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FEDERAL RAILROAD ADMINISTRATION
PUBLIC HEARING

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Wednesday, October 13, 2004

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* * * * *

P R O C E E D I N G S

1
2 MR. McKEON: Good morning --
3 Federal Railroad Administration in
4 conjunction with Docket FRA 2003-17989, which
5 is a petition by the Canadian Pacific Railway
6 for a waiver of compliance with certain
7 provisions of 49 CFR, part 218. I note for
8 the record that we have already conducted a
9 safety briefing and we're ready to proceed
10 with the hearing.

11 My name is Mark McKeon, I'm
12 regional administrator in FRA's northeastern
13 region office in Cambridge, Massachusetts.
14 I'm also a member of the Railroad Safety
15 Board, and it's in that latter capacity that
16 I'll be serving as hearing officer for
17 today's panel.

18 Other members of the hearing panel
19 are, on my immediate left, David Blackmore,
20 is deputy regional administrator in FRA's
21 Midwestern regional office in Chicago, and is
22 also a member of the Railroad Safety Board.

1 On my immediate right, Thomas Herrmann is a
2 senior trial attorney in FRA's Office of
3 Chief Counsel and is counsel to the Railroad
4 Safety Board and will serve as legal officer
5 for today's hearing.

6 Next to him is James Wilson who is
7 a railroad safety specialist in FRA's Office
8 of Safety and Headquarters and will serve as
9 a technical expert on the panel today. In
10 addition, in the audience we have Rich McCord
11 who is our field liaison director for FRA,
12 George Scerbo who is a motor power and
13 equipment safety specialist, and Gene Cox who
14 is an operating and practices specialist, all
15 located in our FRA's headquarters office.

16 I'll ask Attorney Herrmann to read
17 the legal officer's statement at this time.

18 MR. HERRMANN: Good morning.
19 Today's hearing will be conducted in
20 accordance with the rules of practice of the
21 Federal Railroad Administration published in
22 Title 49 of the Code of Federal Regulations

1 and part 211. Today's hearing will be
2 informal, will not be an adversarial
3 proceeding, the rules of evidence do not
4 apply, and cross examination of witnesses
5 will not be permitted.

6 The purpose of this hearing is fact
7 finding, it's not meant to be a forum for a
8 debate on the petition now before us, rather
9 as an opportunity for you to provide relevant
10 information to FRA and a mechanism to place
11 your views on the record for later review and
12 consideration.

13 In order to permit each of you an
14 equal opportunity to express your views and
15 comments, the following procedures will be
16 used: Each person who wishes to do so will
17 be permitted to make an oral statement. At
18 the beginning of your oral statement, please
19 identify yourself, spell your name for the
20 court reporter, and indicate whether you are
21 appearing as an individual or in a
22 representative capacity.

1 At the conclusion of the witness'
2 statement, the hearing officer and technical
3 panel may question the witness to clarify the
4 witness' testimony. After questioning by the
5 hearing officer and the technical panel, any
6 questions for witnesses will be taken from
7 the audience.

8 FRA does not permit cross
9 examination of witnesses about justification
10 for their comments or the validity of their
11 reasoning. However, FRA does permit
12 questions for the purpose of resolving
13 ambiguities, defining terms, and otherwise
14 clarifying the substance of any testimony.

15 At the conclusion of all questions
16 for a given witness, we will move on to the
17 next witness. If a document you will be
18 referring to today has not yet been furnished
19 to the FRA, please submit a copy to the
20 hearing officer and to the court reporter so
21 that it may be marked for identification and
22 made part of the public docket.

1 A transcript of today's proceeding
2 is being taken. We will not go off the
3 record in this hearing unless so stated by
4 the hearing officer. A transcript is being
5 prepared by a private, non-governmental
6 reporting service under contract with FRA.

7 A transcript of this proceeding and
8 all filed comments are available for
9 inspection in room PL401 on the plaza level
10 of the Massiff Building at 400 7th Street,
11 S.W., Washington, D.C. between the hours of
12 9:00 a.m. and 5:00 p.m., Monday through
13 Friday. Anyone wishing to purchase a copy of
14 the transcript may make their own
15 arrangements with the reporting service by
16 speaking to the reporter here today. In
17 addition, the entire contents of the docket
18 including the record of this hearing and all
19 filed comments are available for viewing and
20 downloading on the internet at
21 <http://dms.dot.gov>.

22 At this time, if you have any cell

1 phone or other electronic device that could
2 ring or otherwise make noise during the
3 hearing, we ask that you shut it off or put
4 it on silent ring for the duration of the
5 hearing. Thank you.

6 MR. McKEON: Thanks, Tom. First
7 witness will be the petitioner, so we'll ask
8 the representative from Canadian Pacific --
9 -- to come forward and be heard from the
10 witness table. Please identify yourself and
11 spell your name for the record.

12 MR. KIENZLER: My name is Jim
13 Kienzler, K-i-e-n-z-l-e-r, I'm director of
14 Regulatory Affairs for Canadian Pacific here
15 to represent our Soo line and DNH.
16 Subsidiaries. I'm headquartered in Calgary,
17 Alberta, and I'm honored to be here today.

18 CP believes that the FRA comments
19 published on September 22nd, under
20 docket 17989, accurately describe the
21 recurrent regulatory framework and the
22 reasons for CPR's waive request. However,

1 from some of the comments to parties
2 responding to that docket, it appears it's
3 less clear as to why we want this waiver.

4 EOT telemetry equipment did not
5 exist when the blue flag regulations were
6 originally written back in 1976. However,
7 even at that time, the FRA recognized that
8 members of train and yard crews were excluded
9 from the definition of workmen that currently
10 exist in that regulation.

11 In 1972, there was an NPRM written
12 to cover the concept of utility employees,
13 and in that NPRM, the FRA reinforced the
14 exclusion based on the rationalization that
15 assigned trained crews had complete control
16 over the movement of the equipment that they
17 operated and posed no great safety risk.

18 However, in the final ruling
19 in 1993, the FRA failed to fully recognize
20 the same protection should be afforded to
21 utility employees. They conceded only the
22 right to inspect, test, install, and remove

1 components including EOT's. While EOT
2 equipment was coming of age at that time, it
3 did not contemplate the relative safety risks
4 that were involved in the removal and
5 installation of EOT's versus the current
6 practice of simply replacing the batteries in
7 place.

8 EOT technology has come a long way
9 since then. The devices are more complex.
10 Besides allowing break pressure and
11 monitoring, two-way telemetry now provides
12 for emergency breaking capacity and even
13 graduated breaking functions. The computer
14 chips have become smaller, more powerful, and
15 draw down less power.

16 The high visibility markers now use
17 low power LED's, and at least on CP, we use
18 small and easy to change Nicad batteries,
19 they're becoming very common. And on the
20 cutting edge today are the air powered ATX --
21 -- training devices which virtually eliminate
22 all infield battery replacements.

1 I should note that that's where CP
2 is going. We have approximately 250 of the
3 air powered ones in service currently and
4 it's increasing continually.

5 Over the years the regulations have
6 not kept up with the technology. The FRA
7 attempted to revise these rules, but to no
8 avail. There was no consensus to be reached
9 in the R-SAC forum and that was for a variety
10 of reasons, but I hope it was not for the
11 disregard of safety of our employees.

12 That brings us to where we're at
13 today. The BNSF received a successful waiver
14 allowing the same practice. And in their
15 filing, they clearly and adequately noted the
16 five minutes and the 15 steps required to
17 change batteries and EOT's, versus the amount
18 of time and the safety risks changing the
19 batteries out in tact. That was under
20 docket 10660. For CP and for other carriers,
21 that description of the process is nearly the
22 same. The difference is, CP uses five and a

1 half pound Nicad batteries in our digitaire
2 (phonetic) systems versus the seven and a
3 half to 10 pound batteries that were
4 referenced by BN (phonetic) and by others.

5 CP has also implemented a
6 cross-ironed tire system, including in
7 Canada, the three point protection for
8 assigned utility employees such that they are
9 exposed to no more risk than the other
10 trained crew members who are excluded under
11 this part.

12 The remaining concerning with
13 removing applying EOT's, particularly in
14 train yards, in this day and age, very busy
15 and congested train yards, is the same -- we
16 have the same issues as with the roadway
17 worker safety, and that is adjacent live
18 tracks. These pose a serious threat to our
19 employees, far more than the track that they
20 are working on under the sulphur (phonetic)
21 control by the assigned train crew.

22 In many cases, employees may be

1 inclined to take unsafe risks by changing out
2 the batteries after they remove the EOT,
3 adjacent to live and active tracks. Or more
4 properly, they may have to cross over several
5 live tracks to put themselves in a clear
6 position in order to set the EOT down, which
7 I should point out is a 32 pound device just
8 for changing out the batteries.

9 On CPR, safety is not competitive
10 and it is not negotiable. We pride ourselves
11 having the best train accident performance
12 record in North America for six years, and we
13 are striving to accomplish the same record
14 for safety with our personal injuries, with
15 the cooperation of our employees.

16 This waiver is about safety. Those
17 that may suggest that this is about jobs or
18 about productivity or economics are wrong.
19 For CP, this provides a relatively minor
20 economic benefit. We would save 10 minutes
21 here, there over a year. Currently we have
22 about 30 daily utility employee assignments

1 at multiple locations, the major ones being
2 Bensonville and St. Paul on the Soo line.
3 And I have to say that of those 30 average
4 daily assignments, not very many of them
5 actually get into replacing batteries on
6 trains on EOT equipment.

7 This is about safety, and I
8 challenge the FRA here today and the labor
9 organizations to find a more noble cause than
10 the advancement of safety in this case. I
11 thank you for your time.

12 MR. McKEON: Thank you. In your
13 testimony, you stated that a three point
14 protection applies to utility workers on CP;
15 could you please elaborate an example of what
16 that means?

17 MR. KIENZLER: They're in contact
18 with the engineer who maintains control of
19 the engine and knows where the employee is
20 working and when he's on safe position. It
21 was I believe recommendation one out of the
22 -- -- study.

1 MR. McKEON: Could you state for
2 the record what the three points or three
3 point protection are on CP?

4 MR. KIENZLER: No, I can't state
5 that right now, I don't have it with me.

6 MR. McKEON: Okay. You also
7 mentioned air-powered telemetry devices in
8 your testimony; if this waiver were to be
9 granted, would these air-powered telemetry
10 devices or the way that they're used be
11 effected by the waiver?

12 MR. KIENZLER: No, they would not.
13 There are very small batteries in there that
14 are replaced in the shop environment, not in
15 the field.

16 MR. McKEON: Your letter of
17 April 16th, 2004, on page two of that, the
18 first sentence on page two states -- reads as
19 follows, CPR wants to make it clear to the
20 FRA that this waiver request is intended only
21 to cover training our employees working on
22 other -- their own assigned equipment.

1 I think we might have -- that's
2 confusing to me. As we went -- in both of
3 the notices for this proceeding, that
4 language was changed to the following:
5 Intended to cover only trained and yard
6 employees working on their own assigned
7 equipment, rather than on other's own
8 assigned equipment; could you speak to that?

9 MR. KIENZLER: I believe there's a
10 typo there. Working on their own assigned
11 equipment is the proper reference; the word
12 other shouldn't be there.

13 MR. McKEON: Thank you. Those are
14 all the questions I have. Mr. Blackmore.

15 MR. BLACKMORE: Yeah, I have just
16 one. Are mechanical employees used as
17 utility people on any of the CP Soo system?

18 MR. KIENZLER: No, they're not.

19 MR. BLACKMORE: Thank you.

20 MR. KIENZLER: We fully recognize
21 blue flag protection for mechanical
22 employees.

1 MR. McKEON: Mr. Johnson.

2 MR. JOHNSON: I couldn't understand
3 what his question was.

4 MR. McKEON: Sure thing. Would you
5 restate your question, Mr. Blackmore?

6 MR. BLACKMORE: Yeah, I asked if
7 mechanical employees were used as utility
8 employees on the CP Soo line -- --?

9 MR. McKEON: And his answer was no.

10 MR. BLACKMORE: No.

11 MR. McKEON: No questions from Mr.
12 Herrmann, how about Mr. Wilson?

13 MR. WILSON: No questions.

14 MR. McKEON: No questions from
15 Mr. Wilson. Okay. Thank you, Mr. Kienzler.
16 I'd like you to stand by for rebuttal
17 questions, if you would, please.

18 The next organization which has
19 indicated that they would like to testify is
20 the Brotherhood of Railway, Carmen Division,
21 the Transportation Communications
22 International Union. Would the

1 representatives from that organization please
2 come forward to be heard? Please state your
3 name for the record.

4 MR. JOHNSON: Richard Johnson,
5 J-o-h-n-s-o-n.

6 MR. McKEON: Thank you, Mr.
7 Johnson, proceed when you're ready.

8 MR. JOHNSON: Good morning. My
9 name is Richard Johnson, I have been the
10 division president of the Brotherhood of
11 Railway, Carmen Division, of the
12 Transportation Communications International
13 Union, which I will refer to as BRC, since
14 May 1st, 1996.

15 BRC represents employees employed
16 as Carmen by each of the class one carriers
17 including Canadian Pacific, which I will
18 refer to as the CP, as well as certain class
19 two and class three railroads, commuter
20 railroads and Amtrak. BRC represents
21 approximately 60 employees on the CP.

22 Before addressing the substance of

1 the issues raised by the CP waiver
2 application, I want to thank the FRA for
3 extending the time to submit written comments
4 and scheduling this oral hearing today.

5 I am here today to offer BRC's
6 comments on a waiver application submitted by
7 the CP on June 7th, 2004, seeking waiver of
8 railroad operating procedures,
9 specifically 49 CFR 218.25 -- workers on main
10 track -- and 49 CFR 218.27, workers on track
11 other than main track, for its subsidiaries,
12 the Soo Line and the Delaware and Hudson.
13 BRC represents employees who currently change
14 out batteries on end of train EOT devices
15 when these batteries are both attached and
16 not attached to trains.

17 The CP waiver request suggests that
18 blue signal protection should not be required
19 for employees when changing out batteries on
20 EOTs attached to trains. The CP contends
21 that changing EOT batteries without removing
22 the EOT device from the train requires less

1 time, places the employee in less immediate
2 danger, and creates less physical strain than
3 removing and replacing the entire EOT. For
4 the reasons I will be discussing below, the
5 CP's contentions cannot withstand scrutiny.

6 First, the CFR requires that
7 employees working between rolling equipment
8 receive blue signal protection for their own
9 safety because the rolling equipment is
10 subject to unexpected movement.

11 Sections 218.25 and 218.27 of the
12 CFR require blue signal protection when
13 workers are on, under, or between rolling
14 equipment, on main track, or track other than
15 the main track.

16 Under 49 CFR 218.5, workers are
17 defined as railroad employees assigned to
18 inspect, test, repair, or service railroad
19 rolling equipment or their compliance
20 including break systems. Employees changing
21 out batteries on end of train devices
22 attached to trains, are workers servicing

1 railroad rolling equipment who must receive
2 blue signal protection.

3 Utility employees are exempted from
4 blue signal protection under CFR 218.22(c)(5)
5 in limited situations. This provision
6 permits the exception of utility employees
7 only when they are inspecting, testing,
8 installing, removing, or replacing a rear
9 marking device or end of train device.

10 However, CFR 218.22(c)(5)
11 additionally provides that under all other
12 circumstances, a utility employee working on,
13 under, or between railroad rolling equipment
14 must be provided with blue signal protection
15 in accordance with 21.23 and 218 -- I'm
16 sorry, I think that's supposed to be
17 218.23 -- through 218.30 of this part; 49 CFR
18 218.5 strictly prohibits operating employees
19 and utility employees from repairing or
20 servicing railroad rolling equipment or their
21 component parts without blue signal
22 protection.

1 These regulations collectively
2 provide that if an operating employee or
3 utility employee removes an EOT battery
4 attached to a train, blue signal protection
5 is required, and if any non-operating
6 employee servicing the EOT on the train, blue
7 signal protection is required in accordance
8 with 49 CFR 218.22(c) (5).

9 Second, it has historically been
10 FRA's position that whenever anyone,
11 regardless of the employee's title or duties,
12 is performing repair or service to rolling
13 equipment, blue signal protection is
14 required. The FRA has determined that
15 removing or replacing a battery in an EOT
16 while device is in place on the rear of the
17 train requires blue signal protection because
18 this task is a service and/or repair to the
19 device.

20 This was the determination that the
21 FRA determined was made in a similar petition
22 by Norfolk Southern Corporation in docket

1 number FRA-2001-10515, which I refer to
2 hereafter as the NS petition.

3 In its denial of the NS petition,
4 the FRA maintained that the only way an
5 employee can legally remove or replace a
6 battery without establishing blue signal
7 protection is to remove the EOT from the rear
8 of the train and perform the work away from
9 any and all unexpected movement of freight
10 cars.

11 Third, while changing the battery
12 on an EOT device without removing the EOT
13 from the train may take less time. The
14 employee is not in any less immediate danger.
15 Without changing -- I'm sorry -- changing EOT
16 batteries normally does not take very long
17 and does not involve tools. But the type or
18 size of any item being serviced and the time
19 it takes to service the item are irrelevant
20 because an employee can be seriously injured
21 from any unexpected movement of the rolling
22 equipment.

1 Severe, even deadly accidents in
2 the railroad industry can occur in a matter
3 of split seconds. This is precisely the
4 reason why the current blue signal
5 regulations do not specify how long an
6 employee must be exposed to dangerous
7 conditions before they will become applicable
8 for protection. Employees are covered as
9 soon as they are exposed to such conditions.

10 The CP is simply attempting to
11 improve operating efficiency while
12 disregarding its employee safety. The CP,
13 like all rail carriers, has blue signal
14 lights and locks in place. While there is no
15 additional financial costs to CP for using
16 blue signal procedures, there may be
17 additional financial cost due to the possible
18 injuries and deaths caused by not using the
19 procedures.

20 Fourth, the CP also relies on a
21 previous petition for waiver regarding the
22 changing of EOT batteries while the EOT is

1 attached to trains granted to the Burlington
2 Northern Santa Fe, which I will refer to as
3 BNSF. The waiver granted to BNSF was not an
4 unlimited wholesale waiver of blue signal
5 protection. The waive granted to BNSF was
6 conditional, and among other things, provided
7 first that the waiver would terminate upon
8 final issuance of final amendments to
9 part 218 arising out of the pending RSAC Blue
10 Signal Task Group, or at the expiration of
11 five years from the date of the grant,
12 whichever comes first; second, that the
13 approval only applied to BNSF employees;
14 third, that battery change-outs cane be
15 performed by train and yard crew members and
16 utility employees only on the equipment that
17 they are assigned to, and finally, that if
18 the battery change-out requires the use of
19 tools, blue signal protection would have to
20 be established before a procedure could be
21 carried out.

22 Last, the failure of the RSAC

1 working group to come to a consensus on this
2 issue supports BRC's position. Failure to
3 reach an agreement as yet on this matter
4 would not serve as an excuse for wholesale
5 labor from the applicable rules. This matter
6 remains under discussion by RSAC.

7 BRC has previously and consistently
8 opposed any reduction and/or elimination of
9 blue signal protection as set forth in 49
10 CFR-218 and will continue to do so. As blue
11 signal protection is eliminated, the hazards
12 to railroad workers and to the general public
13 increase. Additional waivers will only
14 encourage further erosion of these
15 protections.

16 If CP is permitted to waive the
17 blue signal protections while an employee is
18 changing out an EOT battery, other minor
19 procedures which also require protection,
20 such as uncoupling an air hose or changing
21 the break shoe, will surely follow.

22 Safety must be the foremost

1 consideration of FRA in regulating railroads.
2 It is clear that railroads consider blue
3 signal protection a burden to be avoided
4 instead of a safeguard to be followed. Such
5 is not the case with BRC. Blue signal
6 protection as set forth in the federal
7 regulations should not be eliminated or
8 weakened.

9 In summary, it is respectfully
10 submitted that the FRA should deny this
11 particular requested waiver because: The CFR
12 requires that employees servicing rolling
13 equipment while working between this rolling
14 equipment receive blue signal protection; it
15 has historically been the FRA's position that
16 whenever an employee, regardless of title or
17 duties, is performing service to rolling
18 equipment, that employee is to have blue
19 signal protection. Changing out a battery on
20 an EOT device without removing the EOT device
21 from the train, without blue signal
22 protection, is not safer simply because it is

1 faster than having an operating employee
2 remove the EOT device from the train or the
3 necessary time required to establish blue
4 signal protection for servicing an EOT
5 attached to a train.

6 The BNSF waiver upon which the CP
7 relies is conditional and does not allow
8 carries to forego blue signal protection if
9 an employee is servicing an EOT battery with
10 tools without removing the EOT from the
11 train. And the failure of the RSAC working
12 group to come to consensus on this issue
13 supports BRC's position. Thank you for your
14 consideration of these views.

15 MR. McKEON: Thank you,
16 Mr. Johnson. Mr. Blackmore, any questions?

17 MR. BLACKMORE: Not at this time.

18 MR. McKEON: Mr. Herrmann, any
19 questions?

20 MR. HERRMANN: Not at this time.

21 MR. McKEON: Mr. Wilson?

22 MR. WILSON: Not at this time.

1 MR. McKEON: Thank you. I'd like
2 to ask you to remain, too, Mr. Johnson, we'll
3 call you back up for rebuttal testimony and
4 questions from the audience. Thank you.

5 The next party which has indicated
6 that they wish to be heard is Norfolk
7 Southern Corporation. Representative from
8 Norfolk Southern, come forward to be heard.
9 Please state your name for the record, sir.

10 MR. SIGLER: Good morning. I'm
11 John Sigler, that's J-o-h-n S-i-g-l-e-r.
12 I'm with Norfolk Southern Corporation.

13 First of all, I'd like to thank the
14 FRA for giving us an opportunity to enter
15 additional comments in the record relative to
16 the CP's waiver request.

17 I just have some comments, or I'd
18 like to read an excerpt from one of the other
19 dockets, that would be the BN docket. And
20 it's just a short section of the
21 FRA-2001-10660-7, it's the May 1st, 2002
22 letter that Norfolk Southern entered into the

1 docket related to the BN waiver request. And
2 I'm just going to read from page three and
3 four of that document. I apologize for not
4 bringing additional copies this morning.

5 But the reason I'm reading this is
6 because there is an ambiguity in the
7 historical record. And the latest
8 publication, September 22, starts out
9 somewhat correct that ambiguity in the
10 record, but we don't think that goes far
11 enough in correcting the ambiguity, and I'll
12 speak to that in just a second after I read
13 what was in our submission to the, again, FRA
14 docket, FRA-2001-10660-7.

15 And reading from page three, in the
16 first full paragraph, FRA reiterated --
17 preceding this were comments concerning the
18 historical record and the implementation of
19 the blue signal rules and some subsequent
20 interpretations. I believe Mr. Kienzler
21 alluded to some of those dates, as well. But
22 beginning in this letter, again, on page

1 three, "FRA reiterated the same position
2 in 1991, after EOT devices were in use on a
3 number of railroads, in a memorandum of
4 interpretations prepared by the staff of the
5 Office of Safety, as an aid to those who come
6 under the jurisdiction of blue signal
7 protection workmen.

8 "The second and last sentence of
9 the following quote from that memo were also
10 used in a preamble of the 1992 utility
11 employee, NPRM, to again reinforce the train
12 and yard exception," and the quotation
13 follows. "Workmen means railroad employees
14 assigned to inspect, test, repair, or service
15 railroad rolling equipment or their
16 components, including break systems. Train
17 and yard crews are excluded except when
18 assigned to perform such work on railroad
19 rolling equipment that is not part of the
20 train or yard movement they have been called
21 to operate."

22 The construction of this definition

1 sought to forestall transfer of such work
2 referred in the regulation to the trainmen
3 for the purpose of evading the requirements
4 of the regulation. And I emphasize this
5 part: "Trainmen continue to be excluded when
6 doing such work traditionally done by Carmen
7 when such work is in conjunction with rolling
8 equipment they are handling or will handle as
9 an operating crew. This exclusion is based
10 on the rationale that working together as an
11 operating crew with their assigned engine
12 crew can control the locomotive that they
13 would have complete control over any movement
14 of the equipment on which they are working."
15 That's the end of the quotation.

16 NS's interpretation has been
17 consistent with the preceding record that
18 allows train and yard crews to do the
19 necessary inspection, testing, or servicing
20 to the train to which they were called to
21 operate. Functions of train and yard crews
22 traditionally performed without blue signal

1 protection include replacing knuckles,
2 changing air hoses, closing doors, securing
3 tie-downs, setting and releasing hand brakes,
4 setting and releasing retainers, air brake
5 tests and inspections, handling EOT devices
6 on and off the equipment, and changing EOT
7 batteries.

8 FRA argues that a number of the
9 items listed above are done under the
10 emergency provision, section 218.25C, as in
11 Charlie, workers on a main track. NS
12 believes that this is an incorrect
13 interpretation of regulation, in that it is
14 directed toward workers, not train and yard
15 crews. The Rail Safety Advisory Committee,
16 blue signal working group meeting records
17 discloses that other railroads share NS's
18 interpretation.

19 FRA's first departure from this
20 interpretation occurs in the section by
21 section analysis of the final rule for
22 utility employees. Without the benefit of

1 safety data or a rule making to support a
2 more restrictive approach, FRA provided the
3 following list of tasks that can be performed
4 by train and yard crews and utility employees
5 that are performed without blue signal
6 protection, and I quote, "Generally, train
7 and yard crew members were permitted to work
8 on, under, or between railroad rolling
9 equipment with blue signal protection in
10 order to set or release hand brakes, couple
11 or uncouple air hoses, and other electrical
12 mechanical connections, prepare rail car
13 couplers for coupling, set wheel blocks or
14 wheel chains, conduct air break test to
15 include cutting air brake components in or
16 out, and positioning retaining valves and
17 permitting a locomotive engineer to conduct
18 daily visual inspections of the locomotive
19 contest for which he or she was called to
20 operate.

21 "Additionally, train or yard crew
22 may inspect, test, install, remove, or

1 replace a rear end marking device or end of
2 train device without blue signal protection
3 on equipment.

4 "I emphasize this, FRA has long
5 held the belief that any other inspections,
6 tests, services, or repairs would be
7 conducted under blue signal protection even
8 when performed by train or yard service
9 employees. FRA received a number of
10 conflicting comments on this issue. Since
11 these comments were beyond the scope of the
12 notice of the NPRM, FRA believes it will be
13 necessary to revisit this topic in a future
14 rule making." And again, that's from the
15 federal register, August 16th, 1993.

16 It is important to note that the
17 statement above begins with the term
18 "generally" and concludes with the comment
19 that it will be "necessary to revisit this
20 top in a future rule making." Accordingly,
21 it should not be viewed as an all inclusive
22 prescriptive list for train and yard crews.

1 FRA's concluding comment is a clear
2 indication that the issue was not part of
3 that rule making and therefore did not change
4 the industry interpretation. Moreover, FRA
5 has provided no evidence of its "long held
6 belief," that's quoted, to substantiate this
7 view and now seeks to improperly codify this
8 prescriptive list by repeating it in this
9 document in a similar waiver request by NS.

10 FRA did restrict the utility
11 employee to the prescriptive list in the
12 final rule under 218.22(c)(5). However,
13 there has been no rule making to change the
14 historical interpretation of the work that
15 can be performed by train and yard crews.

16 FRA should not attempt to rewrite
17 historical interpretation of the blue signal
18 rule inaccurately. NS respectfully requests
19 that FRA recognize the historical
20 interpretation of the blue signal regulation
21 with respect to the train and yard crews.
22 This allows train and yard crews to change

1 batteries on the EOT device on their train
2 without blue signal protection.

3 NS also respectfully requests that
4 FRA grant BNSF's waiver, in this case, CP's
5 waiver request, to allow utility employees to
6 perform this task without blue signal
7 protection. And again, the latest
8 publication on September, again, that's the
9 end of the quotation that I wanted in the
10 record from the previous docket.

11 But again, in the latest
12 publication, in Federal Register volume 69,
13 number 183, September 22, at the bottom of
14 the middle column, FRA states, "The plain
15 language of the definition of the worker
16 contained in 218.5 excludes members of train
17 and yard crews from the blue signal
18 protection provisions contained in 49 CFR,
19 part 218, except when assigned to inspect
20 task, repair, or service railroad rolling
21 equipment that is not part of the train or
22 yard movement they have been called to

1 operate.

2 "Thus, in light of the express
3 exception to the definition of worker
4 contained in 218.5, the blue signal
5 protection provisions simply do not apply to
6 situations involving the replacement of EOT
7 batteries by train and engine employees on
8 equipment they are called to operate.
9 Accordingly, FRA concludes CPR's request for
10 a waiver to permit train and yard crew
11 members to perform such duties on equipment
12 they are called to operate should be
13 dismissed as unnecessary."

14 Of course, Norfolk Southern agrees
15 with that position, but it's also not clear
16 in the context of this writing for a public
17 hearing whether or not that is now FRA's
18 position or it's subject to whatever this
19 decision is from this public hearing. So we
20 would like FRA to clarify that if that is now
21 currently your position and go further and
22 reiterate the interpretation prior to the

1 utility rule, where it governs anything that
2 a training crew does to their own train, not
3 simply limiting it to changing the batteries.

4 Again, I appreciate the opportunity
5 to provide comments.

6 MR. McKEON: Thank you.

7 MR. SIGLER: Any questions?

8 MR. McKEON: Any questions,
9 Mr. Blackmore?

10 MR. BLACKMORE: I have none,
11 thanks.

12 MR. McKEON: Mr. Herrmann?

13 MR. HERRMANN: Not really a
14 question, more of a -- I'd just like to note
15 that at the end of that paragraph you're
16 reading, the notice does that any parties
17 seeking a legal basis for the conclusions
18 that you mentioned should submit their
19 request to FRA's Office of Chief Counsel, and
20 it provides the address that you should
21 submit that request to.

22 MR. SIGLER: I was hoping you'd

1 bring one, Tom, save us the trouble. But I
2 -- from what I'm hearing, that decision or
3 your response to what I'm saying may be in
4 that decision, so I appreciate that.

5 MR. HERRMANN: Like I said, if you
6 could write in with your specific request,
7 the Office of Chief Counsel will give you a
8 written response.

9 MR. SIGLER: Thanks.

10 MR. McKEON: Any questions,
11 Mr. Wilson?

12 MR. WILSON: Not at this time.

13 MR. McKEON: Okay. Mr. Sigler, if
14 you could remain in the room for any rebuttal
15 testimony or questions from the audience.

16 The next organization which has
17 indicated that they wish to appear is the
18 Brotherhood of Locomotive Engineers and
19 Trainmen. Would the representative from that
20 organization come forward, please? Would you
21 please state your name for the record?

22 MR. HARVEY: My name is Robert A.

1 Harvey. I'm the regulatory research
2 coordinator for the Brotherhood of Locomotive
3 Engineers and Trainmen.

4 MR. McKEON: Thank you. Please
5 proceed.

6 MR. HARVEY: Good morning,
7 Mr. McKeon and members of the board. The
8 Brotherhood of Locomotive Engineers and
9 Trainmen is a duly elected representative for
10 locomotive engineers on all class one
11 railroads in the United States. The BLET
12 represents locomotive engineers and has as
13 members trainmen of the CP railroads Soo Line
14 and Delaware and Hudson Railroads. The BLET
15 has a vital interest in the above requested
16 waiver by Canadian Pacific Railway.

17 The BLET was an active participant
18 in the Rail Safety Advisory, RSAC, working
19 group on blue signal protection. In meetings
20 of the blue signal protection working group,
21 the matter of changing of a battery
22 constituting a repair was thoroughly

1 discussed. As the issue progressed, rail
2 labor determined not to compromise safety by
3 removing blue signal protection for
4 "workmen". At the same time, train and
5 engine service employees were not interested
6 in assuming additional risk by placing
7 themselves in harms way even if it was only
8 for a few seconds or minutes. During this
9 time, the blue signal protective, RSAC --
10 during this time of the blue signal
11 protection, RSAC, two railroads came to FRA
12 seeking a waiver of compliance from the
13 provisions of 49 CFR 218. Their request was
14 similar or variations on the same theme as
15 this request made by the CP railroad.
16 Ultimately, a conditional waiver was granted
17 by FRA to Burlington Northern Sante Fe, in
18 docket FRA 2001-10660. Now, as the BLET sees
19 it, we are now confronted with another
20 request for erosion of the clear and
21 unambiguous language and work practices that
22 have existed for decades in the statute and

1 regulation of blue signal protection.

2 The 34-year-old statute has
3 provided a proactive method of protecting
4 persons who must inspect, test, repair, or
5 service railroad rolling equipment. The
6 success of this "blue flag/lockout"
7 provisions required by the regulation served
8 as an example of how doing the correct thing
9 in a consistent and uniform manner can keep
10 people safe in an otherwise dangerous
11 occupation. The application of these sound
12 safety practices during these past four
13 decades have given us a watershed of safety
14 success. The relatively few fatalities and
15 reduction in injuries endured by workmen
16 should not be seen as an indication of a low
17 risk or no risk environment. The dangers are
18 very real and could very well be growing as
19 our industry is challenged with fewer
20 seasoned employees and increased use of labor
21 saving technologies.

22 There have been several recent

1 technological changes that now make the
2 railroad switch yard more complex and
3 arguably increase the risk to both railroad
4 operating employees and workmen assigned to
5 working on rolling equipment in those yards.
6 The first is remote control locomotive
7 operations. The second is the use of radio
8 controlled switches. These technologies have
9 permitted fewer persons to perform the work
10 of switching rail equipment. This has also
11 resulted in fewer employees looking out for
12 the safety of themselves and others.

13 Two recent fatalities in our
14 industry, one, a carman, the other a remote
15 control operator, are examples of what can go
16 wrong when these technological changes are
17 viewed from a non-biased perspective. At
18 Queensgate yard in Ohio on
19 November 16th 2002, a carman was fatally
20 injured when an unprotected movement from a
21 remote controlled hump yard operation ran
22 into his pickup as he was parked on a

1 crossing about to replace a rear end device.
2 There was no point protection, in part,
3 because the assignment had been removed.

4 On December 7th, 2003, a lone
5 operator of a remote controlled locomotive
6 had operated a radio controlled switch into a
7 track to pick up cars. As he turned his back
8 to the movement, the locomotive overtook him,
9 causing his fatal injuries. The radio
10 controlled switch may have failed the line
11 properly or repositioned itself after initial
12 movement by the remote control operator.

13 We may never fully know why these
14 deaths occurred. But one thing can be said,
15 the railroad environment is changing because
16 of the introduction of radio controlled
17 safety critical equipment. We may expect the
18 safety of rail operations to be different in
19 the future from our experience of the past.
20 These changes may create new "paths to
21 failure". FRA must consider these changes in
22 their impact on the safety of all railroad

1 employees, especially those whose jobs
2 require them to be on, under, or between that
3 railroad equipment while performing their
4 duties.

5 BLET has endeavored to understand
6 the railroad's difficulty with the existing
7 regulation and its impact on operations. One
8 major railroad in its request for exemption
9 offered that it costs hundreds of thousands
10 of dollars annually to continue the placement
11 of blue signal protection when changing a
12 battery on a rear end device. At other
13 times, it was argued that a few seconds is
14 all the time required to replace the battery.
15 None of these arguments make much sense to us
16 in view of what could happen to any employee
17 regardless of class or craft in the short
18 time they may be exposed to an unexpected
19 movement of rail equipment. FRA efforts to
20 bring compromise among the parties on this
21 issue although commendable, are not in the
22 interest of worker safety. These efforts

1 have now brought new challenges.

2 It is alleged that the BNSF has not
3 been in compliance to the conditions
4 established by FRA in its waiver granted and
5 docket number FRA 2001-10660. It is reported
6 that on a routine basis, train crews replace
7 batteries on equipment to which they are not
8 assigned on main track. It has also been
9 reported that significant problems may exist
10 on CP rails, Delaware and Hudson railroad
11 with respect to compliance of the existing
12 requirements of blue signal protection. At
13 least one carman has lost his life in the
14 past two years because of these failures. To
15 further erode the rule at this time would not
16 be prudent, given the changes in the railroad
17 operating environment and the profound
18 importance of this rule for the protection of
19 railroad workmen. Therefore, BLET
20 respectfully requests the waiver be denied.

21 MR. McKEON: Thank you. Questions,
22 Mr. Blackmore?

1 MR. BLACKMORE: No thanks.

2 MR. McKEON: Mr. Herrmann?

3 MR. HERRMANN: No.

4 MR. McKEON: Mr. Wilson?

5 MR. WILSON: No.

6 MR. McKEON: Harvey, I'd like you
7 to remain available, too, for rebuttal
8 questions and questions from the audience.
9 Thank you.

10 The next organization which has
11 indicated a desire to be heard is the United
12 Transportation Union. I'd like the
13 representative from that organization to come
14 forward and be heard. Good morning. Would
15 you please state your name for the record?

16 MR. STEM: Yes, sir. Good morning.
17 My name is James Stem, I'm here representing
18 the United Transportation Union. We
19 represent the trainmen operating employees on
20 the CP Soo line and every other class one
21 railroad in the United States.

22 I want to start my remarks today by

1 thanking FRA for arranging this public
2 hearing and allowing our input into this
3 issue. And I also want to publicly state
4 that we are aware that this issue will not be
5 resolved today and will not be resolved by a
6 decision on this waiver request. And we
7 publicly state to the industry and the FRA
8 that we look forward to working with you in
9 the future to find solutions that maintain
10 the level of safety that is appropriate
11 today, while addressing the needs of the
12 industry in a changing environment.

13 I am the alternate national
14 legislative director of the United
15 Transportation Union. As always, the UTU
16 appreciates the opportunity to testify before
17 you on safety issues. We hope this
18 proceeding will be a proactive process and
19 not result in a degradation of the level of
20 safety currently available for our operating
21 crews. Convenience should never take
22 precedence over a safe operation.

1 The UTU opposes this waiver
2 petition by the Canadian Pacific Railway for
3 several reasons. First and foremost, this is
4 not in the interest of safety. We have
5 received many complaints in our office which
6 relate to the lack of safety for yard and
7 utility employees. There are simply too many
8 instances where such employees are subjected
9 to unacceptable risks. For example, one of
10 the safety problems we regularly encounter is
11 cars and trains being shoved or humped into
12 tracks where utility employees are working
13 without any warning to them.

14 To grant this petition would not
15 only increase the risk, but condone the lack
16 of safety precautions practiced in the
17 industry by some carriers. In the adoption
18 of the final rule in 1993 relating to blue
19 flag protection for utility workers, the FRA
20 recognized that there may be the need to
21 establish standards for the protection for
22 all train and yard crew members and utility

1 employees from actions of other crews.

2 FRA is allowing the employee
3 protections mandated in part 218 to be
4 amended by a waiver, changing the level of
5 protection mandated for employees for the
6 past 11 years. The practical application of
7 the granting of this waiver will be to remove
8 the blue signal protection for both
9 mechanical and operating employees when
10 changing the battery in an EOT, regardless of
11 other circumstances. If this waiver is
12 granted, it will not appear in the CFR and
13 only a very limited number of people will
14 ever see the FRA language granting the
15 waiver. What will be seen by managers and
16 employees in the rail industry is the fact
17 that the blue signal protection requirement
18 has been eliminated for another class of
19 operating employees.

20 We recognize that FRA has granted a
21 similar waiver to BNSF on this same issue.
22 To continue to grant similar waivers on blue

1 signal protection will result in much more
2 confusion and a degradation of safety. The
3 net result of granting the BNSF waiver on
4 blue signal protection, while the RSAC Blue
5 Signal Working Group were still considering
6 the issues, was much confusion about what is
7 now allowed under the regulation for
8 operating and mechanical employees. As your
9 inspectors have shared with you, that
10 confusion continues throughout the industry
11 today.

12 This will also result in the mixing
13 of crews and allowing employees to foul
14 tracks that they are not controlling. For
15 example, an operating crew member or a
16 utility employee could be instructed to
17 change the battery of the EOT located on a
18 track that is not under their control. This
19 discussion is really about decisions made by
20 the carriers not to invest in modern battery
21 systems and also not to implement available
22 administrative controls that would make

1 changing the battery in an attached EOT a
2 very infrequent activity.

3 If FRA intends to consider all
4 operating crew members working in a terminal
5 as one crew for blue signal requirements,
6 then this waiver process is moving you in the
7 right direction. If FRA is supporting the
8 findings of the SOFA working group, then this
9 factional approach for weakening the
10 protection required for yard and utility
11 employees is in strong opposition to the SOFA
12 values. Safety of the operation must be
13 given priority over expediency.

14 The issues involved with safety in
15 this waiver are not unique to CP railroad
16 yards. Every carrier in the county has the
17 same safety issue which should be addressed
18 along with the various other issues regarding
19 the safety of operating crews and utility
20 employees in yards. We strongly believe the
21 time has arrived for FRA to consider all of
22 the issues relating to blue signal safety in

1 yards and not deal with this serious issue on
2 a piecemeal basis. This matter should be
3 considered and addressed by the RSAC before
4 any further action is taken by FRA.

5 In conclusion, CP's petition should
6 be denied. The overall matter of the safety
7 of operating employees working in yard
8 situations should be submitted to the RSAC
9 for consideration. The bottom line is that
10 there has been no attempt to demonstrate
11 maintaining the current level of safety or
12 improving the level of safety if this waiver
13 is granted. All constituencies should be
14 allowed to participate in this decision, and
15 only an RSAC type forum can provide that
16 opportunity. When the RSAC process is
17 completed on this issue, there will be no
18 continuing necessity for waiver applications
19 and results of that process will apply to all
20 carriers equally.

21 And if I may, I would like to add
22 to my prepared remarks by again pointing out

1 to FRA that the only thing we are here
2 considering today in this waiver is involving
3 an attached end of train device. And the
4 request for the waiver from the position of
5 UTU is to allow the safety precautions to be
6 relaxed that now govern who can change that
7 battery and under what situations.

8 We are also aware, and we've
9 already had testimony this morning, that an
10 air powered EOT device now makes changing the
11 battery while it's attached to a train
12 irrelevant. So what we are considering here
13 for CP is a matter of convenience only. When
14 technology and other administrative controls
15 will provide the relief that they are seeking
16 by asking FRA to grant them a relaxation of
17 safety standards. And I will be glad to
18 answer any questions.

19 MR. McKEON: Mr. Blackmore, any
20 questions?

21 MR. BLACKMORE: No, not at this
22 time, thank you.

1 MR. McKEON: Mr. Herrmann?

2 MR. HERRMANN: Not at this time.

3 MR. McKEON: Mr. Wilson?

4 MR. WILSON: No.

5 MR. McKEON: Thank you, Mr. Stem.

6 If you could remain available for rebuttal

7 testimony and questions from the audience.

8 Those are all the parties who have indicated

9 that they wish to testify. Are there any

10 other parties who wish to testify who haven't

11 previously signed in?

12 Seeing none, I'll call the CP DNH

13 Mr. Kienzler, back up and offer him the

14 opportunity for any rebuttal testimony,

15 followed by any questions from the audience.

16 MR. KIENZLER: Very little

17 rebuttal, a couple comments. I wanted to

18 clarify to the panel here that changing out

19 the batteries on the digitale units that we

20 currently use do not require tools.

21 I can fully appreciate everyone's

22 comments that were here on blue flag

1 protection. CP also considers it a vital
2 safety tool. The issue here is not whether
3 we should be applying blue flag or not in
4 changing out batteries on end of trains, it's
5 whether we should be taking the EOT devices
6 off the trains under the existing regulations
7 and changing the batteries on the ground or
8 allowing a shorter period of time to change
9 them unattached to the units. I think that's
10 all I have to say unless there's other
11 questions.

12 MR. McKEON: Thank you.

13 Mr. Blackmore, any questions?

14 MR. BLACKMORE: You say there's no
15 devices on the CP that require tools for
16 changing batteries?

17 MR. KIENZLER: Not that I'm aware
18 of.

19 MR. BLACKMORE: And that's included
20 with all the other devices that run through
21 on your property?

22 MR. KIENZLER: If we do get EOT's

1 from other carriers, I'm not aware of any
2 that require batteries -- -- reiterated that
3 in their waiver request.

4 MR. BLACKMORE: All right, thank
5 you.

6 MR. KIENZLER: I could stand to be
7 corrected, but I'm not aware of any. We'd
8 certainly be willing to exclude those.

9 MR. McKEON: Mr. Herrmann?

10 MR. HERRMANN: No.

11 MR. McKEON: Mr. Wilson?

12 MR. WILSON: I guess just to
13 clarify a point: You did make the statement
14 that you currently do not have any mechanical
15 people serving as utility employees. Is it
16 CP's desire to possibly have mechanical
17 people serve as utility employees in the
18 future?

19 MR. KIENZLER: It would be hard to
20 speculate on that. I'm not aware of any
21 interest in doing so, and certainly, if that
22 were the case, I would expect that to be an

1 exclusion to this approval (phonetic) if
2 granted, I would have no problem with that.

3 MR. WILSON: Okay.

4 MR. McKEON: Any questions from the
5 audience for Mr. Kienzler?

6 Seeing none, I thank you. I want
7 to invite Mr. Johnson from BRCPCU for any
8 rebuttal testimony.

9 MR. JOHNSON: We don't have any.

10 MR. McKEON: Any questions from the
11 audience for Mr. Johnson?

12 Seeing none, we'll invite Mr.
13 Sigler for any rebuttal testimony.

14 MR. SIGLER: I don't have anything.

15 MR. McKEON: Any questions from the
16 audience from Mr. Sigler?

17 Yes, sir, Mr. Stem.

18 MR. STEM: I would like to ask
19 Mr. Sigler if he has a -- -- that he could
20 express -- -- about the failure of blue
21 signal on a -- --?

22 MR. SIGLER: Is that cross

1 examination or are you looking for -- I'm not
2 prepared to offer a corporate position on
3 that today, James. We can talk about it
4 privately if you'd like to, but I'm not
5 prepared to offer our position today on that.

6 MR. STEM: Okay, thank you.

7 MR. SIGLER: Anything else?

8 MR. McKEON: Thank you. Mr. Harvey
9 from the Brotherhood of Locomotive Engineers
10 and Trainmen, any rebuttal testimony?

11 MR. HARVEY: Harvey, H-a-r-v-e-y,
12 just one quick comment. Mr. Sigler made a
13 reference to the August 16th, 1993 rules and
14 regulations -- -- federal register with
15 respect to, I believe it's the final rule on
16 utility employee. On page 43290, in other
17 discussion, one statement is made by FRA
18 which, to me, contradicts some of the things
19 that Mr. Sigler may have said with reference
20 to the same language in the preamble.

21 On that page, in the first column,
22 it says, "FRA does not intend that this rule

1 caused a material expansion of the tasks
2 performed by train and yard crews without
3 blue signal protection that would decrease
4 the level of safety, particularly for
5 repairing and servicing activities. As
6 further discussed below, the final rule
7 addresses these concerns in expressed
8 language to the effect that only train and
9 yard service duties may be performed without
10 blue signal protection.

11 FRA does not believe that the final
12 rule will materially effect the type of work
13 normally assigned to train or yard crews.
14 Accordingly, it is unlikely to have a major
15 impact on the availability of maintenance or
16 equipment personnel across the national rail
17 system. Any incidental impact can properly
18 be addressed within the scope of other rule
19 making activities if necessary for safety."

20 We had an opportunity, and for
21 various reasons, including the waiver
22 process, the introduction of waivers in the

1 midst of an RSAC proceeding on this issue,
2 that that process was not allowed to be
3 finalized.

4 I agree certainly with Mr. Stem in
5 his remarks about how that may have been
6 detrimental to the RSAC process on blue
7 signal protection. We did not ask for
8 waivers, but we want the record to reflect
9 that we were willing to continue to talk
10 about this issue, but we are not willing to
11 compromise the safety of our members. Thank
12 you.

13 MR. McKEON: Any questions from the
14 audience for Mr. Harvey? Seeing none, thank
15 you.

16 MR. HARVEY: Sure.

17 MR. McKEON: I'd like to invite Mr.
18 Stem from the United Transportation Union for
19 any rebuttal testimony.

20 MR. STEM: This morning we have
21 discussed a waiver. We've had two carrier
22 officers here today, both of which referred

1 to other waivers and also the Blue Signal
2 RSAC Working Group.

3 When the final draft of part 218
4 was put into the register in 1993, there was
5 some give and take, there was a lot of
6 debate, there was a comment period that
7 addressed the entire protection scheme that
8 part 218 demands for mechanical employees
9 which are identified as workers and train and
10 engine crews. And if we, by waiver, allow
11 that protection scheme to be weakened, then
12 it weakens the entire process.

13 We've also heard today from
14 Mr. Kienzler with CP that he has 250 air
15 powered end-of-train device currently in
16 operation, where the battery does not need to
17 be changed, and we're only discussing today
18 changing the battery in an end-of-train
19 device while it is attached to the train. So
20 I conclude my rebuttal by saying this is
21 totally unnecessary and irrelevant to the
22 overall operation and only a convenience

1 item.

2 MR. McKEON: Thank you. Any
3 questions from the audience for Mr. Stem?
4 Seeing none, thank you, sir. The docket for
5 this matter is scheduled to remain open for
6 comments until October 22nd. Prior to that
7 time, I'd like to ask the representative from
8 CP to furnish for the docket details on three
9 point protection and how that type of
10 protection applies to utility employees
11 engaged in the matter before us here.

12 Any other persons wishing to come
13 forward and be heard on this matter?

14 Seeing none, on behalf of the FRA,
15 I thank the parties for their participation,
16 and this meeting is adjourned.

17 (Whereupon, at 10:21 a.m., the
18 PROCEEDINGS were adjourned.)

19 * * * * *

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CERTIFICATION OF TRANSCRIPT

I certify that the attached transcribed hearing, United States Department of Transportation Federal Railroad Administration Public Hearing on October 13, 2004 was held as herein appears and that this is the original transcript.

I, the undersigned, do certify that this is a true, accurate and complete transcript prepared from the electronic recordings taken by Bryce Hixson, of Beta Reporting and Videography Services, on the aforementioned date, and that I have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recordings.

Transcriber/Proofreader:

Abdul Maneg

Date:

10 - 28 - 2004