding questions and issues. We look forward to reviewing additional information provided by the Petitioners and the manufacturers, and we appreciate the opportunity to have participated in this process.

Respectfully submitted,



Vice President and National Legislative Representative

cc: All BNSF and NS General Chairmen
All State Legislative Board Chairmen in States where BNSF or NS operates
Thomas A. Pontolillo, Director of Regulatory Affairs