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March 10, 2004

Carole J. Washburn
Washington Utilities and Transportation Commission
1300 E. Evergreen Park Drive S.W.
Post Office Box 47250
Olympia, Washington 98504-7250

RECEIVED
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04 MAR 10 PM 4:45
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Comments of The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) on Remote Control Locomotive (RCL) Operations Rulemaking Docket No. TR-021465

Dear Ms. Washburn:

We appreciate the extent to which the Commission has recognized BNSF's and UP's concerns about state attempts to regulate remote control operations. BNSF and UP continue to believe that state rules restricting or controlling remote control operations are preempted by federal law.

The rules now proposed for adoption have two components. The first is to add remote control-related definitions to WAC 480-62-125. BNSF and UP have no objections to that portion of the proposed rules. With regard to the additional notice requirements proposed in WAC 480-62-320, BNSF and UP reiterate their belief that prohibiting RCL operations by delaying implementation for even 30 days to give notice is beyond the Commission's power. BNSF and UP have, however, always been responsive to requests for information and have consistently given the Commission Staff advance notice of new remote control operations. There appears to be no compelling reason to require by rule what can be obtained informally by simple request to the railroads.

BNSF and UP therefore request that the rule requiring advance notice be deleted. If the notice provision is retained and expanded, as set forth in the proposed rulemaking, any future compliance with the rule by BNSF and UP will be without waiver of their right to assert that such notice requirements are preempted by federal law.

Very truly yours,

KILMER, VOORHEES & LAURICK, P.C.



Carolyn Larson
Attorney for Union Pacific Railroad Company

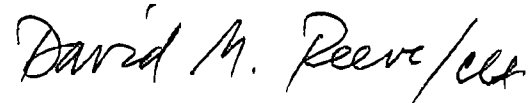
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GIBSON KINERK, L.L.P.

A handwritten signature in black ink that reads "David M. Reeve" followed by a stylized flourish.

David M. Reeve

Attorney for The Burlington Northern and Santa Fe
Railway Company

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