



*A bold voice for transportation workers*

January 20, 2023

The Honorable Amitabha Bose  
Administrator  
Federal Railroad Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

**RE: Union Pacific Railroad December 12, 2022, Request to Amend Its  
Positive Train Control Safety Plan  
Docket No. FRA-2010-0061-0162**

Dear Administrator Bose:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice regarding Union Pacific Railroad's (UP) December 12, 2022, request to amend its Positive Train Control (PTC) safety plan and control system. TTD consists of 37 affiliated unions representing the totality of rail labor, including both passenger and freight rail workers.<sup>1</sup>

**UP Request Should be Denied Without Prejudice**

**TTD formally asks FRA to deny without prejudice UP's request for this amendment to its PTC plan until such time as UP publicly explains in full detail what their amendment entails.** TTD and its unions support FRA's goal of implementing safe and effective PTC systems in a timely fashion in order to protect rail workers and the general public. However, UP's petition is emblematic of both the freight railroads' desire to implement unproven, and sometimes risky technology such as Trip Optimizer through these PTC safety plans and also a rushed and flawed process at FRA in reviewing and allowing for public input of these plans.

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<sup>1</sup> Attached is a list of TTD's affiliated unions.



## **Extensive Redactions Warrant Denial**

The two filings UP has submitted as part of this amendment request contain extensive redactions and are very technical in nature. These redactions and the technicality of these filings make it virtually impossible for stakeholders and the public to fully assess UP's request and subsequently provide meaningful comments.

In its Request for Amendment (RFA) #2 to the Positive Train Control Safety Plan version 1.1, UP has fully redacted more than 550 pages of a 586-page document. In Section 1.4 of this document, UP states "...no changes to the PTC System are identified or proposed in this RFA." At a threshold level, such a statement is impossible to independently verify given the 550-plus pages of redactions.

The following two concerns cast doubt on UP's claim that no changes are included in the RFA. First, if there are no changes to UP's Positive Train Control Safety Plan, why is UP filing a 586-page document that is stated as an amendment? An amendment, by its very definition and nature, entails changes to a pre-existing document. UP, in its own cover letter, states that "RFA #2, Version 1.1, **includes revisions** based on subsequent discussions between FRA and UP" (emphasis added).

Second, UP's claim that there are no changes is exceedingly difficult to evaluate because other portions of the document include discussion of novel highway crossing technology and high-speed operations at 125mph on a segment that only allows for 90 mph passenger rail operations currently, according to UP's own filing. If this amendment proposes changes, and there are plenty of indications that it does, then the public needs to be able to see and understand these changes in order to properly comment. Speed increases pose a safety risk that must be weighed against proposed measures and safety procedures to ensure the risk is properly mitigated. However, the document that UP submitted for public inspection proposes high speeds without any publicly viewable discussion of safety or mitigation measures.

## **Extensive Redactions Support Denial of Second Filing**

These concerns extend to UP's second filing, which is version 3.1 of UP's Positive Train Control Safety Plan (PTCSP). UP has again redacted numerous pieces of information that seem fundamental to understanding its request to FRA. For example, table #5 (beginning on page 45) contains information relating to I-ETMS Functions in the Positive Train Control Development Plan (PTCDP). However, the column containing UP's specific implementation of this technology is entirely redacted. UP's implementation of this technology is what FRA is supposed to analyze and what the public is supposed to comment on. Similarly, UP fully redacts the results of its risk assessment in table 11.3 on page 103. Elsewhere, UP redacts pages in their entirety, including pages 38 to 40.

Further, UP's appears to redact anything related to the results of their testing or their specific implementation of technology, including the location of the testing. This prevents stakeholders and the public from analyzing and commenting on UP's proposal and claims that UP makes, such as "UP attests that all known variances are documented in this PTCSP, and that there are no other such variances."<sup>2</sup> Without the information that UP is redacting, it is impossible to comment on UP's claims or these important issues more broadly.

### **TTD Opposed to Installation of Zero to Zero Trip Optimizer Software**

TTD and our affiliates are extremely concerned that UP may be attempting to use this PTC Safety Plan Amendment as an opportunity to install Zero to Zero Trip Optimizer software without input from the public and stakeholders, including labor, because of the redactions and some of the small pieces of information available to read. There is currently no framework for establishing the safety of ETMS software within FRA regulations, and it is not in accordance with railroad safety standards to allow the use of such software that can manipulate the train without input from the engineers and conductors. For example, there are no records kept to detail failures or derailments caused by the ETMS. Trip Optimizer and other fuel-saving software were not designed to increase safety. These programs have only ever been intended to cut costs and increase profits.

Since the implementation of ETMS, there have been dozens, if not hundreds, of derailments and train separations that have occurred while ETMS software was in control of the train's operations. The exact number of incidents is unquantifiable as a result of FRA's decision to not collect the data and/or the carriers' unwillingness to share the data. Thus, it is impossible to determine whether such incidents could be attributed to the ETMS systems. A request, such as this one from UP, could adversely affect or compound these concerns. However, because of the redactions in this Notice, as well as the lack of data collection by the applicable parties, it is impossible to know what exactly is at stake and/or if more reliance will be placed upon fallible and unproven technology. Approving this PTC amendment if it involves Zero to Zero Trip Optimizer without a robust safety review and analysis that involves in-depth stakeholder engagement would be a serious misstep for safety on our freight rail system.

### **Filings Should be Complete Without Need for FOIA Request**

Currently, the only way to get the information that is redacted is to submit a Freedom of Information Act (FOIA) request. One of our affiliates has tried to do just that for other Class I PTC filings but their FOIA request was denied and they are currently appealing the decision. These FOIA requests can take months, if not years. That timeline is not feasible when FRA currently makes a decision within 45 days of receipt regarding PTC amendments, which is also addressed below. To be clear, a stakeholder or a member of the public should not have to FOIA the federal

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<sup>2</sup> See Page 37 of Union Pacific Positive Train Control Safety Plan (PTCSP) Version 3.1, dated December 12th 2022

government for information necessary to comment on a request that a federal agency is seeking public comment on. This bizarre method of governance feels akin to an episode from The Twilight Zone.

### **Increase Time Period for Public Comment: 45 days Is Too Short**

While we understand that the FRA is required to provide a decision on PTC plan amendments within 45 days of receipt, we believe that this regulation should be changed.<sup>3</sup> Even though FRA has 45 days to make a decision from the time it receives notice from a railroad, the time it takes to publish the documents in the federal register means that the public and stakeholders have far less time than that 45-day timeline. In this instance, the time allowed for public comment on this filing was very short. Moreover, it coincided with the December holidays and New Year's break when many people were with their families and not working. Specifically, FRA received the request from UP on December 12th but notice of UP's request was not filed to the docket until December 21st and comments were due on January 10th, giving stakeholders just 20 days, including weekends and federal holidays, to comment. The baseline documents were made available a few days earlier on December 13th, but with no context until the notice was published. All told, stakeholders and the public have had less than a month to provide input to FRA on a critical issue with more than 1,000 pages of documents to analyze. **FRA's choice to only provide 45 days of public comment has not served the public well in this instance, nor has it for many other PTC amendment requests. FRA should amend the relevant federal regulations to provide more time for public comment.**

Many PTC plan amendments, including this one from UP, are hundreds of pages long and very technical, making analysis in a short amount of time very challenging. Even more challenging, these amendments come with heavy redactions that do not allow the public to understand what is being changed or how software or other technology will be specifically implemented. This is simply unacceptable, does not promote transparency and accountability, and potentially runs afoul of the requirements of the Administrative Procedure Act (APA). Under the section cited as authority to redact large portions of the PTC RFAs, 49 U.S. Code § 20118, DOT has the authority to release certain information as long as such disclosure is "consistent with the confidentiality needed for that safety risk reduction program or pilot program."<sup>4</sup> **TTD and its affiliates have consistently asked DOT to invoke its authority to address these redactions so that stakeholders and the public can actually get the information they need to provide comments. This filing from UP is yet another example of why TTD reiterates that request to DOT here.**

The RFA that UP has submitted in this docket is one of the most egregious examples of redacted PTC safety plan amendments that TTD has seen in years. When more than 90% of a document is redacted, the opportunity for public comment seems intentionally hampered by the railroad, enabled by FRA accepting such redactions. Confidence and trust in the railroads' good faith and

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<sup>3</sup> 49 CFR 236.1021(m)(3)(i)

<sup>4</sup> 49 U.S. Code § 20118(b)

intentions is at historic lows due to the many, many actions that railroads have taken to prioritize profit over worker dignity, safety, and quality of life. As the regulatory agency, FRA has a duty to not only ensure that railroad operations are conducted safely, but that the public has opportunities to engage and be assured that railroad safety is being actively enforced. The level of redactions that UP includes in its filings, which is similar to PTC filings from other railroads, makes the public comment process a farce.

Stakeholders and the public should not be asked to rush to comment on such a lengthy and technical document that does not even provide the information necessary to file comments because of the level of redactions. Instead, Union Pacific's request should be denied without prejudice by FRA so that Union Pacific can provide the necessary information to the public and stakeholders to enable meaningful public review and comment in a reasonable timeframe. The importance of well-functioning Positive Train Control systems to the safety of our rail systems and the need to keep the integrity of the public comment process intact underscores why FRA should deny Union Pacific's request without prejudice.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Regan", enclosed within a circular stamp or seal.

Greg Regan  
President