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Carole Washburn
Utilities and Transportation Commission
1300 E. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

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OFFICE OF THE
ATTORNEY GENERAL

Re: Railroad Companies - Operations Rulemaking, TR - 981102

Dear Ms. Washburn:

Please accept the following written comments on the latest draft of the proposed operations rules. This letter restates our concerns regarding rules for setting speed limits and rules for community notification. This letter is not intended to be an abandonment of the concerns raised at the workgroups or in earlier correspondence. BNSF and UP feel, however, that the rules regarding speed increases are not workable, and could well result in expensive and time-consuming litigation. BNSF and UP hope that the Commission will reconsider its approach to this subject. As for the notification rule, BNSF and UP remain concerned that this rule is inconsistent with maintenance practices and could result in delays of minor non-emergency repairs.

WAC 480-62-155 (Procedure to Set Train Speed Limits):

The Commission is preempted by federal law in the area of train speed increases. The Commission's authority over railroads operating in Washington has drastically changed since the Washington Administrative Code (WAC) chapters under consideration were first adopted. The ICC Termination Act, 49 U.S.C.A. § 10101, et seq., extensively revised the transportation laws in the United States. The Commission has lost all economic regulatory powers and has

limited jurisdiction over railroad safety. The Commission derives its authority, except where preempted by federal law, from the Revised Code of Washington.

Because of the paramount need for an effective system of commerce by rail, Congress has delegated the principal responsibility for railroad safety to the Federal Railroad Administration. The need for a uniform system of safety which recognizes that the railroad industry freely interchanges trains, locomotives, cars and equipment is expressed in 49 USCA §20106:

§20106. National uniformity of regulation:

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A state may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order --

(1) is necessary to eliminate or reduce an essentially local safety hazard;

(2) is not incompatible with a law, regulation, or order of the United States government; and

(3) does not unreasonably burden interstate commerce.

49 U.S.C.A. §20106.

The Commission is preempted by federal law in the area of train speed increases. It was acknowledged by those present at the last workgroup that it is not the burden of the railroad to show the absence of an essentially local safety condition before altering train speeds. Nor does the Commission have the power to require prior approval of speed increases. This too is not in dispute. The rule as written is preempted for these reasons.

In addition, as noted in earlier letters, it has been recognized at the federal level that uniform speed of trains increases overall safety. The attempt of the Commission staff to set forth rules for determining local safety hazard is inappropriate. Federal law controls what is a local safety hazard. The rule should be narrowly construed. The Federal Railway Administration has said:

FRA's current regulations governing train speed do not afford any adjustment of train speeds in urban settings or at grade crossings. The omission is intentional. FRA believes that locally established

speed limits may result in hundreds of individual speed restrictions along a train's route, increasing safety hazards and causing train delays. The safest train maintains a steady speed. Every time a train must slow down and then speed up, safety hazards, such as buff and draft forces are introduced. These kind of forces can enhance the chance of derailment with its attendant risk of injury to employees, the traveling public, and surrounding communities.

The FRA has also observed:

The physical properties of a moving train virtually always prevent it from stopping in time to avoid hitting an object on the tracks regardless of the speed at which the train is traveling. Prevention of grade crossing accidents is more effectively achieved through the use of adequate crossing warning systems and through the observance by the traveling public of crossing restrictions and precautions.

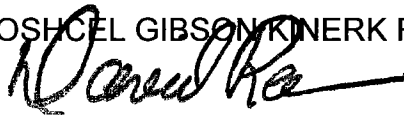
The Commission staff has stated that the rule was written primarily to help municipalities understand the Commission's limited role in this area. The WAC does not appear to be the proper place to educate the public about the limits on the Commission's powers. If this is the reason the rule is drafted as it is, then it should be deleted in its entirety. If a rule is included, BNSF and UP again suggest a simplified rule that prohibits speeds in excess of those set by the federal government and allows interested parties to petition the Commission for mitigation of local safety hazards.

WAC 480-62-305 (Community Notice Requirements):

The railroad is not always able to predict when it will have time to conduct non-emergency repairs. For example, if the opportunity presents itself a railroad may replace a broken plank in a crossing. If required to give notice, however, the opportunity to make this repair may be lost. The rule should be modified to allow flexibility needed to perform this type of repair. Again, we feel that this concern could be met by requiring a 10 day notice only where practicable.

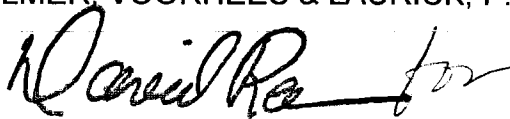
Very truly Yours,

KROSHCEL GIBSON KINERK REEVE, L.L.P.



David M. Reeve
Attorney for The Burlington Northern and
Santa Fe Railway Company

KILMER, VOORHEES & LAURICK, P.C.

A handwritten signature in black ink, appearing to read "Carolyn Larson" with a stylized flourish at the end.

Carolyn Larson
Attorney for Union Pacific Railroad Company

/dr