



A bold voice for transportation workers

March 19, 2023

John Karl Alexy
Associate Administrator for Railroad Safety
Federal Railroad Administration
1200 New Jersey Avenue SE
Washington, DC 20590

**RE: BNSF Railway's Request to Amend Its Positive Train Control Safety Plan and Positive Train Control System
Docket No. FRA-2010-0056-0614**

Dear Mr. Alexy:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice regarding BNSF's request to amend its positive train control (PTC) safety plan to operate short movements with locomotives, with or without cars, without an onboard PTC apparatus installed or operational where an onboard PTC apparatus is otherwise required at El Paso Junction. TTD consists of 37 affiliated unions representing the totality of rail labor, including rail workers who operate on these lines. We ask that the FRA deny this PTC safety plan amendment for the reasons below.

While not infallible, PTC systems provide a crucial level of additional safety for all rail workers. Any refusal to use PTC or downgrade its capabilities is a downgrade of safety that should not be done without strong justification and plans to maintain safety in the absence of PTC. In its request, BNSF said, "BNSF is requesting this change to avoid unnecessary delays to international freight shipments **originating or terminating within Mexico** or near the US-Mexico border" (emphasis added).¹ However, expediency is not a justification for downgrading safety. BNSF made almost \$6 billion in 2022 in profit and can clearly afford to equip these locomotives with PTC.²

TTD is concerned that BNSF will use this PTC safety plan amendment as an opportunity to enable Mexican-based train crews to operate in the United States without being trained on the PTC system based on the fact that the stated purpose of the RFA is to avoid delays for shipments possibly

¹ <https://www.regulations.gov/document/FRA-2010-0056-0613>

² <https://www.bnsf.com/about-bnsf/financial-information/pdf/performance-summary-4q-2022.pdf>

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Greg Regan, President / Shari Semelsberger, Secretary-Treasurer



originating or terminating within Mexico. TTD and our affiliated rail unions have previously raised concerns about cross-border operations with Mexican train crews, including the lack of ability for FRA to check Mexican personal vehicle driving records of Mexican engineers and the existence of Department of Transportation (DOT) regulations that allow foreign railroad workers to operate up to 10 miles into the United States without being subject to any drug and alcohol testing.³ Further, we are concerned that BNSF may attempt to use Mexican locomotives that are not equipped with PTC, which would pose a hazard because many U.S.-based engineers and conductors are not fluent in Spanish and would not be able to read the control labels on the locomotive.

Similar to many recent PTC filings, BNSF has redacted significant portions of this request for amendment (RFA). Most concerningly, about half of the rationale justifying the need for the change in PTC safety plan is redacted, leaving many questions unanswered about BNSF's intended operations. In the request, BNSF claims that these movements are short and similar to movements that fall under yard movement exemptions; however, these would be movements made on mainline track, which inherently carries many potential risks and hazards that must be mitigated by safe operating procedures.

Given BNSF's redactions and the general dearth of information provided in their RFA, it is not possible to determine from BNSF's filing whether it deals with cross-border train movements. BNSF's statement that the purpose of the RFA is to avoid delays for shipments possibly originating or terminating within Mexico explicitly raises the possibility it does deal with cross-border train operations, but otherwise the public and stakeholders are left in the dark because of the lack of clarity.

BNSF's lack of information in this filing at the end of the day is short-sighted. The lack of information creates distrust on a critical issue because instead of providing the information needed to make the general public and stakeholders, including labor, comfortable with their request, their filing creates more questions than answers about the purpose of this request. The lack of initial information from BNSF also wastes FRA's time because it may necessitate follow up meetings between FRA staff and stakeholders that could be avoided if BNSF had provided more information in this RFA. Ultimately, TTD has no choice but to ask FRA to deny this amendment until these important questions are answered.

We also feel it important to reiterate that the regulatory requirement that PTC RFAs be adjudicated within 45 days is increasingly unrealistic and public comment periods become shorter and shorter, depriving the public of opportunities to review railroads' proposals.⁴ In this case, public notice was not published until 33 days after receipt of BNSF's RFA on February 1, 2023. That left stakeholders with less than two weeks to review technical and redacted documents and prepare comments. This is one of the shortest comment periods FRA has given the public on an PTC RFA

³See <https://ttd.org/policy/stopping-the-unsafe-outsourcing-of-u-s-rail-jobs/>

⁴ 49 CFR 236.1021(m)(3)(i)

yet and proves very challenging to members of the public and organizations that, unlike BNSF, do not have billions of dollars in yearly revenue to employ large teams of dedicated staff with legal teams on retainer. This process does not serve local communities that have a right to know what is happening in their backyards.

For all of these reasons, we believe that BNSF's RFA is not in the public interest. We ask FRA to deny any RFA with a redacted reason for requested changes. Until such time as BNSF is transparent about what operations will be conducted and FRA allows the public sufficient time to review and verify that the operations would be safe for workers and surrounding communities, it is simply not responsible or safe to allow railroads to make operational changes unchecked.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Regan', written over a circular stamp or mark.

Greg Regan
President