Decision **DRAFT DECISION OF ALJ WEISMEHL** (Mailed 1/17/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own motion to provide for mitigation of local rail safety hazards within California.	Rulemaking 93-10-002 (Filed October 6, 1993)

OPINION MODIFYING DECISION 97-09-045 TO CONFORM IT TO FEDERAL COURT DECISIONS

I. Summary

This decision modifies Decision (D.) 97-09-045, the Commission's 1997 order identifying local safety hazard sites on railroad lines in California and adopting regulations to eliminate or reduce recurring railroad accidents at these identified local safety hazard sites. By this order, D.97-09-045 is modified to conform to decisions and orders of the Ninth Circuit Court of Appeals and the United States District Court for the Northern District of California, Case Nos. 01-15141, 01-15531, and C-97-03660 TEH, respectively. This proceeding is closed.

II. Background

In October 1993, the Commission opened this Rulemaking to consider mitigations for local rail safety hazards within California. The Rulemaking was prompted by the disastrous derailments and toxic spills at Dunsmuir and Seacliff, California, in July 1991, and other rail accidents involving derailments, runaway trains, injuries and fatalities. In addition, the California Legislature passed legislation requiring this Commission to adopt regulations to prevent serious rail accidents. The legislation required the Commission to identify local

safety hazard sites on railroad lines in California and mandated that the Commission adopt regulations to eliminate or reduce recurring railroad accidents at these identified local safety hazard sites.

In September 1997, the Commission issued D.97-09-045 (75 CPUC2d 1), adopting safety regulations to eliminate or reduce essentially local safety hazards. The decision identified several local safety hazard sites in California using statistical methods and models to analyze site characteristics and accident concentrations. In the decision, the Commission stated it took "great pains to ensure that this Commission has done nothing to weaken or conflict with the rightful and valuable exercise of federal jurisdiction" and it "carefully and thoroughly considered every safety measure to ensure that these measures do not 'unduly' or 'unreasonably' burden interstate commerce." (75 CPUC2d 1 at 10.) The Commission's regulations were intended to complement the Federal Railroad Administration's (FRA) efforts, with the hope of reducing or eliminating derailments and toxic spills in California.

Following issuance of D.97-09-045, the Commission's rail safety regulations were actively litigated in federal courts, leading to several court decisions including *Union Pacific Railroad Co. v. CPUC*, 109 F.Supp. 2d 1186 (N.D. Cal. 2000) and *Union Pacific Railroad Co. v. CPUC*, 346 F.3d 851 (9th Cir. 2003.) In the latter decision, the Ninth Circuit Court of Appeals concluded that Commission rules were preempted by federal law in several areas and remanded the issue of "train make-up" or "track train dynamics" (TTD) rules to the district court. In response to the remand, the parties – namely the Rail Operations Safety Section of the Commission's Consumer Protection and Safety Division ("Staff"), Union Pacific Railroad Company, and Burlington Northern and Santa Fe Railway Company (collectively "Railroads") – settled train make-up rules by

filing a Stipulated Final Judgment allowing the Commission to enforce the Railroads' rules for train make-up at the local safety hazard sites. The Stipulated Final Judgment was approved by the U.S. District Court for the Northern District of California on May 10, 2004. (Case No. C 97-03660-TEH.)

On June 30, 2004, Staff filed a petition to modify D.97-09-045 and conform it to the Stipulated Final Judgment and other court orders.[1] The Railroads responded in support of Staff's petition, with minor additions and corrections. Staff filed a replied on August 20, 2004, agreeing with all of the Railroads' suggested changes.

III. Modifications to D.97-09-045

A. Performance Standards

In its petition for modification, Staff requests that the Commission's discussion of performance standards[2] should be deleted because the Ninth Circuit found the Commission's rules were preempted by federal law. (*Union Pacific v. CPUC*, 346 F.3d 851, 857.)

The Railroads respond that many discussions within the Commission's decision are no longer correct in light of the decisions issued in *Union Pacific v. CPUC*. The Railroads contend it is not essential to correct all discussions within D.97-09-045 as long as the ultimate conclusions of law and ordering paragraphs

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[1] Under the Commission's Rules of Practice and Procedure, petitions for modification are normally required to be filed with one year of the issuance of the decision. (Rule 47(d).) While Staff's petition is filed almost seven years after the original decision, the lengthy litigation of the matter was finally settled in May 2004 with the parties' Stipulated Final Judgment. This petition is timely since it was filed shortly following final court action.

[2] 75 CPUC2d, 1 at 32-33.

are modified. The Railroads recommend inclusion of a single paragraph in the opening of the decision to state as follows:

> At the conclusion of this rulemaking, the Railroads instituted a challenge to various regulations issued herein based on alleged violations of federal law. We have modified the original conclusions of law, ordering paragraphs, and regulatory appendices to conform to the decisions issued in that proceeding and the parties' settlement. See, *Union Pacific Railroad Co. v. CPUC*, 346, F.3d 851 (9th Cir. 2003) cert. den. 124 S.Ct. 1040 (2004) and the decisions of the U.S. District Court: *Union Pacific Railroad Co. v. CPUC,* 109 F. Supp.2d 1186 (N.D. Cal. 2000) and the Court's unpublished "Order Granting Motion to Amend Judgment" dated December 19, 2000. With limited exceptions, we have not modified the discussion of the issues as written in 1997. Even though the analysis of federal law set forth herein was rejected in part, we do not believe it is necessary to rewrite the discussion at this date. The decisions of the federal court overruling certain aspects of the Commission's reasoning are available for review.

We agree with the Railroads' proposal for a one paragraph addition to D.97-09-045. We will make this single change rather than attempt to delete all discussions that were subsequently preempted or modified by federal court action. We will modify D.97-09-045 to add the above paragraph to the "Summary" section of the order immediately following the paragraph that begins, "The statistical basis for identifying these local safety hazard sites is sound." (D.97-09-045, *mimeo*. at 5, 75 CPUC2d 1 at 11.)[3] In addition, we will modify the 1997 order to include the parties' Stipulated Final Judgment and revised Appendix E, as set forth in Attachment D of this order.

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[3] All edits to the text of D.97-09-045 are set forth in Attachment A to this order.

B. Train Make-Up Rules

Staff requests that the Commission's discussion of the approval of the Railroads' train make-up rules should be deleted and replaced with the provisions of the parties' Stipulated Final Judgment. (D.97-09-045, 75 CPUC2d 1 at 35-37.)

In accordance with the discussion above, we will not delete any of the discussion of train make-up rules, but we will modify the appropriate findings of fact, conclusions of law, ordering paragraphs, and appendices on this topic.

C. Conclusions of Law and Ordering Paragraphs

Staff recommends several modifications to the Conclusions of Law and Ordering Paragraphs in D.97-09-045 to conform them to the Stipulated Final Judgment and to acknowledge that federal courts found the Commission's regulations preempted by federal law. The Railroads made minor additions and corrections to the Staff's recommended modifications. Each of the Railroads' suggested additions were supported by Staff in their August 20, 2004 reply comments. All the suggested modifications are unopposed and we find they reasonably reflect both the Stipulated Final Judgment and the federal court decisions arising from this heavily litigated matter. Therefore, we will adopt the changes described in detail below. Each suggested modification is described along with a citation to the court action leading to the modification.

1. Conclusion of Law 13 should be deleted in view of the Ninth Circuit's holding that site 9 (the Cantara Loop) is not an "essentially local safety hazard" under 49 U.S.C. Sec. 20106. (*Union Pacific v. CPUC*, 346 F.3d 851, 857.)
2. Conclusion of Law 14 on Track-Train Dynamics should be rewritten to conform to the Stipulated Final Judgment, in response to the remand on the issue of train make-up or track train dynamics by the Ninth Circuit. (*Union Pacific v. CPUC*,

346 F.3d 851 at 870.) Staff suggests a rewrite of the conclusion as follows:

> 14. The Commission's staff has authority under ~~P.U. Code § 314 and under the orders of this Decision to obtain from the Railroads all information necessary to analyze the track-train dynamics regulations and any modifications to them~~[4] the Stipulated Final Judgment on Remand Issues to enforce the railroads own rules and regulations concerning train make-up at the identified local safety hazard sites and, further, to enforce the railroads' notification to the Commission of changes to those train make-up rules pursuant to the Stipulated Final Judgment on Remand Issues.

3. Conclusions of Law 15 through 19 on dynamic braking should be deleted because the court found these regulations preempted by federal law. (*Union Pacific v. CPUC*, 109 F.Supp.2d 1186 at 1209.)
4. Conclusions of Law 20 through 23 regarding "end of train devices" should be deleted because they are preempted by federal law. (*Union Pacific v. CPUC*, 109 F.Supp.2d at 1209 and 1211.)
5. Conclusions of Law 29 through 33 regarding training should be deleted because they are preempted by federal law. (*Union Pacific v. CPUC*, 109 F.Supp.2d at 1200-1201.)
6. Conclusions of Law 34 through 37 regarding track standards should be deleted because the Ninth Circuit found Site 9 was not a local safety hazard. Thus, increased track safety standards are preempted by federal law. (*Union Pacific v. CPUC*, 346 F.3d 851 at 860.)

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[4] Deletions to D.97-09-045 are marked by overstriking and additions are marked by underlining.

7. Conclusions of Law 38 through 41 regarding train securement should be deleted because the parties agreed these issues were not sufficiently developed to permit a determination concerning preemption; the count dismissed the issues without prejudice. (*Union Pacific v. CPUC*, 109 F.Supp.2d n5 at 1192.)
8. Conclusions of Law 44, 47 and 48 should be deleted to be consistent with the preemptions discussed above.
9. Consistent with the legal grounds discussed above, Staff recommends the decision be modified to delete Ordering Paragraphs 1, 2, 3, 8, 9, 11 through 22, and 24 through 31.
10. Several Ordering Paragraphs should be modified in accordance with the Stipulated Final Judgment and federal court findings. Specifically, staff recommends modification of Ordering Paragraphs 4, 5, 6 and 7 as follows:

    4. ~~No later than 60 days after the effective date of this decision, the Railroads must forward to Staff any corrections, additions or deletions to the Staff's identification of track-train dynamics rules in~~ The Commission shall enforce the train make-up rules contained within Appendix E of the Stipulated Final Judgment on Remand Issues. ~~Appendix E contains many of the Railroads' track-train dynamics rules but it is not intended to limit the Railroads' designation of other rules as track-train dynamics related operating rules.~~

    5. Beginning May 11, 2004, ~~on the effective date of this decision~~ the Railroads must notify staff ~~when any Railroads' track-train dynamics rules that were in effect on July 1, 1997, as identified in Appendix E, including corrections, are changed, dropped or supplemented~~ of any and all changes to Appendix E of the Stipulated Final Judgment on Remand Issues.

    6. Beginning May 11, 2004, the Commission shall enforce the notification of changes to the Railroads' train make-up rules as provided in the Stipulated Final Judgment on Remand Issues. ~~the effective date of this decision the Railroads shall provide the scientific justification for any changes made to the track-~~

~~train dynamics rules that were in use on July 1, 1997, including any corrections, additions or deletions made pursuant to Ordering Paragraph #4, *supra*.~~

7. Pursuant to the Stipulated Final Judgment on Remand Issues, ~~No later than 90 days after the effective date of this decision,~~ each Railroad operating through sites Nos. 1, 3, 4, 7, 9, 12, 16, 22, 23, 26, 28, 29, and 31 shall make available to Staff an explanation of the processes or decision criteria employed by the Railroad in order to assess the safety of the proposed rules, as well as the application of that criteria to the site. ~~all scientific justification for their operating track-train dynamics rules that will be in use at that time (i.e., 90 days after the effective date of this decision) for these respective sites~~.

D. Appendices A, B and E

Staff and the Railroads identified changes to Appendices A, B and E that are necessary to conform the Appendices to subsequent court action. Specifically, the parties recommend:

1. Appendix A, pages A-3 through A-5[5] should be stricken because they contain track-train dynamics and training regulations that have either been replaced by the Stipulated Final Judgment or the District Court found were preempted by federal law. We will modify Appendix A of D.97-09-045 as shown in the revised Appendix A attached to this order.
2. Appendix B of D.97-09-045[6] should be modified to remove references to various regulations that were held to be preempted by the Federal Railroad Safety Act, 49 U.S.C. Sections 20101 et seq. We will modify Appendix B as shown in the revised Appendix B attached to this order.

[5] 75 CPUC2d 1 at 86-88.

[6] 75 CPUC2d 1 at 88-89.

3. Appendix E of D.97-09-045[7] should be deleted and replaced with the Stipulated Final Judgment and a newly revised Appendix E setting forth train make-up rules for specific sites.

[7] 75 CPUC2d 1 at 122-339.

> We agree and a revised Appendix E containing both the Stipulated Final Judgment and a revised Appendix E is attached to this order.

The changes to Appendices A, B, and E are undisputed and we will adopt them.

Comments on Draft Decision

The Commission mailed the draft decision of the ALJ in this matter to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Philip Scott Weismehl is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Ninth Circuit Court of Appeals concluded that various rail safety regulations in D.97-09-045 were preempted by federal law. The Ninth Circuit remanded train make-up rules to the District Court.

2. Staff and the Railroads settled train make-up rules by filing a Stipulated Final Judgment, which was approved by the District Court in May 2004.

Conclusions of Law

1. The Commission should modify D.97-09-045 to conform to the findings of the Ninth Circuit, the District Court, and the Stipulated Final Judgment.

2. The text, Findings of Fact, Conclusions of Law, and Ordering Paragraphs of D.97-09-045 should be modified as set forth in Attachment A to this order.

3. Appendices A and B of D.97-09-045 should be modified to remove references to preempted regulations, as set forth in Attachments B and C of this order, respectively.

4. Appendix E of D.97-09-045 should be deleted and replaced with the Stipulated Final Judgment and Revised Appendix E, as set forth in Attachment D of this order.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 97-09-045 is modified as set forth in Attachment A to this order.
2. Appendix A of D.97-09-045 is modified as set forth in Attachment B of this order.
3. Appendix B of D.97-09-045 is modified at set forth in Attachment C of this order.
4. Appendix E of D.97-09-045 is deleted and replaced with the Attachment D of this order which contains the Stipulated Final Judgment and revised Appendix E.
5. Rulemaking 93-10-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
Page 1

MODIFICATIONS TO DECISION 97-09-045[8]

1. The following paragraph is inserted into the "Summary" section of the order immediately following the paragraph that begins, "The statistical basis for identifying these local safety hazard sites is sound." (D.97-09-045, *mimeo*. at 5, 75 CPUC2d 1 at 11.)

   At the conclusion of this rulemaking, the Railroads instituted a challenge to various regulations issued herein based on alleged violations of federal law. We have modified the original conclusions of law, ordering paragraphs, and regulatory appendices to conform to the decisions issued in that proceeding and the parties' settlement. See, *Union Pacific Railroad Co. v. CPUC*, 346, F.3d 851 (9th Cir. 2003) cert. den. 124 S.Ct. 1040 (2004) and the decisions of the U.S. District Court: *Union Pacific Railroad Co. v. CPUC*, 109 F. Supp.2d 1186 (N.D. Cal. 2000) and the Court's unpublished "Order Granting Motion to Amend Judgment" dated December 19, 2000. With limited exceptions, we have not modified the discussion of the issues as written in 1997. Even though the analysis of federal law set forth herein was rejected in part, we do not believe it is necessary to rewrite the discussion at this date. The decisions of the federal court overruling certain aspects of the Commission's reasoning are available for review.

5. Conclusion of Law 13 is deleted:[9]

   13. ~~The track-train dynamic regulations are necessary to eliminate or mitigate the essentially local safety hazard sites pursuant to 45 U.S.C. Sec. 434 and 49 U.S.C. Sec. 20106.~~

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[8] Additions are marked by underlining, and deletions are marked by overstriking.

[9] The modifications pertain to Conclusions of Law beginning at 75 CPUC2d 1 at 80.

6. Conclusion of Law 14 is modified as follows:

   14. The Commission's staff has authority under ~~P.U. Code § 314 and under the orders of this Decision to obtain from the Railroads all information necessary to analyze the track-train dynamics regulations and any modifications to them~~ the Stipulated Final Judgment on Remand Issues to enforce the railroads own rules and regulations concerning train make-up at the identified local safety hazard sites and, further, to enforce the railroads' notification to the Commission of changes to those train make-up rules pursuant to the Stipulated Final Judgment on Remand Issues.

7. Conclusions of Law 15 through 23 are deleted.

   ~~DYNAMIC BRAKING:~~

   ~~15. The one-year fact gathering period concerning the use of dynamic brakes is issued pursuant to P.U. Code § 7712(b)(2) and is consistent with 45 U.S.C. § 434 and 49 U.S.C. § 20106.~~

   ~~16. The FRA has not regulated the use of dynamic brakes by railroads in the United States of America.~~

   ~~17. The one-year fact gathering period concerning the use of dynamic brakes will not unreasonably burden interstate commerce.~~

   ~~18. The dynamic brake requirements are necessary to eliminate or reduce an essentially local safety hazard.~~

   ~~19. The characteristics of sites 10, 19, 25, 27 and 30, warrant a one-year fact gathering period concerning the use of dynamic brakes.~~

   ~~END-OF-TRAIN DEVICES:~~

   ~~20. The end-of-train (EOT) device regulations are issued pursuant to P.U. Code § 7712(b) and are consistent with 45~~

~~U.S.C. § 434, 49 U.S.C. § 20106 and with the FRA's Final Rule.~~

~~21. The EOT device regulations are necessary to eliminate or reduce an essentially local safety hazard.~~

~~22. The EOT device regulations are not incompatible with a law, regulation, or order of the United States Government.~~

~~23. The EOT device regulations do not unreasonably burden interstate commerce.~~

8. Conclusions of Law 29 through 41 are deleted.

~~TRAINING:~~

~~29. The training regulations are issued pursuant to P.U. Code § 7712(d) and are consistent with 45 U.S.C. § 434 and 49 U.S.C. § 20106.~~

~~30. The training regulations are necessary to eliminate or reduce an essentially local safety hazard.~~

~~31. The training regulations are not incompatible with a law, regulation, or order of the United States Government.~~

~~32. The FRA has not regulated training with respect to state-identified local safety hazard sites in the United States of America.~~

~~33. The training regulations do not unreasonably burden interstate commerce.~~

~~TRACK STANDARDS~~

~~34. The track standard regulations are issued pursuant to P.U. Code § 7712(e) and are consistent with 45 U.S.C. § 434 and 49 U.S.C. § 20106.~~

~~35. The track standard regulations are necessary to eliminate or reduce an essentially local safety hazard.~~

~~36. The track standard regulations are not incompatible with a law, regulation, or order of the United States Government.~~

~~37. The track standard regulations do not unreasonably burden interstate commerce.~~

~~TRAIN SECUREMENT~~

~~38. We agree with Staff that the use of improved train securement procedures by the Railroads would greatly assist in the prevention of runaways and the derailments and accidents caused therefrom.~~

~~39. Therefore, the Railroads should adopt better procedures and heightened standards for securing standing trains to assist in the prevention of runaways.~~

~~40. The Commission directs staff to further investigate the problems associated with standing trains.~~

~~41. The Railroads shall assist staff and cooperate fully in this investigation of the problems associated with standing trains.~~

9. Conclusions of Law 44, 47 and 48 are deleted.

~~44. The Commission's exercise of jurisdiction requiring EOT devices on trains and a fact gathering period concerning the use of dynamic brakes on some locomotives operating over certain local safety hazard sites is made pursuant to P.U. Code §§ 7711 and 7712 and is consistent with 45 U.S.C. § 434 and 49 U.S.C. § 20101 et seq and is not preempted by the Locomotive Boiler Inspection Act as set forth in 49 U.S.C. § 20101 et seq, formerly 45 U.S.C. §§ 22-23 and 28-43.~~

~~47. It is critical to rail safety in California and necessary under P.U. Code §§ 7711 and 7712 that the Commission retain jurisdiction over the identified local safety hazard sites to ensure the Railroads' compliance with the regulations issued in this Decision.~~

~~48. Similarly, the Staff shall have continuing authority pursuant to this Decision to monitor the identified local safety hazard sites in California and to enforce the provisions of this Decision.~~

10. Ordering Paragraphs 1, 2, 3, 8, 9, 11 through 22, and 24 through 31 are deleted.[10]

~~1. Railroads shall cooperate and work with Staff and any other interested parties, to develop and implement, subject to Commission approval, performance-based standards for train configurations based on current track-train dynamics principles, and administrative procedures for modifying the performance-based standards and the rules derived from those standards.~~

~~2. When a performance standard, with administrative procedures for its modification, is developed, it shall be submitted to the Commission for approval and adoption and this performance standard may supercede any or all track-train dynamics ordering paragraphs (paragraphs 5 - 11) herein.~~

~~3. If no consensus is reached between Staff and the Railroads regarding the implementation of administrative procedures and performance-based standards for train configurations within 90 days from the effective date of this decision, Staff shall nevertheless submit for the Commission's consideration proposed administrative procedures and performance-based standards for track-train dynamics based on up-to-date track-train dynamics principles.~~

[10] Modifications to Ordering Paragraphs begin at 75 CPUC2d 1 at 82.

~~8. Beginning 90 days after the effective date of this decision, the Railroads operating through sites Nos. 1, 3, 4, 7, 9, 12, 16, 22, 23, 26, 28, 29, and 31 must comply with the identified track-train dynamics rules in use at that time (i.e. 90 days after the effective date of this decision) for each of these sites.~~

~~9. Beginning 90 days after the effective date of this decision, changes to the track-train dynamics rules shall follow the administrative procedures set forth in Appendix A to this Decision in a manner consistent with Section IV.A.(1), *infra,* unless a performance-based standard in conjunction with administrative procedures for modification of that standard and the rules derived from that standard have been approved by the Commission.~~

~~11. The Railroads shall work with Staff to investigate Site No. 8 on SP's Valley Line for possible implementation of operating restrictions including, but not limited to, track-train dynamics restrictions.~~

~~DYNAMIC BRAKES:~~

~~12. Each Railroad shall gather such information as requested by Staff to examine the use of dynamic brakes on trains operating over site Nos. 10, 19, 25, 27, and 30, respectively, for one year beginning from the date of notification issued by Staff.~~

~~13. The Railroads shall provide Staff with the information maintained and compiled within the previously-mentioned fact gathering period at any time upon demand.~~

~~14. Each Railroad affected by the dynamic braking provisions shall cooperate and work with Staff, and other interested parties, to develop and implement, subject to Commission approval, performance-based standards for dynamic brakes based on total train braking performance criteria.~~

~~15. To assist both Staff and the Railroads in developing the performance-based standards for dynamic braking for the identified local safety hazard sites, the Railroads shall, upon request from Staff, promptly provide Staff with computer models, data, software, and, if necessary, access to computer hardware for the assessment of train braking system performance.~~

~~16. Within 180 days from the effective date of this Decision, the Staff shall submit for our consideration dynamic brake performance standards resulting from the consensus that may be reached with the Railroads,.~~

~~17. If no consensus is reached between Staff and the Railroads regarding the implementation of performance-based standards for dynamic braking within 180 days from the effective date of this Decision, Staff shall nevertheless submit for our consideration and possible adoption a proposed performance standards for dynamic braking based on total train braking performance criteria.~~

~~END-OF-TRAIN TELEMETRY DEVICES:~~

~~18. The Staff and Railroads, and other interested parties, shall attempt to reach an agreement with the Federal Railroad Administration, within 90 days from the effective date of this Decision, to extend the federal oversight, application and enforcement of the federal two-way end-of-train regulation for 2% grades (i.e., a section of track with an average grade of two percent or greater over a distance of two continuous miles) to site Nos. 6 and 25.~~

~~19. Ninety (90) days from the effective date of this Decision, all trains operating over local safety hazard sites Nos., 6 and 25 shall have the means to initiate, from the controlling unit of the locomotive, an emergency brake application at the rear of the train consistent with the Federal Railroad Administration two-way end-of-train device requirements (i.e., 49 CFR Parts 232.21 - 232.23), as if~~

~~the grades at these two sites average two percent or greater over a distance of two continuous miles, unless modified by another Commission order.~~

~~20. Staff may grant exceptions to the EOT regulations ordered for Site No. 25 in paragraph 19, *infra*, based on performance justifications submitted by a Railroad requesting such exceptions.~~

~~SPECIFIC TRAINING:~~

~~21. Ninety days from the effective date of this Decision any Railroad operating trains over local safety hazard site Nos. 1, 3, 4, 7, 9, 12, 16, 22, 23, 26, 28, 29, and 31, shall comply with the administrative processes for implementing site-specific training as described in Appendix A (Training Regulation) to this Decision, unless modified by another Commission order.~~

~~22. The Railroad, Staff, and other interested parties, shall seek an agreement with the Federal Railroad Administration, that addresses our training concerns, and shall submit for our review such an agreement within 90 days of the effective date of this Decision.~~

~~TRACK STANDARDS:~~

~~24. Within 180 days from the effective date of this Decision, after conferring with Staff and conducting any necessary joint inspections, Southern Pacific, or its successor, shall submit to the Commission a document which accurately identifies the improvements at site No. 9 which SP deemed responsible in I.91-08-029 for reducing derailments through track structure strengthening beyond the minimum FRA track standards.~~

~~25. Within 30 days after the improvements in the above ordering paragraph 24 have been identified and submitted to the Staff, Southern Pacific, or its successor, shall confer with Staff and submit to the Commission specific~~

~~requirements, including margins for expected wear, designed to preserve and maintain the improvements at site No. 9 identified by SP in I.91-08-029 as reducing derailments by track structure strengthening in excess of minimum FRA track standards.~~

~~26. Beginning 60 days after the specific track standard requirements for site No. 9 have been identified and submitted as required in ordering paragraphs 24 and 25, *infra*, Southern Pacific, or its successor, shall comply with the identified requirements.~~

~~27. Requests to change the track standard requirements at site No. 9 ordered in paragraphs 24, 25, and 26, *infra*, must be accompanied by scientific justification establishing that the change(s) provide(s) an adequate level of track structure strength.~~

~~28. Staff may approve changes to track standard requirements for site No. 9.~~

~~TRAIN SECUREMENT:~~

~~29. The Railroads shall adopt better procedures and heightened standards for securing standing trains to assist in the prevention of runaways, and shall report to the Commission within 45 days of the effective date of this order on these train securement procedures and standards.~~

~~30. The Staff shall continue to investigate the problems associated with standing trains.~~

~~31. The Railroads shall cooperate with and assist Staff in investigating the problems associated with standing trains.~~

11. Ordering Paragraphs 4, 5, 6 and 7 are modified as follows:

4. ~~No later than 60 days after the effective date of this decision, the Railroads must forward to Staff any corrections, additions or deletions to the Staff's identification of track-train dynamics rules in~~ The

Commission shall enforce the train make-up rules contained within Appendix E of the Stipulated Final Judgment on Remand Issues. ~~Appendix E contains many of the Railroads' track-train dynamics rules but it is not intended to limit the Railroads' designation of other rules as track-train dynamics related operating rules.~~

5. Beginning May 11, 2004, ~~on the effective date of this decision~~ the Railroads must notify staff ~~when any Railroads' track-train dynamics rules that were in effect on July 1, 1997, as identified in Appendix E, including corrections, are changed, dropped or supplemented~~ of any and all changes to Appendix E of the Stipulated Final Judgment on Remand Issues.

6. Beginning May 11, 2004, the Commission shall enforce the notification of changes to the Railroads' train make-up rules as provided in the Stipulated Final Judgment on Remand Issues. ~~the effective date of this decision the Railroads shall provide the scientific justification for any changes made to the track-train dynamics rules that were in use on July 1, 1997, including any corrections, additions or deletions made pursuant to Ordering Paragraph #4, *supra*~~.

7. Pursuant to the Stipulated Final Judgment on Remand Issues, ~~No later than 90 days after the effective date of this decision,~~ each Railroad operating through sites Nos. 1, 3, 4, 7, 9, 12, 16, 22, 23, 26, 28, 29, and 31 shall make available to Staff an explanation of the processes or decision criteria employed by the Railroad in order to assess the safety of the proposed rules, as well as the application of that criteria to the site. ~~all scientific justification for their operating track-train dynamics rules that will be in use at that time (i.e., 90 days after the effective date of this decision) for these respective sites~~.

(END OF ATTACHMENT A)