EX PARTE NO. 179 [1]

RULES AND INSTRUCTIONS FOR INSPECTION AND TESTING OF MULTIPLE UNIT EQUIPMENT

NEW YORK CENTRAL RAILROAD COMPANY
LONG ISLAND RAIL ROAD COMPANY (WILLIAM WYER, TRUSTEE)
DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY
BALTIMORE AND OHIO RAILROAD COMPANY
(STATEN ISLAND RAPID TRANSIT RAILROAD COMPANY)
ILLINOIS CENTRAL RAILROAD COMPANY
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY
PENNSYLVANIA RAILROAD COMPANY
READING COMPANY

Decided October 25, 1955

1. Upon further hearing, petition of The New York Central Railroad Company, The Long Island Rail Road Company (William Wyer, trustee), The Delaware, Lackawanna and Western Railroad Company, The Baltimore and Ohio Railroad Company (The Staten Island Rapid Transit Railway Company), the Illinois Central Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, and the Reading Company for reconsideration of rules 91.448 and 91.451 (a) of the order of May 18, 1954, herein, as amended, denied.
2. Upon further hearing, petition of the Hudson & Manhattan Railroad Company for reconsideration of the order of May 18, 1954, as amended, granted insofar as it applies to rules 91.417 (a) and 91.417 (b) and conditionally granted insofar as it applies to rule 91.419, and insofar as it applies to petitioner's equipment and to rules 91.400, 91.406, 91.407, 91.411, 91.431, 91.438, 91.448, and 91.451 (a), the petition is denied. Prior report 292 I. C. C. 693.

John H. Colgren, *William A. Colton*, *Donald B. Ferens*, *John F. Reilly*, *Howard D. Koontz*, *J. W. Grady*, *W. J. Myskowski*, *A. Schroeder*, *Lockwood W. Fogg, Jr.*, *William A. Roberts*, and *James A. Wilson* for petitioners and intervener.

Clifford D. O'Brien, *Charles W. Phillips*, *Richard R. Lyman*, *Lawrence V. Byrnes*, *James Longson*, and *Charles McCloskey*, for protestants.

James O. Tolbert for Bureau of Safety and Service, Interstate Commerce Commission.

[1] This report embraces also Ex Parte No. 179, petition for reconsideration of the Hudson & Manhattan Railroad Company (Herman T. Stichman, trustee).

First Report of the Commission on Further Hearing

Division 3, Commissioners Arpaia, Clarke, and Freas

Clarke, *Commissioner:*

These proceedings were separately heard and were the subject of two separate proposed reports. Since the record made in one proceeding was incorporated by reference and made a part of the other proceeding, and since the petitions under consideration involve related issues, they will be disposed of in one report. Exceptions, including a request for oral argument, were filed by petitioner Hudson & Manhattan Railroad Company to the reports proposed by the examiner, and the Brotherhood of Locomotive Engineers, protestants, replied. In our opinion, oral argument is unnecessary to the disposition of the issues presented, and the request is denied.

On July 15, 1955, the Brotherhood of Locomotive Engineers tendered transcripts of the evidence presented in the United States District Court, Southern District of New York, in a bankruptcy proceeding against the Hudson & Manhattan Railroad Company in bankruptcy No. 90460, hereinafter referred to, and moved that such evidence be received in evidence and considered by this Commission as a part of the record in the instant proceeding on the ground that it is pertinent and material to the issues under consideration. The Hudson & Manhattan has replied to this motion and vigorously objects to the acceptance of these transcripts as a part of this record. Although these transcripts were not available at the time of the further hearing, and the Brotherhood of Locomotive Engineers promptly tendered them when they became available, they were nevertheless submitted nearly 8 months after the close of this hearing and their acceptance would be in violation of rule 86 of the General Rules of Practice. The motion is therefore denied and the transcripts referred to have been disregarded and accorded no weight as evidence in the disposition of the issues presented.

Pursuant to the provisions of the Locomotive Inspection Act of February 17, 1911, as amended, an order of May 18, 1954, as amended, in the original report herein, prescribed certain rules and instructions for the inspection and testing of electrically operated units designed to carry freight and/or passengers, operated by a single set of controls.

On July 26, 1954, The New York Central Railroad Company, The Long Island Rail Road Company (William Wyer, trustee), The Delaware, Lackawanna and Western Railroad Company, The Baltimore and Ohio Railroad Company (The Staten Island Rapid Transit Railway Company), the Illinois Central Railroad Company, The New York, New Haven and Hartford Railroad Company, The Penn-

sylvania Railroad Company, and the Reading Company, hereinafter referred to collectively as the carriers, filed a joint petition for reconsideration of rules 91.448 and 91.451 (a) prescribed by the order of May 18, 1954, with a view to amending such rules so that the inspection periods prescribed therein be on the basis of 6,000 miles or 60 days. The proceeding was accordingly reopened for further hearing to this extent. The Hudson & Manhattan Railroad Company intervened in support of the petition. The Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, and the Railway Employees Department, American Federation of Labor opposed granting of the petition.

On July 28, 1954, the Hudson & Manhattan Railroad Company filed a petition for reconsideration, and the proceeding was reopened for further hearing insofar as it relates to the issue of the Commission's jurisdiction over the prescription of the rules and instructions in the original report insofar as they affect the equipment of the Hudson & Manhattan and insofar as it applies to rules 91.400, 91.406, 91.407, 91.411, 91.417 (a), 91.417 (b), 91.419, 91.431, 91.438, 91.448, and 91.451 (a). Hearing has been held. Granting of the petition was opposed by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Railway Employees' Department of the American Federation of Labor, and the Brotherhood of Railway Carmen of America. An appearance was made for and on behalf of the petitioners hereinbefore referred to as the carriers.

We will first consider the petition of the carriers, each of whom described the present inspections of multiple units being made on its line and, in substance, contends that its method and frequency of inspection is adequate for the safe operation of its trains and that a 30-day inspection as required by rules 91.448 and 91.451 (a) would merely incur additional expense without improving safety, nor would it detect mechanical defects not now detected by presently made inspections. There is no uniformity in the type of inspections made or the intervals between inspection periods, some of which are now as frequent as every 15 or 20 days, while others are made at less frequent periods. Details of the inspections made by each carrier and other pertinent matter will be briefly described for a clearer understanding of the issues involved. Some of the carriers own and operate multiple units as well as so-called trailers which were defined as units equipped with controls, light switches, brake valves, and other equipment necessary to enable operation of the train from the trailer but they do not have propulsion and related equipment.

The New York Central Railroad has 381 multiple units in service on its system. Each unit receives a daily inspection at each terminal which consists of an inspection of electrical equipment, control

system, lights, fuses, trucks, brake rigging, draft gears, windows, doors, and general appurtenances in the unit. Brake tests are also made. The complete inspection of a train consisting of about 10 units requires from 10 to 30 minutes and is made by 1 electrician and 1 car inspector. In addition to the daily inspection, 10 units are removed from service daily for a periodic inspection which is substantially equivalent to the inspections required under rules 91.448 and 91.451 (a). The mileage covered by the units determines the ones that are selected for this inspection which is on the basis of 4,500 miles usually accumulated in from 6 to 8 weeks. Completion of this periodic inspection requires the services of about 50 men for a period of 6 to 8 hours for each train. This inspection, however, includes repairs or replacement of parts as an incident thereto.

This carrier is of the opinion that compliance with the above rules will require the withdrawal from service each day of 20 instead of 10 units as a result of which additional personnel will be required, thereby increasing its annual cost by about $192,206. It contends this additional expense is not justified, particularly in view of its good safety record. For the period from January 1944 to December 1953, during which its units covered a total of 97,528,222 miles, there were 334 reportable accidents, only 9 of which were caused by defective equipment, such as stuck doors, defective door latches, parting of an air hose, or broken glass. In this carrier's opinion, eight of these defects could have been discovered in the ordinary course of daily inspections.

The Long Island Rail Road owns and operates 999 multiple units, 751 of which are motor units and 248 are trailers. Under its inspection program each unit is inspected daily and also receives a terminal inspection either at the end of the run or at layover. In addition, this carrier performs what it calls a regular inspection based fundamentally on mileage, although calendar periods are also used which correspond to the mileages covered for a stated period. The basic mileage used for this inspection is 6,000 miles. However, because of the difference in the type of equipment and accessories on each unit and the mileage accumulated, which ranges from 85 to 243 miles per unit per day, this carrier has set up a 4-calendar schedule for these inspections which are made at 15-, 20-, 25-, and 60-day periods. The inspections made at more frequent intervals than 60 days, other than the daily inspections, are made when equipment is brought in for normal maintenance, such as inspection and adjustment of single-shoe brake equipment, waste-packed journal, and armature bearings or other equipment in the units needing attention. With the exception of 182 units used in intact trains which receive inspections at 60-day intervals, all of this carrier's multiple units receive inspections within

the 15-, 20-, or 25-day periods, which is substantially the same inspection required by rules 91.448 and 91.451(a) under consideration herein.

In support of its contention that the above rules should be amended and that a maximum inspection period of 6,000 miles or 60 days would maintain safe operation, this carrier refers to its good safety record and its redevelopment program under which it proposes to modernize nearly all of its multiple units within the next 6 years. For the 10-year period from 1944 to 1953, inclusive, its multiple units covered a total of 395,750,953 miles during which there were 3,056 accidents reported by this carrier, 120 being chargeable to defective equipment. In its opinion, 63 of these defects could have been detected by a daily inspection and 12 by a 30-day inspection, while it contends that 45 could not have been detected either by a 30- or 60-day inspection. As a further reason for the granting of its request, this carrier claims that compliance with rules 91.448 and 91.451(a) in their present form will increase its operating costs by about $57,358 annually. This cost is based on the increase in maintenance forces needed for the changeover from the present 60-day inspections made on its 182 units used in its intact trains to the 30-day inspections required by these rules.

The Delaware, Lackawanna and Western owns 283 multiple units. Its present schedule consists of daily inspections and so-called general or periodic inspections which are made at 5-week intervals, during which time the accumulated mileage for each unit ranges from 2,800 to 3,000 miles. The daily inspection requires from 15 to 18 minutes per double unit, while about 7½ hours are required for the periodic inspection, the latter being similar to the inspections required by rule 91.451 (a), except that its report of this inspection is not notarized.

This carrier estimates that it will increase its operating costs by $35,550 annually if it is required to make inspections of its equipment on a 30-day basis as required by rules 91.448 and 91.451 (a). In support of its contention that this expenditure is unwarranted, it refers to its accident record for the period from 1945 to September 1954, during which it reported 302 accidents in which multiple-unit equipment was involved. In its opinion only 6 such accidents were attributable to defective equipment, averaging 1 accident per 14,855,-216 car-miles.

The master mechanic for the Staten Island Rapid Transit Railway Company and the Baltimore and Ohio Railroad Company testified that for the period between 1948 and 1953, the multiple units of the Staten Island, consisting of 81 motor units and 5 trailers, accumulated a total mileage of 11,813,308 miles and carried approximately 9 million passengers each year. During this period, 38 accidents were reported, none of which, in this carrier's opinion, was attributable to defective equipment. For this reason, it expressed the view that its present

inspections consisting of daily and periodic inspection, the latter being made at 60-day intervals, or approximately every 2,000 miles, were sufficiently adequate for proper maintenance and safe operation of its equipment and that more frequent inspections were not necessary. Furthermore, compliance with rules 91.448 and 91.451 (a) in their present form will increase its annual maintenance costs by about $23,000, for which it feels there is no justification.

The Illinois Central Railroad Company operates 280 multiple units, of which 140 are motor units and 140 are trailers. During the past 10 years this equipment covered 103,800,000 car-miles and was involved in 12 reportable accidents attributable to defective equipment. Personal injuries to 7 persons resulted from 7 of these accidents. In its operations this carrier transports about 38 million passengers a month. Inspections of its equipment are made at intervals averaging about 51 days, during which the average mileage per unit is 4,600 miles. Compliance with rules 91.448 and 91.451 (a) to provide for inspections on a 30-day basis will require the addition of 5 employees, which this carrier estimates will increase its inspection costs by about $24,000 annually.

The New York, New Haven and Hartford Railroad Company operates 206 multiple units, 106 of which, consisting of 40 motor units and 66 trailers, are about 25 years old and are expected to be retired from service within the next 5 years. The remaining 100 units are new and were placed in service between April and October 1954.

At present this carrier inspects all of its units daily, and, in addition, all of its old motorized units are shopped for general inspection on an average of about every 5,000 miles or 60 days, while its trailers are inspected on an average of about 7,500 miles or 90 days. The reason advanced for less frequent inspections of its trailers is because they do not have the same amount of equipment requiring inspection as the motorized units. This petitioner's assistant mechanical engineer testified that inspection of its 100 new units at intervals of 4 months or after an accumulation of not less than 15,000 miles would be adequate and would not adversely affect safety since these units are of an improved design and construction with new and improved insulation and other safety features requiring less attention than older type equipment. In his opinion, an inspection of all of this carrier's equipment on the basis of every 60 days or 6,000 miles is more than adequate for their safe operation.

In support of its contention that rules 91.448 and 91.451 (a) should be amended, this carrier called attention to its safety record and the additional maintenance cost it would incur if the relief sought herein is not granted. During the 10-year period from 1944 to 1953, its equipment operated a total of 69,973,802 car-miles and was involved

in 670 reportable accidents, only 28 of which were chargeable to defective equipment. Only 18 of the 28 accidents involved personal injury. In the opinion of its witness, only 5 of these defects could have been discovered in the course of a daily inspection, while the remaining 23 could not have been discovered by either a 30-, 60-, or 90-day inspection.

This petitioner estimates that compliance with these rules for inspection on a 30-day basis will increase its operating costs by about $200,000 per year due in part to its higher percentage of trailers as compared to other carriers, the longer time required to inspect the new units because of their added features and devices, and because of the 2 types of power equipment in use on its line; namely, alternating current for the 11,000-volt overhead system on its line and the direct current for the third-rail system on the New York Central system's line over which it operates.

The Pennsylvania Railroad Company owns 455 multiple units, each of which receives a daily interior and exterior inspection including the running gear, airbrakes, seats, door latches, windows, and other items which are a part of the unit. About 15 minutes are required for the completion of this inspection. An airbrake test is also made of the train prior to its departure from a terminal. A form is also kept in each unit upon which is noted any defect found by the train crew. Such defects are corrected at the terminal to which the unit moves. In addition, each unit receives a periodic inspection on the basis of 5,000 miles, or approximately every 70 days, which includes an inspection of all of the items covered by the rules under consideration herein. In the opinion of this carrier's assistant chief of motive power, present inspections are adequate for the safe operation of its equipment and protection of its employees and the public. This same witness testified that compliance with the requirements of rules 91.448 and 91.451 (a) by substituting 30 days' inspection for the inspection presently made would increase this carrier's annual operating costs by $196,260.

During the 10-year period between 1944 and 1953, this petitioner's multiple-unit equipment operated 153,674,491 car-miles and was involved in 1,115 reportable accidents, 188 of which were attributable to defects in equipment. A reportable accident was defined by this carrier as one in which damage to property is in excess of $350 or where an employee is unable to perform his duties for 3 days within a 10-day period as a result of an injury or where a person other than an employee is incapacitated for 1 day. In its opinion, 54 of these defects could have been detected by a daily inspection, 7 by a 30-day inspection, while 127 could not have been detected by either a 30- or 60-day inspection. Although 54 persons were injured in 53 instances

in which defects in equipment were responsible, there were no fatalities.

The Reading Company owns and operates a total of 136 multiple units which are powered from overhead wires, and their annual mileage is about 5,462,000 car-miles. These units consist of 11 combine cars averaging 5,265 miles per month, 28 trailers averaging 1,625 miles per month, 78 two-motor units averaging 5,380 miles per month, 11 two-motor units averaging 1,967 miles per month, and 8 four-motor units averaging 2,215 miles per month. The 78 two-motor cars are equipped with cab-signal devices.

This carrier's superintendent of motive power and rolling equipment testified that daily visual inspections requiring about 10 minutes per unit are made of this equipment comprising the inspection of brake equipment, wheels, brake tests, brake rigging, and general condition of the unit. In addition, general inspections comparable to those prescribed in rules 91.448 and 91.451 (a) are made of each unit at varying intervals, depending on the type of equipment inspected. The combine cars are inspected approximately every 30 days, or when they have accumulated 5,000 miles. The trailers, the 11 two-motor units and the four-motor units are inspected every 2 months, while the 78 units equipped with cab-signal devices are inspected every 6 weeks. These general inspections are more complete and require about 15 man-hours per unit.

In this carrier's opinion, its equipment is maintained in a safe and efficient condition, and the additional labor costs, amounting to $26,091 annually, resulting from compliance with rules 91.448 and 91.451 (a) are not warranted. Reference was made to its past safety record, which shows that between January 1946 to and including August 1954, it reported 164 accidents, representing the occurrence of 1 accident for every 288,774 miles operated. Ten of these accidents were attributable to defects in equipment resulting in personal injury in 3 instances and property damage with no personal injury in the remaining 7 instances. Its witness was of the view that none of these 10 defects could have been discovered in a daily inspection, although 1 could have been discovered by the type of inspection prescribed by the rules under consideration.

Protestants opposed the granting of this petition on the ground that any modification of rules 91.448 and 91.451 (a) for less frequent inspections and reporting thereof than the 30 days prescribed therein would reduce safety and protection. An engineer of the Hudson & Manhattan Railroad Company who is general chairman of the Brotherhood of Locomotive Engineers on that railroad, appearing as a witness for one of the protestants, confined his testimony to conditions on the Hudson & Manhattan which, though not a party to the peti-

tion under consideration, appeared as an intervener in support thereof. This witness testified generally and stated that as a representative of the employees on the Hudson & Manhattan, he had complained to the management for failure to correct defects in equipment reported to him by the employees but did not specify the nature of these defects, excepting poor brakes which were referred to as the most frequent defect reported. He criticized the manner in which inspections were made by the Hudson & Manhattan.

A representative of the Brotherhood of Locomotive Engineers with many years' experience as a locomotive engineer expressed the view that because of the short and more frequent stops made by multiple-unit trains and the heavy traffic in which this equipment is used, safety would be impaired if inspections were made at 60-day intervals instead of the 30-day periods now provided by these rules. This witness admitted that his experience on multiple-unit propulsion equipment was very limited, having been restricted to about 5 or 6 days' actual operation of such equipment.

An engineman for the Pennsylvania Railroad appearing as a witness for the Brotherhood of Locomotive Firemen and Enginemen testified that from his many years of experience as an engineer and instructor in the operation of multiple-unit equipment, he believes that the present practice of these carriers of inspecting multiple units, as well as the inspection periods proposed herein, is inadequate to provide a reasonable standard of safety of operation. In his opinion, more frequent inspections would disclose certain defects in equipment, some of which cannot be detected by a daily inspection because of their location under the unit or behind doors or covers.

A car repairman for the Long Island Rail Road who was also general chairman for the Brotherhood of Railway Carmen of America appeared as witness for the Railway Employees Department, American Federation of Labor, and testified that, in addition to the daily and 60-day inspections, this carrier's intact trains receive a yard inspection at 30-day intervals, at which time inspection and necessary repairs are made of the running gear, including replacement of brake-shoes. This witness was of the opinion that brakes should be inspected at least at 30-day intervals and that their braking power would be impaired if they were permitted to be operated for periods of 60 days without attention. For this reason, and the further reason that this carrier's equipment is in constant use, he believes that substitution of a 60-day inspection period for the present 15-, 20-, 25-, 30-, and 60-day periods now in effect on this line would reduce safety.

Another witness employed as an electrician for the Delaware, Lackawanna and Western Railroad who was also local chairman of an

electricians' union testified that in 1930 this carrier's maintenace crews inspected and repaired 10 double units consisting of a motor unit and a trailer each day on a 6-day-week basis. However, due to a reduction in force, the number of units handled was reduced so that at the present time only 6 units on a 5-day-week basis are being inspected and repaired at this carrier's Hoboken, N. J., multiple unit shop. This repair point also repairs about 5 or 6 units that become disabled while in service. Owing to reduction in force and shorter workweek, some of the former inspections, such as high voltage test on insulation and jumper inspections have been discontinued.

A summation of the evidence discloses that all of the carriers herein make daily inspections of their multiple unit equipment but that different periods are used by each carrier for periodic or general inspections, some of which occur at more frequent intervals than the 30-day period required by rules 91.448 and 91.451 (a), while others occur at less frequent periods. The purpose of these rules is to promote safety by the prescription of uniform standards for the testing and inspection of multiple-unit equipment at reasonable intervals so that defects can be detected and corrected, thereby preventing or reducing operational hazards incident to train operation. The frequency within which such tests and inspections shall be made is one of the issues for consideration in this proceeding. As indicated by the evidence, some of these carriers presently make more frequent inspections than required by the rules; for example, The Long Island Rail Road which inspects some of its equipment variously at 15-, 20-, and 25-day intervals. On the other hand, the New Haven makes periodic inspections of trailers at intervals of 90 days or 7,500 miles, while the Pennsylvania makes its inspections at intervals of 70 days or 5,000 miles. Several of the carriers inspect their equipment at intervals of approximately 60 days during which the mileage accumulated per unit ranges from 2,000 miles in the case of Staten Island Rapid Transit to 6,000 miles in the case of the Long Island.

The question presented is whether inspection of multiple-unit equipment at less frequent intervals than the 30-day periods prescribed by rules 91.448 and 91.451(a) will accomplish the purpose for which these rules are intended and whether their modification is justified. Although the safety records of these carriers is noteworthy, this of itself does not assure freedom from future occurrence of accidents resulting from defective equipment. It is significant that the best safety records were established by the carriers making more frequent inspections as indicated by the evidence generally. Obviously these carriers base their need for frequent inspections upon practical experience.

Modification of these rules to provide for less frequent inspections than the 30 days prescribed, on the ground that only a small percentage of accidents reported by these petitioners were attributable to defective equipment, standing alone, is not justified, particularly since the determination of the causes of the accidents is a matter of opinions expressed by these carriers' inspectors. The primary cause of an accident may be properly attributed to some extraneous force; however, a chance for avoidance of accidents may be lost because of defective equipment. Since the prime purpose of these rules is to protect employees and the traveling public, it is essential that frequent inspections be made of equipment to minimize the possibility of accidents resulting from the operation and maintenance of defective equipment. The need for frequent inspections of multiple-unit equipment is all the more accentuated by the fact that this type of equipment is generally used by carriers engaged in mass transportation, such as petitioners herein; and in view of the short and frequent stops and starts, heavy traffic, and constant vibrations, mechanical failures or defects can be extremely hazardous.

We do not believe that compliance with these rules on a 30-day basis will be unduly burdensome to petitioners, and in relation to the potential loss and damage to the traveling public, the carriers, and their employees from serious accidents, the costs for such compliance do not appear to be unreasonable. Modification of these rules to provide for inspections predicated on a mileage basis rather than on a calendar basis is undesirable and impractical and should be denied.

Consideration will next be given to the petition of the Hudson & Manhattan Railroad Company. This petitioner argues that the provisions of the Locomotive Inspection Act, as amended, do not apply to multiple-unit equipment so that the Commission is without authority for the prescription of the rules under consideration and that the order of October 23, 1953, redefining a locomotive so as to include multiple-unit equipment is invalid and not promulgated and issued pursuant to the provisions of section 4 of the Administrative Procedure Act. It contends that its equipment does not fall within the definition of a locomotive and that Congress, in fact, did not intend to confer on the Commission jurisdiction and authority to determine rules and instructions for the inspection and testing of motorcars and electrically operated units designed to carry passengers and operated by a single set of controls. Aside from the question of jurisdiction, petitioner argues that such order of October 23, 1953, was invalid since it was issued without notice and opportunity for hearing as required by the Administrative Procedure Act.

In its exceptions to the examiner's reports, this carrier questions the propriety of the examiner's reference to the authority for the prescrip-

tion of these rules as the Locomotive Inspection Act, it being its contention that the proper designation should be the "Boiler Inspection Act." As originally approved on February 17, 1911, the act in question was enacted as the Boiler Inspection Act (section 22, title 45 of the United States Code Annotated) since it established a general safety standard for locomotive boilers only. Thereafter, on March 4, 1915, the original act was amended to include not only the boiler, but also the locomotive and tender, and all parts and appurtenances thereof. Later, by the amendment of April 22, 1940, the title of chief inspector and assistant chief inspector of locomotive boilers was changed to director and assistant director of locomotive inspection. These changes indicated that the nomenclature "Boiler Inspection Act" was too restrictive, and the broader term "Locomotive Inspection Act" was applied and is the popular name by which this act is known. The Commission's annual reports refer to this act as the Locomotive Inspection Act. Acts supplementary to the Interstate Commerce Act, as well as pamphlets prepared by the Commission, designate the act in question as the Locomotive Inspection Act. It is of some significance that this petitioner in its petition for reconsideration also referred to this act as the Locomotive Inspection Act, and it was not until it filed its exceptions to the examiner's reports that it raised the question of improper reference thereto. Under the circumstances, it does not appear that this petitioner was prejudiced or otherwise misled as to the authority under which these rules and instructions for inspection and testing of multiple-unit equipment were prescribed. Hereinafter reference to the Locomotive Inspection Act will include the Boiler Inspection Act.

For a better understanding of the jurisdictional and procedural issues involved, a recitation of the events leading up to the inception of this proceeding is advisable. On March 5, 1951, an order entitled "Proposed Rule Making" was entered in response to a complaint and petition filed by the Brotherhood of Locomotive Engineers on December 7, 1950, and a petition filed by the Brotherhood of Locomotive Firemen and Enginemen on January 24, 1951. The Hudson & Manhattan filed a motion on January 22, 1951, for dismissal of the complaint on the ground that the Commission lacked jurisdiction under the Locomotive Inspection Act over the equipment operated by it and on the further ground that petitioner was exempt from the provisions of the act because of its exempt status, contending it fell within the exemption as a street, suburban, interurban electric railway not operated as a part of a general railroad system of transportation. The order of March 5, 1951, specifically provided that all class I railroads subject to the Interstate Commerce Act were respondents, and each was served with a copy thereof. Notice to the general

public was made by depositing a copy with the secretary of the Commission and by filing a copy with the Director, Division of the Federal Register. Petitioner's motion for dismissal of the above complaint was denied without prejudice to its subsequent renewal.

Thereafter the Commission prepared and circulated certain proposed rules and instructions to the respondents and labor organizations inviting their comments. These rules specifically provided that they shall apply to electrically operated units designed to carry freight and/or passenger traffic in multiple-unit service operated by a single set of controls, which were defined as (1) unit or units with propelling motors, control apparatus, and one or more control stands; (2) unit or units with propelling motors and control apparatus but without control stands; and (3) unit or units without propelling motor or control apparatus but with control stands. The rules further defined multiple-unit service as the use of two or more of the above-described units coupled and with their propulsion equipment operated from a single control position. Following the issuance of the proposed rules and instructions, a prehearing conference was held on May 26, 1952, at which time the various rules and instructions were discussed and offers made for amendments or modifications thereof.

Subsequent to the prehearing conference and after considering the suggestions, amendments, and modifications offered at such conference, a notice of proposed rulemaking was issued on October 23, 1953, the purpose of which was to advise all common carriers by railroad subject to the Interstate Commerce Act and each national organization of railroad employees, as well as the public, that an investigation would be conducted under authority of the Locomotive Inspection Act, as amended, for a determination as to what rules and instructions should be prescribed for the inspection and testing of multiple-unit equipment. Not only did the notice specifically state the type of equipment to which the proposed rules were to apply, but attached to the notice were the tentatively proposed rules and instructions containing, among others, the following rule:

400. All rules and instructions contained herein apply to electrically operated units designed to carry freight and/or passenger traffic operated by a single set of controls which are defined thus:
   1. Unit or units with propelling motors, control apparatus and one or more control stands;
   2. Unit or units with propelling motors and control apparatus but without control stands;
   3. Unit or units without propelling motors or control apparatus but with control stands.

This notice of proposed rulemaking was issued in full compliance with the provisions of the Administrative Procedure Act. The notice

and proposed rules and instructions were published in the November 13, 1953, issue of the Federal Register, volume 18, page 7201.

At the time of the issuance of the notice of proposed rulemaking there was in effect an order of December 14, 1925, wherein the Commission prescribed rules and instructions for the inspection and testing of locomotives other than steam. Contained therein were definitions of a locomotive and a motorcar, the former being defined as "a self-propelled unit of equipment designed solely for moving equipment" and the latter was defined as "a self-propelled unit of equipment designed to carry freight or passenger traffic and is not to be considered a locomotive." Since the purpose of the proceeding herein is to prescribe rules and instructions similar to those prescribed by the order of December 14, 1925, except that they are to apply to multiple-unit equipment instead of locomotives other than steam, it was necessary to revise the definition of a locomotive to include multiple-unit equipment. Accordingly, an order was entered on October 23, 1953, concurrently with a notice of proposed rulemaking which amended the order of December 14, 1925, insofar as here pertinent, by changing the definition of a locomotive therein to read as follows:

A locomotive is a self-propelled unit of equipment designed for moving other equipment and includes a self-propelled unit designed to carry freight and/or passenger traffic.

Following the issuance of the above order on October 23, 1953, the Hudson & Manhattan filed a petition dated December 21, 1953, for reconsideration and vacation of such order, renewing its objection to the jurisdiction of the Commission over its equipment and reserving its jurisdictional objection, based on its status as an exempt carrier. This petition was denied by the report and order of May 18, 1954.

Subsequent to the issuance of the report and order of May 18, 1954, to which the Hudson & Manhattan directed its petition for reconsideration filed July 28, 1954, resulting in the reopening of this proceeding for further hearing, the contention that it was exempt as an interurban electric railway was no longer mentioned by petitioner in its pleadings or on brief. It is significant also to note that prior to the institution of the further hearing, this petitioner's creditors filed an involuntary petition in the United States District Court for the Southern District of New York against petitioner under chapter X of the Bankruptcy Act. This chapter, providing for corporate reorganization, excludes from its scope a railroad corporation authorized to file a petition under section 77 of the same act. In support of its motion to dismiss the above involuntary petition for lack of jurisdiction, petitioner's president and chairman of the board of directors filed an affidavit dated September 24, 1954, in which he stated that petitioner is a common carrier by railroad engaged in the

transportation of persons in interestate commerce and that it does not come within the interurban electric railway exception but that if it does, it is nevertheless a part of a general railroad system of transportation operated by The Pennsylvania Railroad Company. Subsequent to the further hearing in the instant proceeding, it has come to the Commission's attention that petitioner's motion to dismiss the chapter X reorganization proceeding was denied by the United States District Court and it declined to permit the reorganization proceeding to proceed under section 77. (126 F. Supp. 359.) In this respect, attention is called to the fact that the ruling of the court that petitioner is not an interurban electric railway not operated as a part of a general railroad system of transportation was only for the purpose of reorganization, and there was no holding that it was exempt from the provisions of the Locomotive Inspection Act.

As previously stated, the petition for reconsideration of the Hudson & Manhattan which gave rise to the reopening of this proceeding for further hearing presents two jurisdictional or procedural propositions. First, that the provisions of the Locomotive Inspection Act, as amended, do not apply to multiple-unit equipment of the type operated by petitioner and, second, that the steps taken in changing the definition of a locomotive by the order of October 23, 1953, were not in compliance with the Administrative Procedure Act.

Consideration will first be given to the propositions in the order presented. It is petitioner's contention that its multiple units are not locomotives and in support thereof refers to the history of the Locomotive Inspection Act, urging that it was not the intent of Congress to include such equipment within the provisions of the act. Particular reference is made to the amendment of June 7, 1924.

There is no dispute over the fact that the original Locomotive Inspection Act applied to locomotives propelled by steam power since section 2 thereof specifically stated that it applied to any locomotive "engine propelled by steam power in moving interstate or foreign traffic." The amendment of March 4, 1915, likewise applied to steam locomotives but the application of the act was extended to include the entire locomotive and tender and all parts and appurtenances thereof. The amendment of June 7, 1924, not only provided for increases in the number and salaries of inspectors but, in addition, removed the restriction of its application to locomotives propelled by steam power and made the law apply to all locomotives regardless of the power by which they are propelled. By these amendments Congress neither specifically included nor excluded multiple-unit equipment, and its intent in this respect must be gathered from the language used in the act and a comparison made of it with other laws on the same subject. The language in the act is all-inclusive, and considering its purpose,

which is to promote the safety of employees and travelers upon railroads, the words "any locomotive" as used in section 2 must be construed as intended to encompass all of the motive equipment of any carrier subject to the act. The broad purpose of the Locomotive Inspection Act has been stated in a number of cases, including *Lilly* v. *Grand Trunk W. R. Co.*, 317 U. S. 481, 486, where the Court said:

> The Act, like the Safety Appliance Act, is to be liberally construed in the light of its prime purpose, the protection of employees and others by requiring the use of safe equipment.

Under authority of section 25 of the Interstate Commerce Act, rules, standards, and instructions for the installation, inspection, maintenance, and repair of automatic block-signal systems, interlocking, traffic control systems, automatic train stop, train control, and cab signal systems and other similar appliances, methods, and systems, were prescribed in Ex Parte No. 171 (278 I. C. C. 267, 307). In that proceeding which also deals with the promotion of safety of employees and travelers upon railroads, a locomotive is defined as a self-propelled unit of equipment which can be used in train service. The rules and instructions provided therein, which clearly include multiple-unit equipment, have been consistently applied to this petitioner and it readily admits it has never questioned their applicability.

Another reason advanced by petitioner that its multiple units are not locomotives is their dissimilarity from locomotives. It takes the position that locomotives are self-propelled units of equipment designed solely for moving other equipment which may be powered by a diesel engine, by electricity, steam, or other means, whereas its multiple units which are powered by electricity from a third rail have the appearance of an ordinary railroad car and usually have all the accommodations found in a passenger railroad car. Appearance clearly cannot determine the classification into which this type of equipment should be placed. Although petitioner's equipment has accommodation for passengers, it nevertheless is a self-propelled unit of equipment capable of moving other equipment. The definition of a locomotive submitted by petitioner in this respect is essentially the same as the Commission's definition in "Classification of Train-Miles, Locomotive-Miles and Car-Miles for Steam Roads." The definition of a locomotive as contained in such classification is only for accounting and other reporting requirements, and a definition as used for such purposes cannot be construed as also applicable to issues for determination under the Locomotive Inspection Act involving entirely unrelated matters.

For the foregoing reasons, it must be concluded that petitioner's multiple-unit equipment is included within the definition of a locomotive and is subject to the jurisdiction of the Commission under the

Locomotive Inspection Act. Petitioner's motion in this respect is, therefore, denied.

Coming now to the second proposition, the procedure in redefining a locomotive by the order of October 23, 1953, was in compliance with the Administrative Procedure Act. As previously stated, this investigation for the prescription of rules and instructions for multiple-unit equipment was instituted by an order entered on March 5, 1951. Since that time, all parties to the proceedings, including petitioner, were fully aware of the nature of the investigation and the type of equipment affected by the proposed rules and instructions. To comply with the rulemaking provisions of the Administrative Procedure Act the notice of October 23, 1953, was entered and publication made in the Federal Register. Concurrently with the issuance of the notice of October 23, 1953, an order was entered redefining a locomotive. Petitioner has no quarrel with the promulgation of the notice of October 23, 1953, but contends that the order of October 23, 1953, redefining a locomotive was not issued in compliance with the rulemaking provisions of the Administrative Procedure Act and argues that proper recognition has not been given to the distinction between the notice and the order, both of which were entered on the same day. It insists that it be put on notice in the manner required by section 4 of the Administrative Procedure Act that its multiple-unit equipment is to be redefined and included within the proposed rules.

The notice of October 23, 1953, clearly informed all interested parties of the proposed rules and equipment to be included within the provisions of such rules. The order of October 23, 1953, as differentiated from the notice of the same date was an integral part of the investigation already instituted in compliance with the provisions of the Administrative Procedure Act and was merely entered for the purpose of interpreting the definition of a locomotive to specifically include multiple-unit electrical equipment within that definition and to coincide with the definition of the equipment described in the notice of October 23, 1953. Being interpretative and supplementary to the matter under investigation, the rulemaking provisions of the above act are not applicable to the order of October 23, 1953. However, it was subsequently published in the Federal Register merely because it was a part of the initial investigation. From the time of the entry of the notice of October 23, 1953, the Hudson & Manhattan and all other interested parties were given notice of a hearing on the proposed rules, and the equipment to be covered thereby. The parties to the investigation, therefore, were fully informed as to the nature of the investigation, the subjects and issues involved, the authority under which the rules were proposed, and the manner and time in which evidence was to be submitted. In this instance the modified procedure

was followed for the submission of evidence. All interested parties, including petitioner, were afforded an opportunity to participate and did in fact participate in the proposed rulemaking throughout the entire investigation, and their views and arguments have been fully considered.

Petitioner refers to the recent case of *Hotch* v. *United States*, 212 F. (2d) 280, in support of its contention that a regulation which has not been published in the Federal Register is ineffective even though the defendant has actual notice of its contents. The facts in that proceeding are different from those here under consideration. In the cited case, which involved criminal action, neither the notice that a regulation was to be issued nor the proposed regulation was published in the Federal Register. In the case at bar, not only was the notice of proposed rulemaking, but also the order of October 23, 1953, as well as the proposed rules, published in the Federal Register. Since the proposed rules have not become effective, the procedure adopted herein is not at variance with the holding of the court in the cited case that notice of a proposed rule must be published in the Federal Register at least 30 days prior to its issuance.

For these reasons there is no basis for petitioner's contention that there was a lack of compliance with the requirements of the Administrative Procedure Act.

In addition to the issues heretofore discussed, the Hudson & Manhattan also requests modification or relief from several of the rules prescribed in the prior proceeding, each of which will be considered separately.

RULE 91.400

This rule has been quoted in the preceding paragraphs and need not be repeated. It defines multiple-operated electric units. Petitioner requests the substitution of the words "car or cars" for the words "unit or units" wherever used, and particularly objects to the use of such words in paragraph (3) of this rule alleging that the application of the requirements for locomotives to "unit or units" is inapplicable to the equipment described therein which it contends are just plain passenger cars. This same contention has been previously considered, and, as stated in the prior report, these rules and instructions are intended to apply to electrically operated units whether operated singly or in trains consisting of several units and more accurately describes the equipment covered herein. The description in paragraph (3) of this rule is inapplicable to cars which are not electrically operated units and are not operated from a single set of controls. Modification of this rule to the extent requested is denied.

RULE 91.406

This rule prescribes the manner in which main reservoirs must be tested and reads as follows:

§ 91.406 (a). *Testing of main reservoir.* Every main reservoir before being put into service and at least once every 24 months thereafter, shall be subjected to hydrostatic pressure not less than 25 percent above the maximum working pressure fixed by the chief mechanical officer, and report made on Form No. 1–A.

(b) The entire surface of each main reservoir shall be hammer tested each time the unit is shopped for general repairs, but not less frequently than once every 24 months, and report made on Form No. 1–A. This test shall be made while reservoir is empty.

Petitioner's superintendent of equipment testified that this rule should be amended to provide for a hydrostatic and hammer test of the main reservoir not more frequently than once every 5 years. As the basis for such contention, this witness explained that each of petitioner's units is equipped with an individual air system complete with reservoirs and motor-driven compressors which inherently discharge oil vapors that are carried to the walls of the reservoir, applying a protective coating, thereby preventing corrosion. Frequent hydrostatic and hammer tests, in his opinion, are not necessary. Although he stated that reservoirs on petitioner's equipment do not appear to be rusting, he admitted that any reservoir in railroad service is subject to have water in it which must be drained. He referred to experimental tests made of representative reservoirs which were found to be serviceable after many years' service but admitted that his experience with reservoirs was limited to those on the locomotives of another carrier. He has never operated a locomotive or a multiple unit. This witness believes this rule is primarily applicable to exposed reservoirs on main-line railroads and not on multiple units, such as petitioner's, which are operated in mass transportation and predominantly in subway operation where exposure to atmospheric conditions is minimized. To this witness' knowledge, petitioner has no program in effect for the testing of reservoirs, nor have such tests been made during the 5 years that the witness has been employed by the petitioner.

A witness for the Brotherhood of Locomotive Engineers who was general chairman of that organization and also a locomotive engineer for petitioner, testified that a considerable portion of petitioner's operations were above ground. For example, with the exception of the 33d Street-to-Hoboken and the Hudson Terminal-to-Hoboken lines, petitioner's operations are about 50 percent in tunnels and 50 percent outside. Its Hudson Terminal-to-Newark operations are 75 percent above ground, the 33d Street-to-Journal Square operations are about 25 percent in the open, and the Journal Square-to-Newark operations are entirely in the open.

Originally it was proposed that hydrostatic tests of reservoirs be made at least once every 12 months and the hammer tests once every 18 months. These requirements were subsequently modified by the prior report herein so as to require both of these tests to be made not less than once every 24 months. The evidence does not warrant further amendment of this rule, and petitioner's request in this respect is denied.

RULE 91.407

In addition to the objections originally advanced by petitioner, it now contends it is impracticable to comply with this rule which reads as follows:

§ 91.407(a). *Air gauges.* Air gauges shall be so located that they may be conveniently read by the engineman from his usual position in the operating compartment and shall show main reservoir and brake pipe or equalizing reservoir pressures.

(b). Air gauges shall be tested at least once every three months, and whenever any irregularity is reported. They shall be compared with an accurate dead-weight tester, or test gauge constructed for the purpose of testing gauges, and gauges found incorrect shall be repaired before they are returned to service.

Petitioner alleges that compliance with this rule is impracticable because of the fact that each of the doors at the ends and middle of its units is operated by an electrically activated pneumatic engine, requiring air for its operation. Owing to the amount of air required and normal leakage incident thereto, applicability of this rule to its equipment is impracticable. At the further hearing petitioner submitted no further evidence in this respect and relied on the above statements contained in its petition for reconsideration.

Relief from compliance with this rule is not warranted on this record.

RULE 91.411

This rule reads as follows:

§ 91.411(a). *Leakage.* Leakage from main air reservoir and related piping shall not exceed an average of 3 pounds per square inch per minute in a test of 3 minutes' duration, made after the pressure has been reduced 40 percent below maximum pressure.

(b) Brake-pipe leakage shall not exceed 3 pounds per square inch per minute.

(c) With a full service application from maximum brake pipe pressure, and with communication to the brake cylinders closed, the brakes shall remain effectively applied not less than 10 minutes.

Relief from the provisions of this rule is based on the same grounds advanced by petitioner in seeking relief from the requirements of rule 91.407 heretofore discussed, and for the reasons stated in connection therewith the instant relief is also denied.

RULE 91.417

The manner in which trucks must be fastened to the unit body is prescribed in this rule which reads:

§ 91.417(a). *Trucks.* Truck center plates shall fit properly and be securely fastened. The male center plate shall extend into the female center plate not less than ¾ inch, except on motor trucks constructed to transmit tractive effort through center plate or center pin the male center plate shall extend into the female center plate not less than 1½ inches.

(b). Trucks shall be locked to the unit body and so arranged that the entire truck will lift with the unit body without disengaging the center plates. The attachments shall be of adequate strength and properly maintained. Such provision shall be made on units presently in service and not so equipped when the unit receives general repairs but not later than 24 months after January 1, 1956.

Note: Relief from the requirements of this rule will be granted upon an adequate showing by an individual carrier.

Petitioner seeks permanent relief from the provisions of this rule for the reason that its multiple units are of a design and construction which do not permit the ready adaptation of any known and permissible locking device. The Brotherhood of Locomotive Engineers does not object to the exemption of petitioner's present equipment in use in its current type of operation, from the requirements of this rule.

Petitioner has made an adequate showing in this respect, and exemption of its multiple units presently in use on its line will be exempted from the requirements of this rule until further order of the Commission.

RULE 91.419

Petitioner seeks exemption from this rule which reads as follows:

§ 91.419. *Clearance above top of rail.* No part or appliance of unit, except the wheels, contact shoes, and train stop or signal devices shall be less than 2½ inches above the top of rail.

Petitioner contends that compliance with the provisions of this rule is not feasible and is impracticable because the present type of running gear on its multiple units is designed for the use of direct drive, direct-current type electric motors and does not permit 2½-inch clearance between the bottom section of the gearcase and the top of the running rail. In its opinion, there is no practical way for altering the design of its equipment to conform to the requirements of this rule. It points out that about 75 percent of its fleet of about 225 units are affected by this rule. Compliance therewith could be made by the application of an entirely new type of running gear at an approximate cost of from $12,000 to $15,000 per unit. Compliance could also be made by the application of 2 new traction motors and new gearboxes to each unit at an approximate cost of $5,000 per motor. Because it has

no record of any accident resulting from improper clearance above the top of the rail and because there are no grade crossings and only one crossover on petitioner's line, this carrier feels that its equipment should be exempt from the provisions of this rule.

Compliance would require major alterations of a large portion of petitioner's equipment. Its superintendent of equipment testified that by maintaining a condemning limit of 1-inch-thick wheel, its equipment will permit a 2-inch clearance above the top of the rail but not a 2½-inch clearance as required by the rule. Under the circumstances, relief from the requirements of this rule will be granted until further order of the Commission to permit a 2-inch clearance as to all of petitioner's multiple-unit equipment presently in use where physical limitation of wheels and gearcases will not permit a clearance of 2½ inches between the bottom section of the gearcase and the top of the rail.

RULES 91.423 AND 91.425

In its brief, petitioner has included a request for relief from the provisions of these rules insofar as they require windshield wipers and headlights on multiple-unit equipment, contending that such rules are unnecessary and burdensome in its type of operation. These rules are not in issue in this proceeding on further hearing and, therefore, need not be further considered.

RULE 91.431

Although petitioner's brief refers to this rule as rule 91.432, it is apparent that it was intended to request relief from rule 91.431, which reads:

§ 91.431. *Testing of train signal system.* The train signal system shall be tested and known to be in condition for service before each trip.

As to this rule, petitioner requests its amendment by the addition of the words "or day's work" after the word "trip" so that train signal systems can be tested before each trip or before the commencement of a day's work. Such amendment is desired because if tests are required to be made before each trip it would interfere with petitioner's scheduled service which consists of mass transportation with only 2-minute headways between trains during certain periods of the day.

The evidence in this respect is insufficient to establish a need for the relief requested. One of petitioner's employees testified that the train signal system on petitioner's equipment is operated by lights and indicates whether the doors on the units are closed and locked. To inspect this signal system before moving a train, all that is necessary is to close the doors and observe whether the lights are burning. It does not appear that any appreciable amount of time is required

for the making of such a test or that compliance with the requirements of the rule will result in any undue inconvenience to petitioner. Furthermore, it is essential that it be definitely established that doors to each unit are closed and locked before undertaking a trip. Relief from this rule is, therefore, denied.

RULE 91.438

This rule reads as follows:

§ 91.438. *Grounding of noncurrent-carrying parts.* All unguarded non-current-carrying metal parts subject to becoming charged which are not thoroughly insulated shall be grounded.

Petitioner bases its request for reconsideration of this rule on the ground that it is impossible of literal compliance, wholly unnecessary, and insufficiently specific. It submitted no evidence at the further hearing in support of these contentions. As stated in the prior report, the purpose of this rule is to protect the engine crews, passengers, and maintenance forces from coming in contact with noninsulated, unguarded, non-current-carrying metal parts which may become charged. Clearly such protection is necessary and not unreasonable, and it is believed the wording of the rule is sufficiently definite to indicate the parts of the units intended to be covered thereby. Request for relief from this rule is denied.

RULES 91.448 AND 91.451

Rule 91.448 reads as follows:

§ 91.448. *Insulation and electrical connections inspection.* Not less than once every 30 days a careful inspection of all visible insulation and electrical connections shall be made and all defects repaired.

Only paragraph (a) of rule 91.451 is petrtinent to the issues here involved and reads as follows:

§ 91.451(a). *Filing of inspection reports.* Not less than once every 30 days each unit in service shall be inspected in accordance with the law and these rules and instructions, and a report made on Form No. 1–A. This report shall be subscribed and sworn to before an officer authorized to administer oaths, by the inspectors who made the inspection, and by the officer in charge of the unit. Within 10 days after each inspection a duplicate of this report shall be filed with the United States district inspector and a copy filed in the office of the mechanical officer.

The Hudson & Manhattan objects to these rules on the ground that they impose a hardship and an expense inconsistent with its operations. It refers to its general inspection of its equipment made on the basis of 2,000 miles of operation by each unit and requests that these rules be amended to provide for an inspection on a mileage basis. This same issue was hereinbefore considered with respect to the joint

petition of the New York Central Railroad Company and others, wherein it was concluded that these 2 rules should not be amended for an extension of the inspection and testing periods from 30 to 60 days. The request for amendment of these rules for application on a mileage basis was denied. In view thereof, the same conclusions hereinbefore reached with respect to denial for amendment or modification are also made applicable to the Hudson & Manhattan.

Upon this record we find that petitioners herein have not justified the granting of their requests for modification of rules 91.448 and 91.451(a), as prescribed in our order of May 18, 1954, as amended, and that such rules should not be amended to provide for inspection and testing periods on the basis of not less than once every 60 days in lieu of the 30 days presently prescribed therein. The petitions in this respect should be denied.

We further find (1) that the entry of the order of October 23, 1953, changing the definition of a locomotive as previously defined in the order of December 14, 1925, was in compliance with the provisions of the Administrative Procedure Act; (2) that the multiple units of the Hudson & Manhattan Railroad Company are locomotives as defined by the order of October 23, 1953, and subject to this Commission's jurisdiction under the Locomotive Inspection Act (Boiler Inspection Act); (3) that relief from the provisions of rules 91.417(a) and 91.417(b) should be granted to the Hudson & Manhattan Railroad Company until further order of the Commission; (4) that relief from the provisions of rule 91.419 should be granted to the Hudson & Manhattan Railroad Company until further order of the Commission, to permit a 2-inch clearance as to all of its multiple-unit equipment presently in service where physical limitation of wheels and gearcases will not permit a clearance of 2½ inches between the bottom section of the gearcase and the top of the rail; and (5) that the request of the Hudson & Manhattan Railroad Company for relief from or modifications of rules 91.400, 91.406, 91.407, 91.411, 91.423, 91.425, 91.431, and 91.438 should be denied.

An appropriate order will be entered.