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February 19, 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: 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 10, 2021, Burlington Northern Santa Fe Railway Company (BNSF) 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 dangerous cold, snow, freezing rain and unusual winter conditions that will make "railroad operations more challenging than usual." BNSF claims that waiving regulations covered under 49 CFR §§ 229.23 *Periodic inspection general*, 229.25 *Tests, every periodic inspection* and 229.27 *Annual tests* will facilitate the safest movements to locomotive maintenance facilities. On February 12, 2021, the FRA granted BNSF's request for temporary relief based on "some of the worst possible conditions" under which transportation and mechanical workers would be required to perform their duties. The FRA should take into consideration that IBEW railroad electricians are essential employees and are 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 Daily inspections do not require the degree of specificity necessary to detect problems that a periodic inspection would. Thorough periodic inspections of electrical equipment are paramount to the safe operation of motors, electrical equipment and essential safety components in all commercial and private applications, particularly railroad rolling stock. Electrical wiring and components may sustain damage that is only detected through visual examination, and may be present even if the defect has not yet impacted the movement of a locomotive's motoring, breaking or has also not caused monitoring systems to indicate a fault. Wire chafing, burned connections, loose terminals, motor flash-over, severely worn brushes, the presence of water and ice in electrical housings and sheared off grounding wires are all conditions that may not be readily apparent to a transportation crew or locomotive monitoring systems, but can indicate imminent unit failure, resulting in the inoperability of any component, increased risk of fire hazards or the potential for catastrophic events.

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. Mechanical electricians have routinely discovered that an event recorder has stopped receiving vital inputs on an element of data it records, has been incorrectly recording data or fails to perform a complete download. In the event of a catastrophic failure, faulty data or difficulty in retrieving data can prolong the investigative process or even prohibit the recovery of an accurate account of a locomotive's operating condition. The safe functioning of these essential systems is critical every day; the importance of performing crucial checks of these systems increases during extreme weather conditions. Continuing to employ equipment that has not been properly inspected, tested and maintained only heightens risk to the operators and the public.

Instead of waiving these essential inspections, BNSF should instead augment their locomotives and equipment inspections regime prior to the onset of winter weather, especially on all systems mentioned above, in addition to air

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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compressors, air dryer systems and any components involved in the braking process of locomotives.

Additionally, BNSF cited a news story from MSN News and state of emergency declarations from other states in which it operates “as far back as February 1st.” The earliest report by BNSF’s cited news source of the impact that the polar vortex would have on these geographical regions began on January 5, 2021 <https://www.msn.com/en-us/weather/topstories/arctic-outbreaks-major-winter-storms-may-unfold-thanks-to-weakening-polar-vortex/ar-BB1cuOMf>.

In addition, the interval between CFR §§ 229.23 and 229.27 is 94-184 and 368 days, respectively. The IBEW is disappointed in the lack of emergency response preparedness that BNSF has shown. BNSF 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 relies on, were thoroughly inspected and properly maintained, prior to its February 10, 2021 petition.

BNSF’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 United States, and do not reflect the demands of responsible operations in the railroad industry. Furthermore, BNSF has decided to continue to utilize locomotives that it had determined would “need to shut down, drained and require[d] removal” and “drop dead on line,” foregoing the responsibility to have reserve locomotives in “at the ready” status and also shopping locomotives that had the potential to become non-compliant as the imminent threat of inclement weather intensified.

As the FRA is aware, BNSF has joined all other Class I railroads in the practice of furloughing thousands of its highly qualified employees across all crafts, including IBEW electricians, who are skilled store electrical mechanics. In addition, BNSF has irresponsibly opted to store units in its locomotive fleet and shutter maintenance facilities in the very areas that are explicitly cited in the request, “Northern Montana and the Dakotas.” The recently closed Glendive Diesel shop in Montana was a prime location for BNSF to perform critical inspections on its locomotives that were operating in the hardest hit areas. BNSF also has mechanical forces on standby, in furlough status, ready to be recalled to their roles as essential employees in various facilities across North Dakota.

Within their petition, BNSF cited its desire to “minimize risk for mechanical and transportation employees” as their primary motivation for the



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request. At the same time, BNSF failed to acknowledge the options which were readily available to avoid the continuous use of units on the line that have not been qualified as safe for the crews (or the public) as the units traverse their communities. Locomotives that fail "en route" or are considered to be "FRA dead" are routinely towed by the remaining locomotive consist, and if needed, locomotive power can be added without cutting non-compliant units from the train.

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 BNSF exhaust all the locomotives held in reserve.
2. There be reporting of the routes that the locomotives are currently on, with a temporary waiver, predicated on the condition that BNSF 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. 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, BNSF illustrated that it did not conduct the necessary prior planning which was needed before the onset of the coldest months of winter. Consequently, BNSF 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 planning, BNSF is disregarding its obligations to the protection of its employees and the public and now must assume the safe condition of locomotives that are used to haul various substances across the US. 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



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in which a locomotive mechanical employee is required to perform tasks to the standard of federal regulations.

On behalf of its railroad members, I thank the FRA for allowing the IBEW to comment on this docket. 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 network BNSF services during this difficult time.

Sincerely yours,

A handwritten signature in black ink that reads "Lonnie R. Stephenson". The signature is written in a cursive style.

Lonnie R. Stephenson
International President

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

