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February 23, 2021

Mr. Karl Alexy
Associate Administrator for
Railroad Safety and Chief Safety Officer
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Additional Comments on Docket No. FRA-2021-001

Dear Mr. Alexy:

The International Brotherhood of Electrical Workers (IBEW) appreciates the opportunity to provide comments regarding the Federal Railroad Administration's (FRA) Emergency Relief Docket No. FRA-2021-0001 for the polar vortex, activating the provisions of 49 CFR § 211.45. These provisions grant the FRA the ability to expeditiously waive its regulations, including those that concern rail safety and the well-being and fair treatment of employees. The IBEW is a labor organization that provides collective bargaining representation on behalf of its approximately 775,000 retired and active members, which includes approximately 12,600 members who are employed by railroad carriers that are subject to the oversight of the FRA. IBEW railroad members work as locomotive electricians, facility maintenance electricians and telecommunication workers. For these reasons, the IBEW is carefully monitoring requests for relief made to the docket and may file additional comments on present or future petitions.

On February 14, 2021, Union Pacific Railroad (Union Pacific) petitioned the FRA to waive essential locomotive tests and inspections for a period of 14 days on locomotives that will be operating in non-compliant status, citing current and predicted extreme temperatures and conditions affecting large portions of the United States (U.S.) and will "pose safety risks to our employees and significantly impact operations." Union Pacific decided to include a plethora of locomotive inspections in the request, including regulations covered under 49 CFR §§ 229.23 *Periodic inspection general*, 229.25 *Tests, every periodic inspection* and 229.27 *Annual tests*, claiming a waiver will reduce the amount of time that employees will be exposed to extreme conditions. On February 16, 2021, the FRA partially granted Union Pacific's request for temporary relief, based on "severe weather conditions in the North, Mid-West, and Central Plains" and will "reduce the amount of time they [employees] will be exposed to the extreme conditions." The FRA should take into consideration that IBEW railroad electricians are essential employees and required to report to work and perform their duties, regardless of any emergency situation, including advanced weather conditions. The IBEW takes pride in its members' professional ability to adapt to and overcome situations that the railroad industry requires of them, responsibly conducting the tasks necessary to ensure the safe and efficient operations of the United States' railroads. Throughout history, IBEW railroad electricians have fulfilled this obligation; the most recent polar vortex is no exception.





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The FRA's safety regulations 49 CFR §§ 229.23 and 229.25 require essential inspections of all electrical devices and visible insulation on a locomotive. Guidance provided by the FRA on how to adequately perform a thorough inspection of a locomotive for defects includes the requirement that mechanical electricians remove covers on all cabinets, motors and generators and be able to visibly check and adequately verify the condition of components and wiring.¹ CFR § 229.25 *Periodic inspections* includes the examination and testing of non-microprocessor event recorders, with CFR § 229.27 *Annual tests* covering self-monitoring event recorders.

As previously covered, 49 CFR §§ 229.23, 229.25 and 229.27 inspections cover vital locomotive systems. CFR Part 229 inspections and tests are often paired with other locomotive periodic and annual inspections and tests to include, if equipped, CFR § 236.588 *automatic train stop, train control or cab signal apparatus* and 49 CFR Subpart I *positive train control systems* per Union Pacific's Positive Train Control Development Plan. Union Pacific must also verify that additional FRA required tests and inspections which are routinely done during the process of performing the waived CFR Part 229 periodic inspections and annual tests continue to be performed, at the designated interval, by a qualified mechanical inspector under this waiver.

The interval between CFR §§ 229.23 and 229.27 is 92-184 and 368 days, respectively. The IBEW is disappointed in the lack of emergency response preparedness that Union Pacific has shown. Union Pacific has had sufficient time to anticipate and adapt to the oncoming weather conditions by ensuring that the essential electrical systems, which the railroad workforce and the public rely on, had been thoroughly inspected and properly maintained, prior to its February 14, 2021 petition.

Union Pacific's drastic cuts to the mechanical forces, storage of locomotive fleets and closure of facilities available to perform inspections and maintenance have created an environment where it is unprepared and unwilling to adapt to seasonal changes in the U.S. and do not reflect the demands of responsible operations in the railroad industry. Furthermore, Union Pacific has decided to continue to utilize locomotives that would be nearing the required inspection, foregoing the responsibility to have reserve locomotives in *at the ready* status and shopping locomotives that had the potential to become non-compliant.

As the FRA is aware, Union Pacific has joined all other Class I railroads in the practice of furloughing thousands of its highly qualified employees across all

¹ U.S Federal Railroad Administration. *Motive Power and Equipment Compliance Manual*. By the Office of Railroad Safety. <https://railroads.dot.gov/sites/fra.dot.gov/files/2020-05/MPEComplianceManual2013.pdf> (accessed February 15, 2021)



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crafts, including IBEW electricians, who are skilled electrical mechanics. Furthermore, Union Pacific has irresponsibly opted to store units in its locomotive fleet, furlough workers and close maintenance facilities in the specific locations and surrounding areas impacted by the 2021 polar vortex, “North, Mid-West, and Central Plains.” The recently closed locomotive facilities in Pine Bluff, Arkansas, Kansas City, Missouri and Hermiston, Oregon are prime locations for Union Pacific to perform critical inspections on their locomotives that are operating in the hardest hit areas. Union Pacific also has mechanical forces on standby, in furlough status, ready to be recalled to their roles as essential employees in various facilities across the United States, including North Platte and South Morrill, Nebraska that were also cut as a part of the 3,000 job eliminations and the storage of 1,200 locomotives outlined in Union Pacific’s *Unified Plan 2020* to reduce their operating ratio while “operating a safe, reliable and efficient railroad.”²

It is for these reasons the IBEW opposes this grant of relief as it stands. This request to waive vigorous inspections of locomotives and equipment is based solely on lack of readiness and a misguided theory on how to protect the railroad workforce. It is neither within the public’s best interest nor consistent with railroad safety. At the very least, the FRA needs to revise the waiver to include the following:

1. A requirement that Union Pacific exhaust all the locomotives held in reserve.
2. Reporting of the routes that the locomotives are currently on, with a temporary waiver, predicated on the condition that Union Pacific crews are truly limited by the speed in which the train can operate safely, while on the way to the nearest mechanical facility along the designated route. This would ensure that the intent is to shop the locomotive at the nearest facility available and not continually utilize a locomotive that is non-compliant out of convenience.
3. Reporting of the dates of all FRA mandatory tests and inspections. This will verify that FRA tests required under the same interval as waived CFR Part 229 periodic inspections continue to be conducted within FRA specified timelines. The IBEW concern stems from the possibility that a non-compliant locomotive can be pulled from storage and vital inspections that are currently waived will not be performed prior to it being placed into service. It is the IBEW’s stance that all FRA mandated tests and inspections are to be performed on any non-compliant locomotive recently released from storage.

² <https://services.choruscall.com/links/unp180919i9IIUaJq.html>





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4. Development of a risk management plan to avoid the reoccurrence of this scenario and prevent future requests to waive vital locomotive inspections during the process of the emergency relief docket.

Furthermore, through its petition, Union Pacific illustrated that it did not conduct the necessary prior planning which was needed before the onset of the coldest months of winter. Consequently, Union Pacific found itself in this precarious situation due to its inflexibility to adapt to weather conditions that are not unheard of in the regions in which the carrier functions. By asking the FRA to waive federal regulations that are in place to ensure proper function of critical systems, because of its lack of prior planning, Union Pacific is disregarding its obligations to the protection of their employees and the public and now must assume the safe condition of locomotives that are used to haul various substances across the U.S. This plan must also include actions taken by the railroad to limit the exposure of inclement weather on its mechanical forces, such as additional breaks from work that requires inspections to be performed outside of a facility, the issuance of personal protective equipment designed to shield workers from extreme temperatures and an extended timeframe in which a locomotive mechanical employee is required to perform tasks to the standard of federal regulations.

In addition, the IBEW has been made aware that Kansas City Southern Railway (KCS) has also requested similar relief. Through its “right-sizing” initiative, KCS has reduced assets and their workforce and is now similarly suffering from the lack of resources.³ All the above requests for revision to Union Pacific’s waiver are also applicable to any relief given to KCS.

On behalf of its railroad members, I thank the FRA for allowing the IBEW to comment on this docket. During this difficult time, I look forward to continuing to work with the FRA to guarantee the continued safe operations of the railroad and providing the uninterrupted movement of freight along the networks Union Pacific and KCS service.

Sincerely yours,

Lonnie R. Stephenson
International President

LRS:smw
Copy to Amit Bose, Acting Administrator, Federal Railroad Administration

³ https://investors.kcsouthern.com/news-releases/2020/07-01-2020-213011216?sc_lang=en