



American Short Line and Regional Railroad Association

December 18, 2020

VIA WEBSITE (www.utc.wa.gov/e-filing)

Mark. L Johnson
Executive Director and Secretary
State of Washington
Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Docket No. TR-200536

Dear Mr. Johnson,

The American Short Line and Regional Railroad Association (ASLRRA) would like to provide these brief supplemental comments in response to assertions provided at the Stakeholder Workshop on November 19, 2020 discussing the rulemaking by the Utilities and Transportation Commission (Commission) to implement House Bill (HB) 1841, Chapter 170 of the Laws of 2020, pertaining to the establishment of minimum crew sizes on certain trains.

ASLRRA is a nonprofit trade association representing the entrepreneurial owners and operators of short line and regional railroads throughout North America. Short line freight is a critical part of the U.S. freight network. The nation's approximately 600 short line carriers provide the first and last mile service for one in every five cars moving each year.¹ Operating nearly 50,000 track miles, or 30% of freight rail in the U.S., they play a vital role in the transportation network.² Short line rail service provides safe, efficient, competitive, and environmentally responsible access to transportation for nearly 10,000 rail customers.³

During the Stakeholder Workshop, a participant stated that short line railroads are not subject to oversight like the Class I railroads and that Class III railroads owned by a

¹ Short Line and Regional Railroad Facts and Figures. American Short Line and Regional Railroad Association, 2017; reprint Dec. 2019. Page 1.

² *Id.*

³ *See Id.*; and Webber, Michael. "Freight trains are our future." *Popular Science*, May 9, 2019. Available at: <https://www.popsci.com/power-trip-excerpt/>.

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holding company could be considered as a Class I railroad. Nothing could be further from the truth. Congress has exercised broad regulatory authority over rail transportation for well over a century.⁴ During that time, Congress and expert federal regulatory agencies, including the Federal Railroad Administration (FRA) have allowed railroads to set minimum crew sizes through collective bargaining, rather than imposing such requirements by law.

The FRA, through delegated authority from the Secretary of Transportation, has been given broad authority to “prescribe regulations and issue orders for every area of railroad safety.” 49 U.S.C. § 20103. Further, FRA exercises its jurisdiction over all railroad operations, regardless of size, that operate over the “general railroad system of transportation.” *See* 49 C.F.R. Part 209, Appendix A. As the primary federal safety regulator, FRA has regulatory and enforcement jurisdiction over Class I, Class II, and Class III railroads. FRA regulations cover all aspects of railroad safety, including infrastructure, equipment, and operations. Regarding operatory rules, for example, all railroads must maintain a file with FRA of its code of operating rules, timetables, and timetable special instructions. 49 C.F.R. § 217.7. Additionally, FRA regulates the qualifications for locomotive engineers and conductors. *See* 49 C.F.R. parts 240 and 242. Note that these regulations are not differentiated in any manner on the type of ownership of the railroad, whether it be private or public, city or corporate, individual or state.

Further, as stated in our original comments, Under ICCTA, the United States Surface Transportation Board (STB) groups carriers into the following three classes:

- Class I: Carriers having annual carrier operating revenues of \$504,803,294 or more.
- Class II: Carriers having annual carrier operating revenues of less than \$504,803,294 but in excess of \$40,384,263.
- Class III: Carriers having annual carrier operating revenues of \$40,384,263 or less.

Although the STB clarifies that families of railroads operating within the United States as a single, integrated rail system will be treated as a single carrier for classification purposes, this amalgamation does not extend to discrete short lines that are separate legal entities that do not operate a single integrated rail system, but are merely owned upstream by a non-railroad holding company.⁵ Class III railroads, regardless of their ownership, are also considered small businesses by the Small Business

⁴ *See* the Interstate Commerce Act of 1887, Pub. L. 49-104, 24 Stat 279, enacted February 4, 1887; and the Safety Appliance Act, 27 Stat. 531 (1893).

⁵ 49 C.F.R. § 1201.

Administration (SBA) and designated as eligible applicants by Congress for small business loans and grants.⁶

We appreciate the opportunity to participate in this proceeding and to provide clarification of the regulatory oversight that FRA exercises over all sizes of railroads.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Yurasko".

Sarah Yurasko
General Counsel

⁶ See 13 C.F.R. § 121.201, and, e.g., Consolidated Rail Infrastructure and Safety Improvements Program as authorized by Section 11301 of the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94 (2015); 49 U.S.C. § 22907.