

Decision 90 09 047 SEP 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation instituted on the
Commission's own motion into the
responsibilities of railroad
corporations to improve walkway
conditions along tracks in
existence before the adoption
of General Order 118.

ORIGINAL

I.89-03-004
(Filed March 8, 1989)

O P I N I O N

On March 8, 1989, we instituted this investigation for the purpose of determining (1) what actions railroad corporations should take to improve walkway conditions along tracks that existed when General Order (GO) 118 was adopted in 1963, (2) the types of trackage subject to any program of walkway improvement, and (3) the time frame within which any walkway improvements should occur.

This decision resolves the issues under consideration in this investigation, adopting a settlement reached by several parties to the proceeding.

Background

The Commission adopted GO 118 in April, 1963 for the purpose of protecting railroad workers. We opened I.89-03-004 following a more recent Commission decision which granted Southern Pacific Transportation Company's (SP) request for a deviation from the walkway safety requirements of GO 118 in Application (A.) 85-03-052. Specifically, Decision (D.) 89-02-032 highlighted the ambiguity of Paragraph 6 of GO 118, which calls for a program of walkway improvement to tracks that predate GO 118. Paragraph 6 of GO 118 states:

"Each railroad corporation operating within the State shall pursue a program of improvement of walkways in all switching areas where a substantial amount of switching is performed, along its main, branch and industrial trackage

toward substantial conformity with its standards filed with the Commission pursuant to this order."

Parties to A.85-03-052 did not agree on their interpretations of Paragraph 6. SP argued that Paragraph 6 requires only that the railroads must develop programs for improving walkways in areas where substantial switching occurs. Commission Safety Division Staff (Staff) argued that the Paragraph requires improvement programs not only in areas of substantial switching, but along all main, branch, and industrial tracks.

In response to this confusion, we initiated this investigation, seeking responses to several questions, attached as Appendix A. The questions did not seek a clarification of the language of Paragraph 6, but rather asked the parties to propose walkway improvement programs that would, in a cost-effective manner, promote safety for railroad workers and thus provide a workable interpretation of Paragraph 6 that would be consistent with the fundamental purpose of the General Order.

Each respondent to this proceeding filed reports, as required by I.89-03-004, which provided information about compliance with GO 118, their walkway safety improvement programs, and the costs of further track improvements. At a prehearing conference held December 13, 1989, the parties agreed to hold workshops with the purpose of informally settling all issues of the proceeding.

Following the workshops and a second prehearing conference on June 4, 1990, the Staff filed a report on the workshop proceedings (attached as Appendix B to this decision) and "Motion to Adopt the Consensus Agreement." The Consensus Agreement Between the Railroad Corporations, Railroad Workers' Representatives, and CPUC Staff Regarding the Interpretation of Paragraph 6 in General Order 118 (Agreement) is signed by three major participants to this proceeding--the Staff, the United

Transportation Union (UTU), and, representing the railroads, SP. No party has contested the motion or the Agreement (attached as Appendix C to this decision).

The Agreement

The Agreement, attached as Appendix B, establishes a walkway improvement program for each of the respondent railroads, and a process for monitoring those programs. Specifically, the Agreement defines four types of tracks according to how frequently railroad employees use them in performing job duties. Tracks most frequently used must meet requirements of GO 118 within six months of the effective date of the Agreement. On the other end of the scale, those tracks which are used only in emergencies need not comply with GO 118 standards unless the Commission orders specific track repairs.

The Agreement also establishes a procedure for requesting deviations from GO 118. Under the procedure, the standard for considering deviation requests is worker safety, not formulae or rules. The procedure provides that the Director of the Safety Division would schedule an informal meeting if any party protests the request for a deviation. After considering the existing track conditions and other elements of the request, the Director will recommend approval or denial by way of Commission resolution. The resolution would be subject to appeal to the Commission. On appeal, the Commission would consider the deviation request through existing formal procedures.

Discussion

The Agreement is a reasonable response to our investigation. It fulfills the primary objective of providing reasonably safe walkways for railroad employees. It also recognizes that railroad resources should be allocated where they are likely to do the most good. The Agreement requires the railroads to improve walkways which are most frequently used and therefore most likely to present risk to employees. It also

recognizes that the probability of harm along some tracks is so small that costly improvements would not be worthwhile.

The Agreement sets forth a procedure for monitoring railroad compliance by providing that Staff will hold a workshop to review the progress of walkway improvement programs if any party requests the workshop within 18 months of the effective date of this decision. After that time, parties wishing to make changes to the Agreement must do so by way of a formal proceeding.¹ We believe this procedure will provide an effective forum for concerns over program compliance without requiring substantial effort by the parties. The expedited treatment of requests for GO 118 deviations is likewise reasonable.

We are impressed that the unions and railroads have agreed to the several issues addressed in this proceeding. We commend their cooperative efforts and the work of the Safety Division Staff in taking the lead on resolving these matters outside of hearings. We will approve the Agreement.

Findings of Fact

1. GO 118 sets forth standards for walkway safety along railroad tracks.
2. The Commission issued I.89-03-004 to develop walkway safety improvement programs.
3. Following workshops, representatives of the railroads, employee unions, and Safety Division staff signed an agreement

¹ We presume by this language the parties did not intend to expand or reduce the rights of any party. Only parties subject to our jurisdiction may file applications. In order that the rights of other parties are not abridged, the term "formal proceeding" should be interpreted to mean "formal procedure." Parties who are not subject to our jurisdiction may initiate a procedure by petitioning for modification of a decision or they may, initiate a proceeding by filing a complaint.

resolving all issues in this proceeding. No party has contested the Agreement.

4. The program that would be established by the Agreement would promote worker safety along railroad tracks in a reasonably cost-effective manner.

5. The Agreement sets forth procedures for monitoring the progress of walkway improvements and applying for deviations from GO 118.

Conclusions of Law

1. The Agreement reasonably resolves all issues raised in I.89-03-004 and should be adopted.

2. This proceeding should remain open in order to provide a forum for enforcing the provisions of the Agreement under the monitoring procedure outlined in the Agreement in the first paragraph of Page 1.

O R D E R

IT IS ORDERED that:

1. The Consensus Agreement Between the Railroad Corporations, Railroad Workers' Representatives, and CPUC Staff Regarding the Interpretation of Paragraph 6 in General Order 118 (Agreement), attached as Appendix C of this decision, is adopted and applies to all respondent railroad corporations.

2. This proceeding will remain open for 18 months from the effective date of this decision for the purpose of providing a forum for enforcing the provisions of the Agreement under the monitoring procedure outlined in the Agreement in the first paragraph of Page 1.

3. Absent further order of the Commission, this proceeding will be closed June 1, 1992.

This order is effective today.

Dated SEP 12 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
PATRICIA M. ECKERT
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

[Signature]
NEAL J. SOULMAN, Executive Director
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Questions from I.89-03-004

To what extent, as of March 10, 1989, are walkways meeting the standards filed by the railroads in compliance with GO 118 in existence along all pre-GO 118 tracks?

To what extent, if any, have railroads already improved walkway conditions along pre-GO 118 main, branch and industrial tracks?

Should the program for improvement include all pre-GO 118 tracks and walkways or just those in switching areas?

If the program is limited to switching areas where substantial switching occurs, how should the phrase "where substantial switching occurs" be defined?

Should the program for improvement include something more than switching areas but something less than all pre-GO 118 tracks and walkways? I.e, should it also include other areas where railroad workers are frequently in need of safe footing? If so, what other pre-GO 118 tracks and walkways should be subject to the program for improvement?

Should the program for improvement require actual compliance or merely "substantial conformity" with GO 118 standards with regard to walkways subject to the program for improvement?

If "substantial conformity" is required, rather than actual compliance, then how should the term "substantial conformity" be defined so that the program for improvement can be enforceable?

What are the estimated costs associated with establishing walkways that meet the standards filed by the railroads in accordance with GO 118 along all pre-GO 118 trackage that does not presently have such walkways and what is the factual basis for these estimates?

What time frame, if any, should govern the program for walkway improvement?

Should the program for improvement set priorities for remedying walkway conditions in switching areas first and then improving other areas as time and resources permit?

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Should any priorities be set on the basis of accident frequencies, cost effectiveness of potential improvements or a combination of these two factors? How could this be done?

What additional orders or rules the Commission should issue with respect to railroad corporations' responsibilities to maintain or improve walkway safety with respect to tracks and walkway conditions in existence prior to the adoption of GO 118.

(END OF APPENDIX A)

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation instituted on the
Commission's own motion into the
responsibilities of railroad
corporations to improve walkway
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before the adoption of General
Order 118.

No. I. 89-03-004

REPORT OF THE SAFETY DIVISION STAFF
ON THE WORKSHOP PROCEEDINGS

This report has been prepared in accordance with the agreement reached on December 13, 1989, in the Prehearing Conference held for this Order Instituting Investigation (OII). At that conference it was agreed to hold workshops with the purpose of settling all issues of the OII by consensus through informal discussions. The staff was directed to prepare a report covering any agreements or stipulations arrived at in those workshops. The staff reports that all parties participating in the workshops have agreed to a settlement of the issues of the OII. In the course of reaching this agreement the primary tasks required by the OII were completed. Additionally, the twelve questions posed in the OII were answered. The staff reports that the workshop participants consider the agreement to be an appropriate resolution of all issues in the OII.

The twelve questions in the OII have been answered as follows:

1. To what extent, as of March 10, 1989, are walkways meeting the standards filed by the railroads in compliance with GO 118 in existence along all pre-GO 118 tracks?

Reports were received from all the railroad corporations listed as respondents to the OII. A summary of those reports is attached as an Appendix to this report. In summary, the railroads reported that walkways in yard areas meet the Standards

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of G.O. 118 with few exceptions, whereas walkways in other areas meet the Standards to varying degrees.

2. To what extent, if any, have railroads already improved walkway conditions along pre-GO 118 main, branch and industrial tracks?

This question was generally seen by the railroad corporations as unanswerable. Several of the railroads indicated that the work that had been done had not been recorded in a fashion such that an answer could be provided. It was generally stated that considerable work had been done for the program of improvement. Staff files dating back to the origin of the program of improvement support this assessment.

3. Should the program for improvement include all pre-GO 118 tracks and walkways or just those in switching areas?

This question is best answered by the "Consensus Agreement Between the Railroad Corporations, Railroad Workers' Representatives, and CPUC Safety Division Staff Regarding the Interpretation of Paragraph 6 in General Order 118," dated 6/4/90. In summary, it was agreed that there are four basic types of trackage defined by degree of walkway importance to safety. Three of these areas were seen to need a program of walkway improvement, albeit with different Standards and time frames applied.

4. If the program is limited to switching areas where substantial switching occurs, how should the phrase "where substantial switching occurs" be defined?

It was agreed that the program of improvement should not be limited to areas of "substantial switching."

5. Should the program for improvement include something more than switching areas but something less than all pre-GO 118 tracks and walkways? I.e., should it also include other areas where railroad workers are frequently in need of safe footing? If so, what

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other pre-GO 118 tracks and walkways should be subject to the program for improvement?

The consensus agreement was based on addressing the need for walkways where railroad workers require safe footing in different degrees, not restricted to switching areas. Other areas included in the agreed program of improvement include running tracks in yards, sidings, railroad owned or maintained industrial spurs, storage tracks, tracks where inspections are made, and other unspecified areas where trains regularly stop and employees must get off the train and perform any number of tasks.

6. Should the program for improvement require actual compliance or merely "substantial conformity" with GO 118 standards with regard to walkways subject to the program for improvement?

It was agreed to develop a better definition of the extent of the program of improvement than indicated by the phrase "substantial conformity." However, it was also agreed that something less than actual compliance with all the Standards would serve the interests of a cost-effective walkway improvement program which maximizes safety. More strict compliance would be required in areas of relatively high risk, whereas very low risk areas would not have to comply with the Standards.

7. If "substantial conformity" is required, rather than actual compliance, then how should the term "substantial conformity" be defined so that the program for improvement can be enforceable?

The term "substantial conformity" was not used in the agreement.

8. What are the estimated costs associated with establishing walkways that meet the standards filed by the railroads in accordance with GO 118 along all pre-GO 118 tracks that do not presently have such walkways and what is the factual basis for these estimates?

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The costs estimated by the railroads were included in their reports and are listed in the Appendix. In summary, the railroads estimate that they would have to spend over 198 million dollars to bring all tracks into conformity with the Standards of the General Order. Additionally, some costs may be underestimated as some costs were not included in the estimates and a few railroads' costs were based to an unspecified degree on something less than full conformity with the Standards. The most informative and important fact revealed in these reports is that almost all of the estimated cost is in areas of little walkway activity, such as mainline trackage between work areas or stations.

9. What time frame, if any, should govern the program for walkway improvement?

Different time frames were agreed upon for different types of trackage, with the shortest time frames for the highest priority areas. The time frames were increased as the priority of the type of tracks decreased.

10. Should the program for improvement set priorities for remedying walkway conditions in switching areas first and then improving other areas as time and resources permit?

It was agreed that priorities should be set according to the four types of trackage. Switching areas were seen as the highest priority.

11. Should any priorities be set on the basis of accident frequencies, cost effectiveness of potential improvements or a combination of these two factors? How could this be done?

It was agreed that priorities should be based upon the types of activity that occur on various types of tracks as such priorities would reflect the risk inherent in these activities as judged by the workshop participants. It was also agreed that the program should be cost effective, generally taking quick action where there was relatively high risk and low cost and no action where

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there was relatively low risk and high cost. Intermediate conditions were addressed with intermediate priorities.

12. What additional orders or rules the Commission should issue with respect to railroad corporations' responsibilities to maintain or improve walkway safety with respect to tracks and walkway conditions in existence prior to the adoption of GO 118?

The "Consensus Agreement Between the Railroad Corporations, Railroad Workers' Representatives, and CPUC Safety Division Staff Regarding the Interpretation of Paragraph 6 in General Order 118," dated 5/25/90, contains all the proposals that were agreed upon regarding the railroads' responsibilities. In addition to the interpretation of Paragraph 6 of General Order 118, provisions were included for expediting acceptable deviations to the General Order.

THE WORKSHOPS

All interested parties were invited to participate in the workshops to seek agreement on an interpretation of Paragraph 6 of General Order 118. Participants of the workshops, including representatives of the railroad corporations, railroad employees, and Commission Safety Division staff, developed an agreement in response to the Public Utilities Commission's OII No. 89-03-004, Investigation Instituted on the Commission's Own Motion into the Responsibilities of Railroad Corporations to Improve Walkway Conditions Along Tracks in Existence Before the Adoption of General Order 118. The agreement covers all three questions contained in the statement of purpose for the Commission's Order Instituting the Investigation. The three questions are:

- (1) What actions should Railroad corporations be required to undertake in order to improve walkway conditions along tracks that were in existence when General Order 118 was adopted in 1963,

- (2) The types of trackage subject to any program of walkway improvement, and
- (3) The time frame within which any walkway improvements must occur?

A common set of working principles acceptable to all parties, for the purpose of negotiations only, was prepared to answer these three questions and to provide a basis for the workshop negotiations. Chief among these were the following:

1. The ultimate goal of all the participants was to cooperatively develop a cost effective program for walkway improvements to minimize safety hazards.
2. Where safety is not at risk, walkway improvements are not necessary.
3. The agreed upon walkway improvement program must provide for the expeditious elimination of any unsafe walkway conditions that may be identified.
4. The referenced standards in G.O.118 should be applied as objective guidelines, but not as absolute minimum requirements, for the walkway improvement program.
5. A safe and adequate walkway, rather than literal conformance to the referenced standards in G.O.118, is the proper standard for the walkway improvement program.
6. The need for walkway improvements must be commensurate with the functions railroad employees are required to perform, with the frequency of that performance, and with the existing condition of the walkways.

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7. To be cost effective, walkway safety hazards identified at particular locations ordinarily require site specific solutions.
8. The railroad corporations, railroad employees, railroad employees' collective bargaining representatives, and Commission staff should share in determining whether or not existing walkways are safe. Disagreements may be informally resolved by the Commission staff. Finally, if agreement cannot be obtained any other way, resolution may be by formal Commission proceedings.
9. There should be a process of review specified in the agreement.
10. All concerned parties are in agreement that a more expeditious method is needed for obtaining Commission approval of acceptable deviations from the requirements of G.O. 118.

Employing these 10 working principles, the railroad corporations, railroad employees' representatives, and Commission Safety Division staff reached agreement on a walkway improvement program for four types of track, designated Type A through D. The agreement specifies how the principles will be implemented and applied to specific types of track. The language of the agreement controls.

APPENDIX: Percentages of Compliance and Costs Reported by Railroads

Railroad	Miles	M.A. %	Yard etc %	Total %	Cost	Note
SPCo	6382			82.5	\$71,585,163	Includes excavation, and other construction costs.
ATSF	2868	87	98	92.5	\$7,305,000	Doesn't include " " " " "
ABE	15			99.5	\$2,000	Doesn't include " " " " "
OTR	15			97.0	\$8,500	Doesn't include " " " " "
LAJ	65			100	\$0	
SRC	37			97	\$23,500	Doesn't include " " " " "
UFRR	2204				\$101,109,385	Includes excavation, and other construction costs.
SN	66	0	99	50.0	\$2,222,000	Doesn't include " " " " "
ATK		100	100	100.0	\$0	
AL		100	100	100.0	\$0	
AMC	12	33	100	75.0	\$250,000	Includes excavation, and other construction costs.
CWR	40	65	100	82.5	\$5,300,000	Includes excavation, and other construction costs.
EUKA	175	50	99	51.0	\$3,303,360	Doesn't include " " " " "
CWR	38			90.0	\$128,735	?
HCR	95	0	100	50.0	\$3,243,940	Doesn't include " " " " "
MEI		100	100	100.0	\$0	
NYR				92.5	\$60,000	?
PRT		100	100	100.0	\$0	
POS					\$108,000	Includes excavation, and other construction costs.
QRR		80	100	90.0	\$0	
SCBT&P	9	50	100	71.0	\$549,068	Includes excavation, and other construction costs.
SDIV		100	100	100.0	\$0	
SERA		65	100	82.5	\$623,900	Doesn't include " " " " "
SFB		100	100	100.0	\$0	
SMV		100	100	100.0	\$0	
ST&E	27	35	100	44.0	\$2,247,235	Doesn't include " " " " "
TRC	31	95	95	95.0	\$225,000	?
VCT		100	100	100.0	\$0	
TV	11	44	100	72.0	\$369,628	?
Total	12090	70.2	99.6	85.7	\$198,664,414	

(END OF APPENDIX B)

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CONSENSUS AGREEMENT BETWEEN THE RAILROAD
CORPORATIONS, RAILROAD WORKERS' REPRESENTATIVES,
AND CPUC STAFF REGARDING THE INTERPRETATION
OF PARAGRAPH 6 IN GENERAL ORDER 118

The parties agree that a walkway improvement program for each of the four types of track, A through D, will be undertaken subject to review at the request of any party within eighteen months, calculated from the effective date of this agreement. If requested within eighteen months, the parties to this agreement, or their representatives, shall meet again in a workshop session sponsored by the California Public Utilities Commission (Commission) to review the progress of the walkway improvement program and make any necessary revisions. After eighteen months any party wishing to make changes to the agreement shall initiate a formal proceeding. This agreement applies only to railroad owned or maintained trackage under the jurisdiction of the Commission.

1. TYPE A TRACKS:

a.) Definition:

Type A tracks are those where railroad employees are routinely required to get on and off equipment, and to routinely perform classification or similar switching operations and spotting of cars as a normal part of their assigned duties.¹

b.) Typical Examples:

Typical examples of Type A tracks include switching and classification yards (but see exception in B under typical example No. 1). Where the conditions described in the

¹ Note: This and all other definitions are intended to describe actual field conditions and practices of railroad employees in the performance of their assigned duties; the possible prohibition of these conditions and practices in published procedures, rules, or bulletins will not change the requirements of this agreement.

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definition set out at paragraph 1(a) occur, depending on the frequency of activity, all or portions of the following other tracks shall be included as Type A: sidings, drill tracks, railroad owned or maintained industrial spurs, and similar tracks used for switching operations.

c.) Actions To Be Taken:

i.) Type A tracks in existence prior to the adoption of G.O. 118 shall be visually inspected from the ground by each carrier to identify any nonconforming walkways that may exist at the time this agreement is entered into. This inspection shall be completed as soon as practicable, but in any event, 50% of the subject trackage shall be inspected within 90 days of the execution of this agreement and the balance within 180 days of the same date. The requirements of Standard No. 6 in G.O. 118 shall be used for performing the inspection. Upon completion of the inspection the carrier shall classify all walkways as belonging in one of the following three categories:

1. Walkways that conform to the minimum dimensions stated in G.O. 118, Standard No. 6 - No improvements required.
2. Walkways that do not conform to the minimum dimensions stated in G.O. 118, Standard No. 6 - No improvements required.
3. Walkways that do not conform to the minimum dimensions of G.O. 118, Standard No. 6 - Improvements are required.

ii.) Inspection reports documenting the scope of each inspection specified at paragraph 1 (c) (i) above, and the location of all walkways in each category, shall be prepared and kept on file by the carrier. These

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inspection reports shall be subject to review by the the staff of the Commission's Safety Division (Staff), employees, or employee representatives. In the event of disagreement between the carrier, employees, employee representatives, or the Staff regarding walkways in categories 1, 2, and 3 above, such walkways shall be subject to reinspection by a joint inspection team. Where there is disagreement, unresolved by joint inspection, the carrier may seek resolution through the informal deviation process described in paragraph 5(d). In the event any party disagrees with the outcome of the informal deviation procedure, the carrier shall initiate a formal deviation request or shall have the option of bringing the nonconforming track up to Standard No. 6 dimensions.

d.) Time for Improvements:

Necessary walkway improvements for Type A tracks shall be given priority over improvements to Type B and C tracks. When required, the improvements shall be made as expeditiously as possible, in accordance with a schedule requiring completion in not more than 6 months after the need for such improvements has been established. Extensions of this 6 months maximum time period will be granted by the Staff to the railroad on a case by case basis for good cause shown.

2. TYPE B TRACKS:

a.) Definition:

Type B tracks are those where trains are known to frequently stop under established operating practices where railroad employees are regularly required to get on and off; and where the employees are required to walk alongside the equipment to perform their assigned duties. Switching operations involving direct set out or pick up of a single car or a solid block of cars or block swapping may also be performed on type B tracks. Specifically excluded

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from Type B are the operations described at paragraph 1(a) and (b). The parties agree that safe access is required on Type B track, but the parties also agree that safe access does not mandate that walkways along Type B tracks meet the same standards as required for Type A tracks.

b.) Typical Examples:

Typical examples of Type B tracks include: (1) running tracks in switching and classification yards; (2) sidings; (3) railroad owned or maintained industrial spurs; and (4) other similar tracks used for storage of equipment, and where the conditions described in the definition set out at paragraph 2 (a) normally occur.

c.) Actions To Be Taken:

- i.) Walkways for Type B tracks in existence prior to the adoption of G.O. 118 shall be in sufficient compliance with the appropriate requirements of G.O. 118, Standards No. 1 through 5, so as to be determined safe for continued use. If they are not, where physical circumstances permit, they will be brought into sufficient compliance within a reasonable period of time.
- ii.) Suspected nonconforming and hazardous walkways may be identified by anyone, including employees, representatives of employee organizations, or members of the Staff. When so identified, the particular walkways shall be jointly inspected within 30 days by representatives of the carrier and the affected employees' California State collective bargaining organization. If the affected employees do not belong to a collective bargaining organization or if the walkway is identified by the Staff, the Staff shall be represented for the purpose of conducting the joint inspection. This inspection will be conducted using the appropriate G.O. 118 Standards No.1 through 5 as

guidelines only. The inspection will be concerned not with the presence or absence of any particular pattern of walkway, but whether or not appropriate and safe footing conditions exist for the tasks that may be expected of the train crews at that location. To the extent practicable, where differences exist the members of the inspection team shall seek to reach agreement on an informal basis. If the Staff is not represented in the inspection team, either party may request the assistance of the Staff. Where corrective action is required, the inspection team members will determine the corrective measures to be taken based upon the physical conditions existing at that location, the safety needs of the employees, and the tasks to be performed, rather than according to any particular formula.

iii.) At the conclusion of the joint inspection, agreed upon walkway improvements for Type B tracks shall be given priority over improvements to Type C tracks. When required, the improvements shall be made as expeditiously as possible, in accordance with a schedule that requires completion in not more than 9 months after the need for such improvements has been established. Extensions of the 9 months maximum time period will be granted in the same manner as as specified at paragraph 1 (d).

iv.) Any unresolved disputes shall be set aside for resolution under paragraph 5 of G.O. 118.

3. TYPE C TRACKS:

a.) Definition:

Type C tracks are limited to locations on main and branch lines where the following functions occur: trains infrequently stop under established operating practices and railroad employees are required to get on and off and to

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walk alongside the stopped equipment to perform their assigned duties. Switching operations are not performed on Type C tracks.

b.) Typical Examples:

Typical examples of Type C tracks include stopping and inspection areas associated with trackside safety detectors (e.g. hot box and dragging equipment detectors), and other similar locations on main and branch line tracks where the conditions described in the definition set out at paragraph 3 (a) may occur.

c.) Action to be Taken:

i.) As soon as possible, but not more than 180 days after the beginning of this agreement, each carrier shall identify by milepost, pole or other similar means, the limits of the stopping and detection areas associated with each of their main and branch line trackside safety detectors in California. These areas shall be classified as high or low use, depending upon whether actuations requiring stopping and train crew inspections have been experienced more or less than twice per month on average over the past 12 months. Footing conditions in the stopping and inspection areas for all high use, and for any low use areas selected by appointed representatives of the affected employees' California State collective bargaining organization or a member of the Staff, shall be inspected to determine whether or not any walkway improvements are required.

ii.) These inspections shall be completed with all reasonable speed according to priorities and a schedule which the inspection team members shall jointly determine.

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iii.) The makeup of the inspection team, the criteria to be used, and the method for resolving disagreements between the inspection team members, shall be the same as that described at paragraphs 2 (c) (ii) and (iv).

iv.) At the conclusion of the joint inspection, agreed upon walkway improvements shall be made as expeditiously as possible in accordance with a schedule that requires completion not more than 12 months after the need for such improvements has been established. Extensions of the 12 months maximum time period may be granted in the same manner as described at paragraph 1 (d).

v.) Any unresolved disputes shall be set aside for resolution under Paragraph 5 of G.O. 118.

4. TYPE D TRACKS:

a.) Definition:

Type D tracks are those where trains are not required to stop under normal operating conditions, and the only time railroad employees are required to be on the ground is after an emergency stop when it then becomes necessary for them to walk alongside the train to perform their assigned inspection and repair duties.

b.) Typical Examples:

Typical examples of Type D tracks include main and branch lines where trains do not normally stop but the conditions set out at paragraph 4 (a) may occur.

c.) Action to be Taken:

No action is required for Type D tracks constructed or reconstructed prior to the adoption of G.O. 118, unless the Commission orders otherwise under paragraph 5 of General Order 118.

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5. APPROVAL OF WALKWAY DEVIATIONS

The parties agree that the procedures described below will be used to expedite Commission approval of acceptable deviations when requested pursuant to the preceding sections of this Agreement. New construction and reconstruction will follow the requirements of G.O. 118, except to the extent that deviations are granted. Deviations may be requested in accordance with the following procedures:

- a.) In granting deviations, the principle to be followed is that of ensuring appropriate employee safety in performing tasks which are required under the circumstances of the particular activity being undertaken. Conformance to a particular pattern, formula, or design is not necessary. While cost effectiveness may be considered, it will not be the sole criterion, and the deviation procedure will not be employed, and deviations will not be granted, simply to avoid costs.
- b.) Written requests for deviations shall be prepared by the carrier and submitted to the Director of the Safety Division, with a copy being served on the California State employee representatives of the carrier's affected trainmen, and on all other interested parties. The deviation request shall include a full statement of the conditions which prevail at the time and place involved, and shall specify the reasons why the deviation is deemed necessary. The request shall also include a showing that the deviation will not create a detriment to safety.
- c.) Within 30 days after publication in the Commission daily calendar, requests may be protested, in writing, by specifying the reason for the protest.
- d.) In the event of a protest, the Director of the Safety Division shall promptly schedule an informal meeting. The meeting shall be attended by the protestant, representatives of the carrier, the affected employees'

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representatives, and the Staff. The meeting shall be informal, governed by the fundamental rule of fairness, and may employ telephone conference calls, on-site inspection, or other procedures designed to lead to a proper and expeditious resolution of the matter.

- e.) The recommendation of the Director of the Safety Division for or against the requested deviation shall be subject to appeal through request for formal adjudication by the Commission. The Commission shall refer the controversy to an administrative law judge for resolution under formal procedures. It is contemplated that the appeal procedure will not be employed frivolously or for dilatory motives by any of the parties. All parties agree to cooperate in the informal meeting, towards the goal of providing a safe workplace, and to cooperate in establishing cost-effective ways of reducing risks to a reasonable and acceptable level.
- f.) If the Director of the Safety Division or his or her designee recommends approval of the requested deviation, and there are no objections raised by the other concerned parties, a Commission Resolution shall be drafted for Ex Parte processing by the Commission at the next scheduled Commission conference. This procedure will be guided by the Commission's Rules of Practice and Procedure.
- g.) Unless otherwise ordered, any exemption or modification so granted shall be limited to the particular case or the special type of construction covered by the request.

6. GENERAL RECITALS

- a.) Nothing in this agreement relieves the carriers of the obligation to provide a safe place for their employees to work.
- b.) All parties agree to exert good faith effort in carrying out the requirements of this agreement.

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7. EFFECTIVE DATE

When used in this agreement "effective date" means the date when this agreement has been executed by the parties and approved by order or resolution of the Commission.

In witness whereof, the parties have caused this agreement to be duly executed.

Dated:

June 4, 1990

Staff of the Safety Division
of the California Public
Utilities Commission

By:

Title:

United Transportation Union

By:

Title:

Dated:

June 4, 1990

Southern Pacific
Transportation Company

By:

Title:

Dated:

5/31/90

K. A. Moore
V. P. O.

6/4/90

Party: _____

By: _____

Dated: _____

Title: _____

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all known parties of record in this proceeding by mailing by first-class a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 6th day of June, 1990.

/s/ BESSIE J. KLAUDT

Bessie J. Klaudt

(END OF APPENDIX C)