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December 20, 2017

Washington State Utilities and Transportation Commission
Attention: Docket TR-170780
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

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12/21/17 08:11
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Sent electronically to: mperkinson@utc.wa.gov and records@utc.wa.gov

Dear Commissioners:

Thank you for this opportunity to submit comments about the rulemaking to implement Engrossed Substitute House Bill (ESHB) 1105, Docket TR-170780. The docket concerns regulation of contract operations used to transport railroad crews. The BNSF Railway utilizes these services to safely move railroad crews as part of their regular work service. These comments reflect our interest in maintaining safe and efficient crew transportation through a regulatory process that is effective and enforceable. The comments in this letter are specific to the rule draft published on-line at the Washington State Utility and Transportation Commission (Commission) web page under the title "TR-170870 Draft Rules Version 3 11-20-17"; all page and section references are specific to this draft.

I. Adoption by Reference

Our most pressing concerns relate to the adoption by reference of multiple sections of Title 49 Code of Federal Regulations (CFR) in the section entitled "Contract crew transportation vehicle and driver safety requirements"¹. The adoption by reference includes multiple sections that may contradict, conflict with, or otherwise obscure compliance and enforcement.

¹ See pg. 7.



For example, the draft rule references –Part 391, which requires the driver of a commercial motor vehicle to possess a valid commercial driver’s license and provides specific criteria for the definition of a commercial motor vehicle. However, in the vast majority of cases, the vehicles operated by drivers of contract crew transportation vehicles as defined in the Commission’s proposed rule meet none of the criteria given in the federal government’s definition of a commercial motor vehicle. For this reason, it is unclear why –Part 391 is included in the proposed rule.

Furthermore, the topic of requiring a commercial driver’s licenses was explicitly considered and subsequently rejected during the legislative discussion leading to passage of ESHB 1105. Ultimately, it was determined that requirement of a commercial driver’s license would be inappropriate since neither the vehicles nor the passenger loads used in contract rail crew transportation meet any of the definitional criteria of a commercial motor vehicle. In the rare instance when railroad crews are transported via commercial motor vehicles, the operations providing such service would already be required to comply with federal requirements, so adding such a requirement in this rule would be redundant and could create interpretational ambiguities.

Finally, the requirement of a commercial driver’s license for vehicles that do not meet the definition of a commercial vehicle would conflict with WAC 480-30-221 and -222 which specifically define driver safety requirements for passenger transportation companies when operating vehicles with a seating capacity of seven or fewer passengers. By deviating from these previously established rules for similar vehicles, the draft rule may conflict with the legislative intent that this regulation “must be consistent with the manner in which the commission regulates these areas under chapter 81.70 RCW and the manner in which it regulates safety under chapter 81.68 RCW.”²

We found similar conflicts with other federal codes adopted by reference in the draft rule. For example, -Part 385 specifies applicability to commercial motor carriers and references the use of a commercial driver’s license and financial responsibility requirements which conflict with other parts of the proposed rule. Further, -Part 395 establishes broad requirements for driver hours of service, including an on-board electronic recording device, which was never discussed during the legislative

² See ESHB 1105 Sec. 2(1).



debate of ESHB 1105. In our reading, we found similar conflicts with references in –Parts 379, 385, 390, 391, 392, 393, 395, 396, and 397.

References to the *North American Uniform Out-of-Service Criteria* could be similarly confusing as this document (published by the Commercial Vehicle Safety Alliance) is by definition specific to commercial vehicles and includes references to braking systems, trailer operations, and emergency exits for buses, which simply are not applicable to the vehicles utilized in transporting railroad crew members.

Given the ambiguities and uncertainties created by these references, and the challenges in enforceability that would result from their inclusion, we respectfully submit that the Commission remove the adoption by reference of these regulations.

II. Further concerns with rule as drafted

In addition to the adoption by reference described in the previous section, we have concerns with the following provisions in the remainder of the draft rule as written:

- Contract crew transportation vehicle and driver safety requirements, Sec. 10, controlled substance and alcohol testing program³: conflicts with Canadian Human Rights Commission policy on alcohol and drug testing; requires exemption for British Columbian drivers who operate between British Columbia and Washington.
- Contract crew transportation passenger notice requirements⁴: requires additional specificity regarding passenger notice requirements, particularly with regard to the rights, complaint process, and specific contact information required to be posted.
- Contract crew transportation safety training, Sec. (1)(i)⁵: Training that is specific to operations near railroad rights of way should be consistent with railroad practices and procedures. However, it is not necessary or perhaps even feasible that this training be conducted by the railroad. Therefore, subsection (i) should be eliminated entirely or edited by striking the phrase “provided by” and amending the sentence to read, “... consistent with the practices and procedures of the railroad...”

³ See pg. 10.

⁴ See pg. 11.

⁵ See pg. 11.



- Contract crew transportation safety training, Sec. (4): allows the Commission to require drivers to complete refresher training, but provides no specifics of when such training might be required. The Commission should provide specific conditions that would require a refresher or provide guidance so that drivers can be advised as part of their training program.

III. Conclusions

In conclusion, I would just reiterate that the primary mission of the BNSF Railway is to ensure the safety of our railroad employees and the communities we serve. In advancing this goal, we seek partnerships with state governments and regulators based on clarity and consistency. To this end, we offer the suggestions included in this letter as a means to help perfect and clarify the proposed rule. We will be pleased to discuss any aspect of the proposed rule and we look forward to future discussions.

Thank you again for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Johan Hellman", with a long horizontal line extending to the right.

Johan Hellman