

EXHIBIT 3-KK

Docket No. DCA-08-MR009

**NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594**

**Copy of the Most Recent Part 217 Audit of Metrolink,
Including California Public Utilities Commission and
Federal Railroad Administration Inspection Reports**

**BEFORE THE
NATIONAL TRANSPORTATION SAFETY BOARD**

**COLLISION OF SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY (METROLINK) PASSENGER TRAIN No. 111
AND UNION PACIFIC RAILROAD FREIGHT TRAIN No. LOF65-12
CHATSWORTH, CALIFORNIA, SEPTEMBER 12, 2008
DCA08MR009**

“EXHIBIT 3 KK”

**JOINT CALIFORNIA PUBLIC UTILITIES COMMISSION
AND FEDERAL RAILROAD ADMINISTRATION AUDIT
OF METROLINK, JANUARY __, 2009**

March 20, 2009

RICHARD W. CLARK, Director
Consumer Protection & Safety
Division
505 Van Ness Avenue, Rm. 2205
San Francisco, CA 94102
Email: rw@cpuc.ca.gov
Phone: (415) 703-2349
Fax: (415) 703-3533

SUMMARY OF CPUC/FRA AUDIT OF CONNEX/METROLINK
(January 12, 2009 through January 16, 2009)

During the week of January 12, 2009, an inspection of the Connex/Metrolink Railroad Efficiency Testing Program records for operating managers was conducted at the Metrolink Operations Center, in Pomona, California. The purpose of the audit was to determine the integrity of the Connex/Metrolink program, and to ensure that tests being performed and recorded were in accordance with their program. The records reviewed by FRA inspectors were retrieved from the Connex/Metrolink "Efficiency Test Report" for the third and fourth quarters of 2008. The results of the audit may or may not be representative of the records for other segments of Connex contracted properties.

The audit discovered numerous instances of manager-entered data that adversely affected the report's calculation of physical test numbers, having the effect of numbers inflation, but also the type of tests performed. For example; records indicated numerous accounts of conflicting rules numbers; multiple times and locations for the same test; and inaccurate/confusing or no information indicated in the programs "comments" field.

The records mentioned above were identified through a combined FRA/CPUC audit; the records indicated one or more of the following :

- Failure to perform tests on Engineer and Conductor at different "Times" and "Places" under various operating conditions. (Magazin - Inspection report #25)
- Failure to conduct tests of employees for compliance with GCOR Rule 1.10 (electronic devices)
(Magazin - Inspection report #3)
- Records indicated multiple managers conducting the same tests on the same employees (causing test data to be improperly recorded and inflated). (McCarthy - Inspection report # 22)
- Records indicated multiple managers recording the same test failures on the same employee(s) at the same time and location, i.e.; testing one employee, then stating it to be the wrong employee, and then reporting it on the correct employee, without discarding the original test data entered
(McCarthy - Inspection report #29)
- Records revealed tests were recorded on train(s)and/or employees(s) that were not actually operating at the time testing managers recorded tests. (Laferriere - Inspection report #2)
- Failure of manager's to conduct tests on 50% of operating rules (GCOR). (Graham-Inspection report #11)

- Failure of manager's to conduct 50% of tests "away from operating terminal." (Ellis - Inspection report #20)
- Records indicated failure to conduct tests "spread over all days of week and nights in approximate proportion to the hours of train operation on any territory." (Laferriere - Inspection report #3)
- Failure of testing employees on Safety Rules as required by Testing Guide instructions. (Wiseman - Inspection report #10)
- Failure of manager's to conduct 24 tests and inspections per year, with two (2) per month, covering the requirement of 49 CFR, Part 218 (Wiseman - Inspection report #9)
- Records indicate manager's recording "speedometer" tests conducted during on-board inspections other than when or "unless a failure is encountered" as directed by the Connex Testing Guide. (Boynton - Inspection report # 14)
- FRA Investigation continues concerning the application of Connex efficiency testing regarding compliance with the "Train Delayed in Block" rule testing procedures as they compare to the program.

Attached is a recommendation for assessment of one civil penalty against Connex/Metrolink for railroad's failure to comply with Title 49, Code of Federal Regulations (CFR), Part 217.9. This singular recommendation addresses multiple non-complying instances of Connex/Metrolink managers testing records indicating tests performed during the third and fourth quarters of 2008. Records for the identified manager(s) contain multiple instances of *failure to conduct and record efficiency testing in accordance with the Connex Efficiency Testing Guide*.

Civil penalty is requested for this recommendation not only for non-compliance of CFR Part 217.9, but also, Connex/Metrolink's failure to monitor its efficiency testing records as directed by its program.

Violations and Defects reported from FRA/CPUC Audit of Connex Operational Tests and Programs

Defects	Viol	Defect	Description
1	1	2170009C1	FAILURE TO PROVIDE FOR OPERATIONAL TESTING AND INSPECTIONS UNDER THE VARIOUS OPERATING CONDITIONS ON THE RAILROAD, PARTICULARLY THOSE OPERATING RULES THAT CAUSE OR ARE LIKELY TO CAUSE THE MOST ACCIDENTS OR INCIDENTS; SUCH AS THOSE ACCIDENTS OR INCIDENTS IDENTIFIED IN QUARTERLY OR BI-ANNUAL REVIEWS, AND THE ANNUAL SUMMARIES REQUIRED UNDER PARAGRAPHS (E) AND (F), AS APPLICABLE. THE RAILROADS PROGRAM SHOULD HAVE SPECIFICALLY PROVIDED FOR A MINIMUM NUMBER OF TESTS AND INSPECTIONS PER YEAR COVERING THE REQUIREMENTS OF PART 218, SUBPART F OF THIS CHAPTER. (EFFECTIVE JULY 1, 2008.)
4	4	2170009C	NO RECORD OF AN OPERATIONAL TEST AND INSPECTION NOTING DATE, TIME, PLACE OR RESULT OF THAT TEST OR INSPECTION
5	3	2170009B11V	FAILURE OF QUALIFIED RAILROAD OFFICER TO CONDUCT OPERATIONAL TESTS AND INSPECTIONS IN ACCORDANCE WITH THE RAILROADS PROGRAM OF OPERATIONAL TESTS AND PROGRAMS.
9	8	2170009A	FAILURE TO PERIODICALLY CONDUCT OPERATIONAL TESTS AND INSPECTIONS TO DETERMINE COMPLIANCE WITH ITS OPERATING RULES, TIMETABLES, AND TIMETABLE SPECIFIC INSTRUCTIONS, INCLUDING VERIFICATION OF COMPLIANCE WITH SUBPART F OF PART 218, IN ACCORDANCE WITH A WRITTEN PROGRAM.