

are designed to move down with a force of  $40 \pm 20$  N. The measured retention force for the improperly machined notch is nearly 4 times the nominal adjustment force and 2.5 times the maximum. Without the button depressed, these head restraints will not “slip” or easily move down from the top adjustment position. For most, it would take a deliberate two-handed action to cause the restraint to move from the top to the mid position without activating the release button. The tactile feedback from such forced movement would be clear indication that it is not the correct method for adjusting the restraint. The opportunity for inadvertent misadjustment of the restraint is also diminished due to the fact that these are rear seat head restraints with no seating positions behind them. They are not at risk for misadjustment as a result of someone bumping or grabbing the restraint for assistance during vehicle ingress and egress.

FMVSS No. 202a provides two compliance options for head restraints. They are Paragraph S4.2 (Dimensional and Static Performance) or paragraph S4.3 (Dynamic Performance and Width). As with most of its vehicles, GM chose to certify the rear seat head restraints for the 2013 Cruze, Verano and Volt, to S4.2 (the “static option”) and the front head restraints to S4.3 (the “dynamic option”).

In order to evaluate the efficacy of the rear head restraints with the improperly machined notches, GM conducted a series of 6 sled tests at MGA Research. Two tests each were run for the Cruze, Volt and Verano. For each vehicle, one test was run according to the procedure specified by FMVSS No. 202a paragraph S4.3 which places the head restraint in the mid-position, and a second test was run in the same manner as the first test, but with the head restraint placed in the top position. The top position is that used in the height retention test of the static option, and that position is the one with the improperly machined notch. Improperly machined head restraints and corresponding rod guides were used for each test.

Significantly, in the three sled tests with the head restraint in the uppermost position, the head restraint did not move down. For all tests, the head restraint remained in its pretest height adjustment throughout the test. Also, in all sled tests (upper and mid position) the dummy met the injury criteria specified in the requirements for the dynamic option ( $<12$  degree of neck rotation,  $<500$  HIC) and head restraint width  $>170$  mm.

### *GM's Arguments*

GM believes that the subject noncompliance is inconsequential to motor vehicle safety because for the following reasons occupant protection is not compromised:

1. The noncompliant test vehicles meet the requirements specified under the dynamic compliance option 1 in all six sled tests. Therefore, GM believes that the improperly machined head restraint rod notches do not expose occupants to a significantly greater risk than those with properly machined notches.

2. The head restraints remained in their adjusted positions throughout the tests.

3. The occupant performance criteria specified for the dynamic compliance option was met in both the mid and upper head restraint adjustment positions.

4. These head restraints will maintain their adjusted positions during everyday use of the vehicle.

5. Paragraph S4.2.6 of FMVSS No. 202a allows 13 mm of permanent displacement of the head restraint. By design, the distance between the top and mid adjustment positions of the subject head restraints is 19 mm. Thus, the potential head restraint displacement due to the improperly machined notch is limited to 19 mm.

6. The owner's manual instructions continue to meet all the requirements of FMVSS No. 202a. Even though the head restraint could be forced down to the mid-position, it still requires substantially more effort than it does when the adjustment button at the base of the head restraint is depressed. The owner's manual instructions continue to be the recommended manner of adjustment.

7. GM is not aware of any injuries or customer complaints associated with this condition.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 202a.

In summation, GM believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to

exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 32,838 vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction for delivery or introduction into interstate commerce of the noncompliant vehicles under their control after GM notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

**[Docket No. NOR 42136]**

### **Intermountain Power Agency v. Union Pacific Railroad Company—Oral Argument**

The Surface Transportation Board will hold oral argument on Thursday, November 14, 2013, at 9:30 a.m., in the hearing room at the Board's headquarters located at 395 E Street SW., Washington, DC. The argument will address the complaint of Intermountain Power Agency (IPA) challenging the reasonableness of rates established by Union Pacific Railroad Company (UP) for unit train coal transportation service from a point of interchange with the Utah Railway Company at Provo, Utah, to IPA's electric generating facilities at Lynndyl, Utah. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present arguments.

IPA filed its complaint on May 30, 2012, and filed its opening evidence on December 17, 2012. UP filed its reply evidence on April 12, 2013. IPA filed its rebuttal evidence on July 3, 2013, and the parties filed final briefs on August 14, 2013. On August 29, 2013, IPA filed an unopposed motion requesting that the Board hold an oral argument in this proceeding. In their final briefs, the parties dispute numerous issues, among them whether certain traffic in IPA's Stand-Alone Cost model includes an

improper cross-subsidy and whether the Board should apply a new cross-subsidy test proposed by UP to replace the Board's existing test. Parties should focus their argument on the cross-subsidy issues in addition to any other issues they consider important.

By November 7, 2013, each party shall submit to the Board the name of the counsel who will be presenting argument, and the name of the party counsel will be representing. IPA shall have 20 minutes to present its argument, and UP shall have 20 minutes to present its argument. IPA, in its filing, shall address the requested time reserved for rebuttal, if any.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's Web site at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

#### Instructions for Attendance at Argument

The STB requests that all persons attending the argument use the Patriots Plaza Building's main entrance at 395 E Street SW., (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the argument must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the argument upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245 by the close of business on November 13, 2013.

For further information regarding the oral argument, contact Jonathon Binet, (202) 245-0368. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### It is ordered:

1. Oral argument in this proceeding will be held on November 14, 2013, at 9:30 a.m. in the Surface Transportation Board Hearing Room, at 395 E Street SW., Washington, DC, as described above.

2. By November 7, 2013, the participants shall submit to the Board the names of the counsel who will be presenting argument and the name of the party counsel will be representing. IPA and UP, in their filings, also shall advise the Board how they choose to divide their time and address the requested time reserved for rebuttal, if any.

3. This decision is effective on the date of service.

Decided: October 22, 2013.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

Jeffrey Herzig,  
Clearance Clerk.

[FR Doc. 2013-25340 Filed 10-25-13; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. EP 670 (Sub-No. 2)]

#### Notice of Rail Energy Transportation Advisory Committee Vacancy

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of vacancy on federal advisory committee and solicitation of nominations.

**SUMMARY:** The Surface Transportation Board (Board) hereby gives notice of one vacancy on its Rail Energy Transportation Advisory Committee (RETAC) for a representative of an electric utility. The Board is soliciting suggestions from the public for a candidate to fill this vacancy.

**DATES:** Suggestions for a candidate for membership on RETAC are due November 27, 2013.

**ADDRESSES:** Suggestions may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 670 (Sub-No. 2), 395 E Street SW., Washington, DC 20423-0001.

#### FOR FURTHER INFORMATION CONTACT:

Michael H. Higgins at 202-245-0284. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

#### SUPPLEMENTARY INFORMATION:

The Board, established by Congress in 1996 to assume many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701-10747, 11101-11124), as well as the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901-10907), and railroad line sales, consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323-11327).

In 2007, the Board established RETAC as a federal advisory committee consisting of a balanced cross-section of energy and rail industry stakeholders to provide independent, candid policy advice to the Board and to foster open, effective communication among the affected interests on issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. RETAC operates subject to the Federal Advisory Committee Act, 5 U.S.C. app. 2.

RETAC's membership is balanced and representative of interested and affected parties, consisting of not less than: Five representatives from the Class I railroads; three representatives from Class II and III railroads; three representatives from coal producers; five representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); four representatives from biofuel refiners, processors, or distributors, or biofuel feedstock growers or providers; one representative of the petroleum shipping industry; and two representatives from private car owners, car lessors, or car manufacturers.