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Kathy Hunter
Acting Executive Director and Secretary
State of Washington
Utilities and Transportation Commission
621 Woodland Square Loop S.E.
Lacey, WA 98503

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Dear Ms. Hunter:

This letter provides comments regarding the Petition for Rulemaking (Docket TR-230876) filed October 9, 2023, by the SMART-TD labor union. The petition requests that the Washington Utilities and Transportation Commission (WUTC) initiate a rulemaking to develop and oversee “experience requirements for employees of regulated railroad companies.”

Such a rulemaking is unnecessary because the Federal Railroad Administration (FRA) already oversees rigorous training requirements for railroad train crews. Existing federal regulation ensures that railroad crew members have the necessary skills to perform train operations in the territories in which they operate. FRA regulations¹ require locomotive engineers to demonstrate locomotive operational proficiency in the most demanding types and class of service in order to qualify and provide service on a territory. Furthermore, FRA regulations² require railroads to provide continuing education for certified locomotive engineers. This training ensures that engineers maintain “the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules.”

Similarly, train conductors are also required to demonstrate specific qualifications regarding the physical characteristics of their territories of service. Similar to the ongoing training railroads must provide locomotive engineers, railroads are also required to provide certified conductors with continuing education consistent with FRA regulation.³ The FRA’s continuing education requirements for conductors ensure that “each conductor maintains the necessary knowledge concerning railroad safety and operating rules and compliance with all applicable Federal regulations, including, but not limited to, hazardous materials, passenger train emergency preparedness, brake system safety standards, pre-departure inspection procedures, and passenger equipment safety standards, and physical characteristics of a territory.”

¹ See 49 CFR 240.127.

² See 49 CFR 240.123.

³ See 49 CFR 242.119.

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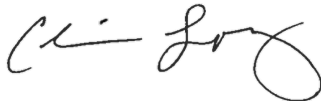
To meet compliance with federal regulations, railroads conduct skills testing of engineers and conductors to ensure they are appropriately trained in the safe operation of trains within the territories in which they serve. Such testing covers topics regarding train length, geography, weather and other factors described in SMART-TD's petition. For example, training simulations cover scenarios involving trains such as those: in excess of 7,500 feet; moving various freight and tonnages, including double-stack, mixed freight, unit trains moving specific cargoes such as coal or grain, and intermodal trains; and, trains operating in unusual conditions. As a result of the training railroad workers receive, FRA statistics shows accident rates have decreased over the past decade even as average train lengths have increased.

These regulations are directly applicable to the current petition for rulemaking because Congress directs in section 20106 of the Federal Railroad Safety Act (FRSA) that "laws, regulations, and orders related to railroad safety" must be "nationally uniform to the extent practicable."⁴ To ensure national uniformity, the FRSA provides that a state law is preempted when the FRA "prescribes a regulation or issues an order covering the subject matter of the state requirement."⁵ A federal regulation or order covers the subject matter of a state law when "the federal regulations substantially subsume the subject matter of the relevant state law."⁶

In summary, the FRA has adopted and currently oversees multiple regulations covering the specific subject matter outlined in SMART-TD's petition. Federal rules establish qualifications and certification requirements for engineers and conductors including training, testing, and oversight requirements. Furthermore, railroads are required to provide initial training as well as continuing education including training scenarios that cover territory-specific factors that may be encountered using a variety of different equipment in diverse conditions.

For these reasons, we urge you not to advance the Petition for Rulemaking in Docket TR-230876, which seeks to establish new regulations regarding "experience requirements for employees of regulated railroad companies" and was filed by SMART-TD on October 9, 2023.

Sincerely,



Christopher D. Lopez-Loftis
General Attorney

⁴ See 49 U.S.C. § 20106(a)(1).

⁵ See *id.* § 20106(a)(2).

⁶ See *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664–65 (1993).