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**Washington State
Department of Transportation**

Sid Morrison
Secretary of Transportation

Transportation Building
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Olympia, WA 98504-7300

November 6, 2000

Carole Washburn, Secretary
Utilities and Transportation Commission
1300 East Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION
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Re: Docket No. TR-981102-Railroad Operations—Rule Making

Dear Ms. Washburn:

I am the director of the Public Transportation and Rail Division for the Washington State Department of Transportation. Please accept the following written comments on the latest draft of proposed WAC 480-62-155 relating to the "procedure to set train speed limits" by the Washington Utilities and Transportation Commission ("Commission"). These comments are not in any way intended to compromise rights of this office to comment at a subsequent time with regard to that and other component sections of the proposed Train Operations Rules.

Research available to the Rail Office indicates that the entire field of railroad speeds has been subsumed by federal speed regulations and local variations from those speed regulations could be inherently hazardous and could also detrimentally affect interstate commerce. 49 U.S.C. §20106(2) and (3). The Federal Railroad Administration (FRA) has promulgated regulations under the authority of the Federal Railway Safety Act that do not provide for any adjustment of train speeds in urban settings or at at-grade crossings. In their 1998 final rulemaking relating to track safety standards. The FRA reemphasized its intent to pre-empt the field to avert increased safety hazards and unnecessary train delays that would follow imposition of local speed controls. See Vol. 63 *Federal Register*, No. 119, pages 33998-33999. It appears that the general scope of proposed WAC 480-62-155 is not in accord with these tenets.

The Burlington Northern and Santa Fe Railroad brought these issues to your attention in its December 17, 1999, comments. Despite those comments the Commission staff has proceeded to pursue a regulation much broader than the regulation propounded by BNSF in its December 17, 1999, letter.

Without waiving its objection to any regulation that purports to allow for reduction of speed limits below levels set by the United States Secretary of Transportation, WSDOT has some additional comment relating to the October 26, 2000, Commission staff draft of proposed WAC § 480-62-155:

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A (2)(a)(i) Any person who seeks to...modify an existing limit set by the commission...

Proposed WAC 480-62-155 §(2)(a)(i) apparently would bind the railroad to petition for a speed increase whenever the existing speed limit has previously been set by the Commission. That proviso would appear to cover any locality with a Commission-set speed limit whether or not essentially local safety hazards had been considered in relation to that prior proceeding. WSDOT strenuously objects to such a clause that would, in effect, retroactively bestow continuing jurisdiction of any speed limits in a locality where the Commission has previously ordered a speed limit. Not only would that clause appear to be in direct conflict with the application of Federal pre-emption to train speeds, it also fails to recognize the fact that once the Commission orders a train speed limit in any locality that would conclude the issue with respect to that speed increase. A subsequent speed increase in conformance with federal standards would have no relationship whatsoever with prior proceedings before the Commission. In effect, the slate is wiped clean by the previous proceeding (whether or not it was properly before the Commission in the first place) and subsequent speed increases have no connection whatsoever to the circumstances and events surrounding the prior order.

B (3) Evidence of what constitutes an "essentially local safety hazard."

WAC 480-62-155(3) attempts to bypass principles of federal pre-emption by describing probative evidence pertaining to a "essentially local safety hazard." None of these elements are contained in 49 U.S.C. §20106 nor in any federal case law known to me. 49 U.S.C. § 20106 seeks to promote national uniformity of regulation of railroad safety allowing the states to adopt more stringent regulations under the following conditions.

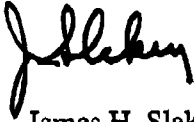
- (1) where regulation is necessary to eliminate or reduce in essentially local safety hazards,
- (2) where regulation is incompatible with a law, regulation, or order of the United States Government; and
- (3) where regulation does not unreasonably burden interstate commerce.

At the very least, proposed WAC 480-62-155 (3) should exclude any attempt to define factual situations that could be subject to evolving Federal Standards; and should include only the limiting conditions set forth in 49 U.S.C. § 20106 (2) and (3).

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I hope that these comments are helpful. If you have any questions please feel free to call.

Respectfully yours,



James H. Slakey
Director, Public Transportation and Rail Division
Washington State Department of Transportation
Public Transportation and Rail Division