

PETITION SUBMITTED TO THE UTILITIES AND TRANSPORTATION COMMISSION OF THE STATE OF WASHINGTON FOR A RULEMAKING NECESSARY, AND SUFFICIENT, FOR THAT STATE AGENCY TO FULFILL MINIMUM LAWFUL COMPLIANCE WITH ITS NONDISCRETIONARY DUTY TO “MAINTAIN SAFETY RESPONSIBILITY FOR PASSENGER RAIL SERVICE OPERATING ON FREIGHT RAIL LINES” (UNDER 81.104.120 RCW)

COMES NOW petitioner Will Knedlik, who is a citizen of the state of Washington and president of Eastside Rail Now!, and whose address is P.O. Box 99, Kirkland, Washington 98083, hereby again petitioning the Washington State Utilities and Transportation Commission, pursuant to all authority of 34.05.330 RCW, to amend WAC 480-60-010 as necessary, and as sufficient, for that agency to fulfill minimum lawful compliance with its nondiscretionary duty to “maintain safety responsibility for passenger rail service operating on freight rail lines” (under 81.104.120 RCW), in the form set forth hereinbelow, including each indicated underscoring, as fully incorporated for every legal purpose by this reference thereto (subject to all rights of appeal granted by law and to a core state constitutional right to original *mandamus* litigation pursuant to Article IV, section 4):

WAC 480-60-010 – Application of rules.

(1) The rules in this chapter shall apply to every common carrier railroad, as defined by 81.04.010 RCW statutorily, subject to the commission’s nondiscretionary duty to maintain safety responsibility, for certain passenger rail service, as further established by 81.104.120 RCW statutorily; to all common carrier railroad companies operating within the state of Washington, including any facilities or structures owned or operated by the railroad or company; and to the construction and reconstruction of tracks or structures adjacent thereto; and to adjacent dangers to public safety from any landslide hazards or from any mudslide perils.

(2)(a) A common carrier railroad subject to the commission’s duty to maintain safety responsibility for passenger rail service as established by 81.104.120 RCW, and operating on any slide-prone freight rail line adjacent to any bluff 60 feet or more in height identified by the United States Geological Survey as at-risk for slides, including trackage between the city transit center in Everett and King Street Station in Seattle, must not transport any passengers during any days, weeks or months after any at-risk bluff, thus identified, first reaches 60 percent of saturation, until its liquidity status has been measured daily at below 60 percent, continuously, for a period of no-less-than-30 days, unless the commission enters an order that temporarily grants an exemption, fully consistent with its safety responsibility, after public hearings in each city served.

(2)(b) A common carrier railroad or company must not operate any equipment over tracks where the clearances are less than those required by these rules, unless a commission order has been entered granting an exemption or an exemption is contained in these rules.

(3) When structures adjacent to tracks used for certain passenger rail service subject to nondiscretionary duty of the commission to maintain safety responsibility, pursuant to 81.104.120 RCW, include passenger facilities, such as but not limited to stations, platforms and other modalities encompassed within structures referenced in sec. 1 hereof, then a common carrier railroad or company must not carry hazardous materials of any kind during the entire period while passenger rail service has been and continues to be suspended under terms of sec. 2a hereof, unless the commission enters an order that temporarily grants an exemption, fully consistent with its safety responsibility, after public hearings in each city served, except to the extent of preemption of any such suspension term or of any such suspension, under the constitutional doctrine of federal supremacy, as determined through litigation and after a final appellate decision as to legal rights of the state of Washington to protect its citizens, pursuant to 81.104.120 RCW, through this state regulation.

Facts supporting essential passenger-safety rulemaking once again being petitioned hereby

A Sounder North commuter-rail train was struck by a landslide caused by supersaturated soils on December 10, 2014, while in transit from Seattle to Everett, because the Washington State Utilities and Transportation Commission has for more than 24 years either defied, or else disregarded, the fully explicit directive by the Washington State Legislature's for said agency to "maintain safety responsibility for passenger rail service operating on freight rail lines," **despite** central fiduciary duties of commissioners, **despite** critical scientific information about very substantial dangers of the rail corridor at issue in leading geological journals since no later than the May, 1897 issue of *The American Geologist's* specific identification of a then-recent slide at "point Edmonds" onto then-Great Northern tracks at its page 319, **despite** crucial inquiries made repeatedly by its own professional staff, **despite** the recent derailling of an Amtrak passenger train in the same perilous rail corridor on April 7, 2013 and **despite** a rule-making petition submitted previously this year.

Without the explicit legislative direction defied or otherwise disregarded by UTC commissioners (for nearly two and a half decades), and thus without the UTC's failures to discharge its patently nondiscretionary duty quoted hereinabove (contrary to undeniable intent of legislation adopted on an **emergency** basis in March, 1990 by the 51st Legislature), the Joint State Route 530 Landslide Commission's Final Report submitted to Governor Jay Inslee, this week, identified passenger rail dangers among its greatest concerns in its "**Critical First Steps**" (bolding in original), in order to "Ensure that landslide hazard and risk mapping occur in the highest priority areas first, including transportation corridors, such as the Everett-Seattle rail line" (as its primary focus at its page iv).

Post-slide, Sound Transit's chair has now belatedly stated that its "board's first concern is safety."

The SR 530 Commission adopted its Final Report less-than-24 hours before a Sounder North train was struck by a landslide, but decades after this commission was ordered to protect state citizens from such dangers well known scientifically for more than a century, long after its own managers had raised concerns, repeatedly, and well after a formal rulemaking petition had been disallowed.

Given that lives of fully 500 state citizens have for years been, and continue still to be, jeopardized as commuter-rail passengers between Everett and Seattle **twice** each weekday (when slides do not prevent Sounder North rail operations time after time) due to egregious commission misfeasance if not malfeasance (due to pivotal geomorphologic similarities between myriad existing slide zones in the rail corridor at issue herein and the Hazel ridge collapse near Oso (as recognized by the SR 530 Commission), and given substantial risks for **every** Sounder North rider (known at least since May, 1897), an expedited hearing is requested (after, respectively, more-than-24 and a half years since all UTC commissioners were first charged with overt passenger-safety obligations through **emergency** legislation then adopted, and over 117 and a half years after geological science had clearly established great dangers of landslides like the one that struck a Sounder train last week), especially given escalating risks to citizen safety from increasing transport of hazardous materials (in high-frequency rail corridors used jointly for carriage of passengers and of dangerous freight).

Respectfully submitted,

Will Knedlik