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March 3, 2020

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE, Lacey WA 98503
P. O. Box 47250
Olympia, WA 98504-7250

RE: *Notice of Penalty Assessment to BNSF Railway Co.*
        Docket TR-191025

Dear Mr. Johnson:

Commission Staff (Staff) has received BNSF Railway Company's (BNSF) February 20, 2020, response to the Utilities and Transportation Commission's (Commission) penalty assessment in Docket TR-191025. Although BNSF has paid the penalty in full, Staff submits the following reply to comments made in BNSF's response.

Staff acknowledges that the Federal Railroad Safety Act contains a preemption provision at 49 U.S.C. §20106 and that the Federal Railroad Administration (FRA) has promulgated rules regarding telephonic reporting. *See* Title 49 Code of Federal Regulations Part 225.9. While the extent to which these provisions preempt state law may be debatable, Staff maintains that BNSF has a continuing obligation to submit telephonic accident reports to the Commission when accidents or incidents occur within Washington State that necessitate reporting to the FRA. 49 C.F.R. Part 225.1 states in part "[a]ny State may require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this [P]art, for accident/incidents and injuries/illnesses which occur in that State." As such, Staff asserts that BNSF is obligated to report accidents/incidents to the Commission if the accident/incident occurs within Washington State and BNSF is otherwise required to report the accident/incident to the FRA under 49 C.F.R. Part 225.

Respectfully,

/s/ Harry Fukano, WSBA No. 52458
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HOF/emd
cc: BNSF