

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending)	DOCKET NO. TR-021465
)	
WAC 480-62-125 and WAC 480-62-320)	GENERAL ORDER NO. R-514
)	
Relating to Remote-Control Locomotive Operations.)	ORDER AMENDING RULES PERMANENTLY
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR #04-05-104, filed with the Code Reviser on February 18, 2004. The Commission brings this proceeding pursuant to RCW 80.01.040, and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the Commission’s consideration of the comments.

5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this order as its concise explanatory statement, supplemented, where not inconsistent, by the Staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

7 **REFERENCE TO AFFECTED RULES:** This rule amends the following sections of the Washington Administrative Code:

WAC 480-62-125 Definitions.

- *Adds definitions of “remote-control area”, “remote-control operations”, and “remote-control zone”.*

WAC 480-62-320 Remote Controlled Operations.

- *Amends subsections (1) and (2) of the rule to clarify the information that railroads must report, and requires that railroads report the creation as well as enlargement of remote-control areas and zones.*
- *Amends subsection (3) of the rule to require railroads to report to the Commission their intention to use cameras for point protection at crossings.*

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: On November 1, 2002, the Washington State Legislative Board of the Brotherhood of Locomotive Engineers filed a petition requesting that the Commission adopt a Safety Advisory issued by the Federal Railroad Administration (FRA) as a state rule. On December 31, 2002, the Commission denied the BLE's petition, but determined that it was appropriate for the Commission to initiate a rulemaking to consider the issues raised in the petition. The Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code Reviser's Office on January 24, 2003, at WSR# 03-04-004.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL**

STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking to consider whether the Commission is preempted to any degree by federal law from adopting rules on the subject of remote control locomotives and whether any state rules, whether or not based on the voluntary federal guidelines, should be considered for adoption. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all railroad companies operating in the state and attorneys representing those railroads.

10 Pursuant to the notice, the Commission engaged in three stakeholder workshops on March 19, August 12, and October 3, 2003, to discuss federal preemption, remote-control operations generally, and to discuss draft rule language. During the March workshop, the Commission gathered information about the various parties' proposals and positions. Prior to the August workshop, Commission Staff circulated a set of draft rules for discussion. Commission Staff incorporated comments received during the August workshop and circulated a new set of draft rules in October. During the October workshop, Commission Staff received additional comments. Staff modified the discussion draft based upon the written

comments received and discussion during the workshop, and prepared draft rule language for consideration by the Commission as proposed rules.

- 11 The Commission received comments during this phase of the rulemaking from over 60 individuals, as well as representatives of the Burlington Northern and Santa Fe Railroad Company (BNSF), the Union Pacific Railway Company (UP), the Brotherhood of Locomotive Engineers (BLE), the United Transportation Union (UTU), International Longshore and Warehouse Union (ILWU), the Washington State Labor Council, AFL-CIO, the FRA, the Spokane City Council, the Metropolitan King County Council, the City of Vancouver, and Clark County. These comments and Staff's responses are included in two separate Comment Summaries reflecting comments received prior to March 3, 2003, and after March 3, 2003. These summaries were placed in the rulemaking file and made available on the Commission's website at www.wutc.wa.gov/021465.
- 12 **NOTICE OF PROPOSED RULEMAKING:** Following oral comment on the issue at the Commission's January 28, 2004, open meeting, the Commission filed a notice of Proposed Rulemaking (CR-102) on February 18, 2004, at WSR #04-05-104. The Commission scheduled this matter for further oral comment and adoption under Notice WSR #04-05-104 at 9:30 a.m., Wednesday, April 28, 2004, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice advised interested persons of the proposed revisions to WAC 480-62-125 and WAC 480-62-320. The Notice advised interested persons that the Commission would address the issue of the protection of the point of movement of trains in a separate rulemaking, Docket No. TR-040151, instead of considering point protection rules concerning remote-controlled trains in this rulemaking.

13 The Commission informed persons of the rule proposal by providing notice of the proposal and the CR-102 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all persons requesting notice from the Commission concerning the rulemaking proceeding. The Notice provided interested persons the opportunity to submit written comments to the Commission by March 10, 2004.

14 **COMMENTS (WRITTEN COMMENTS):** The Washington State Legislative Board of the Brotherhood of Locomotive Engineers and Trainmen (WSLB-BLET) and BNSF and UP, jointly, submitted written comments on the rule proposal. The WSLB-BLET objected to the Commission's removal of point protection rules from the proposed rules for adoption in this docket, but supported the remaining proposed rules. The railroads do not object to the proposed definitions in WAC 480-62-125, but assert that the Commission is preempted by federal law from requiring railroads to provide advance notice of remote-control operations in WAC 480-62-320.

15 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on April 28, 2004, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J. Oshie. The Commission heard oral comments from Mike Rowswell, representing Commission Staff, Robert Walkley, representing BNSF, and Dr. Mark Ricci, president of the WSLB-BLET.

16 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission adopted the rule amendments as noticed at WSR #04-05-104 with the changes described below.

17 **CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR #04-05-104.

- The Commission amended the definition of “remote-control operations” in WAC 480-62-125 to more appropriately reflect the nature of such operations, and
- The Commission added the words “remote-control” prior to the word “operations” in subsections (1) and (2) of WAC 480-62-320 to avoid ambiguity given the new definition of the term “remote-control operations.”

18 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-62-125 and WAC 480-62-320 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

19 **THE COMMISSION ORDERS:**

20 WAC 480-62-125 and WAC 480-62-320 are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after filing with the Code Reviser pursuant to RCW 34.05.380(2).

21 This Order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this ____ day of May 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.