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BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION

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FEDERAL RAILROAD ADMINISTRATION

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FRA WAIVER PETITION DOCKET No. FRA-2004-17989 - 5

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**Blue Signal Protections**

(49 C.F.R. Part 218)

August 17, 2004

STATEMENT OF RICHARD A. JOHNSON, GENERAL PRESIDENT,  
BROTHERHOOD OF RAILWAY CARMEN DIVISION  
TRANSPORTATION • COMMUNICATIONS INTERNATIONAL UNION

3 Research Place  
Rockville, Maryland 20850

### ***Introduction***

My name is Richard A. Johnson. I am the General President, Brotherhood of Railway Carmen Division, Transportation • Communications International Union (BRC) and an International Vice President of the Transportation • Communications International Union (TCU). I have been a carman for 33 years, beginning in 1971 on the former Milwaukee Road at Bensonville, Illinois, and I am personally familiar with the Federal Railroad Administration's (FRA) regulations that set forth safety appliance standards for rail equipment.

The BRC appreciates this opportunity to participate in the regulatory process, and brings to that process an enormous wealth of experience and practical knowledge in the area of railroad safety. Our experience has taught us that full compliance with the Federal Railroad Administration's (FRA) safety regulations is the surest way to improve railroad safety and, to that end, the BRC wishes to address the safety and other issues raised by this petition for waiver.

The Canadian Pacific Railroad (CP) seeks a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR part 218. CP requests specifically to permit train and yard crew members and utility employees to remove and replace batteries in two-way end-of train telemetry devices (EOT), while the EOT is in place on rear of the train, without establishing any blue signal protection. For the reasons stated below, the BRC opposes CP's request for waiver and requests FRA to deny their petition.

### ***CP's waiver of blue signal protection should be denied because the request risks the safety of railroad employees.***

CP's waiver should be denied because it is based solely on improving operating efficiency while disregarding safety of their employees required by CFR safety regulations. Sections 218.25 and 218.27, require blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. Workers are "railroad employe[e]s assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems." 49 CFR 218.5

According to CFR 218.22(b)(5), a utility worker is not afforded blue signal protection only in certain circumstances:

if the utility employee is inspecting, testing, installing, removing or replacing a rear marking device or end of train device. **Under all other circumstances**, a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with sections 21.23 through 218.30 of this part. (Emphasis added)

A utility employee servicing an EOT *in situs* must have blue signal protection. CFR Part 218.22(b)(5) exempts carriers from affording blue signal protection to utility employees **only** when they are inspecting, testing, installing, removing or replacing a rear marking device or end of train device. Utility employees are not authorized to repair or service railroad rolling equipment or their component parts with out blue signal protection. 49 CFR 218.5. If a utility employee removes an EOT battery, blue signal protection is required. However, if any employee is servicing the EOT on the train, blue signal protection is required in accordance with 49 CFR 218.22(b)(5).

BRC has previously and consistently opposed any reduction and/or elimination of blue signal protection as set forth in 49 CFR Part 218. CP cannot bypass the CFR and the FRA.

Blue signal protection is the heart of railroad safety. Blue signal protection is required for employees servicing EOTs attached to freight cars because the employee is between railroad rolling equipment. This vital protection cannot be compromised for operational efficiency.

It has historically been the position of the FRA that whenever an employee, regardless of the employee's title or duties, is performing repair service to rolling equipment, that the employee is to have blue signal protection. The FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of the train, requires blue signal protection because this task is a service and/or a repair to the device. The only way a utility employee or a train and yard crew member can legally remove or replace a battery, without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the work away from any and all unexpected movement of freight cars.

Also, it is not unreasonable to for CP to use blue signal procedures. CP, like all rail carriers have blue signal lights and locks in place. There is no additional financial costs to CP for using blue signal procedures.

In its petition for waiver, CP raised the following arguments. First, that it is common practice in the rail industry to change EOT devices attached to trains. CP noted specifically that Burlington Northern Sante Fe (BNSF) have already received similar waivers.

The practice is not as broad as CP contends. The waiver granted to BNSF was conditional. Among other things, the FRA provided that "[i]f the battery change-out requires the use of tools, blue signal protection would have to be established before the procedure could be carried out." Thus, if a utility employee is servicing the battery, *in situs*, blue signal protection is required.

Further, the fact that one (1) carrier has obtained waivers for the same regulation does not negate the need for the blue signal protection. Carriers are seeking to eliminate blue signal protection in this instance purely for their own convenience. Additional waivers will only

encourage further erosion of these protections.

Second, that blue flag protection is not required for employees changing EOT batteries because they are members of train and yard crews, and properly assigned utility employees. CP maintains that these employees are not covered by blue flag protection under CFR Part 218.22(c)(5) while inspecting, testing, removing or replacing an EOT device. CP particularly notes that battery replacement is left out of the this regulation.

As stated above, a utility employee servicing an EOT *in situ* must have blue signal protection because utility employees are not inspecting, testing installing, removing or replacing a rear marking device or end of train device. The employees are servicing the EOT which requires blue signal protection.

Third, that changing EOT battery *in situ* requires less time, places the employee in less immediate danger, and creates less physical strain than removing and replacing the entire EOT. CP additionally bolsters this contention by the fact that the batteries the CP uses are smaller than the batteries used by the BNSF.

While changing an EOT device *in situ* does take less time, BRC does not agree that an employee is in less immediate danger. Working between rolling equipment is dangerous because an employee can be seriously injured from any movement of the equipment. The size of the battery is irrelevant because the employee is still servicing the equipment. Blue signal is required and provided to employees who perform any service between rolling equipment regardless of the type or size of any item being serviced.

Finally, CP argues that this waiver is necessary due to the failure of the RSAC working group to come to a consensus on the related amendments to Part 218.

The failure of the RSAC working group to come to a consensus on this issue does not support CP's position. In fact, the failure displays the participating labor organizations intense opposition to carriers proposals to water down blue signal protections.

As blue signal protection is eliminated, the hazards to railroad workers and the general public increase. Safety must be the foremost consideration of FRA in regulating railroads. It is clear that railroads consider blue signal protection a burden to be avoided instead of a safeguard to be followed. Such is not the case for the BRC. Blue signal protection as set forth in the federal regulations should not be eliminated or weakened.

### ***Conclusion***

The Brotherhood of Railway Carmen always welcomes the opportunity to participate in

the regulatory process. Safety issues addressed in this process are among the primary concerns to the Carmen. In accordance with our commitment to maintaining safety on the nation's railroads, the BRC suggests that FRA deny the CP petition for waiver.