



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

October 3, 2005

The Honorable Amy Jo Sooy  
Mayor of Cheney  
609 2<sup>nd</sup> Street  
Cheney, WA 99004

Re: Union Pacific Railroad Request to Increase Train Speeds  
Docket No. TR-051466

Dear Mayor Sooy:

On September 28, 2005, the Union Pacific Railroad requested the Commission to raise train speed limits in Cheney from 35 mph to 60 mph. I have enclosed a copy of their request.

Federal law preempts the state from imposing, or continuing in effect, train speed limitations unless certain conditions are met. WAC 480-62-155 was adopted by the Commission in 2001 to set out the process, burden of proof, and other matters for train speed petitions that comply with federal preemption concepts. (A copy of the WAC is enclosed for your reference.)

Under the Commission rule, the Union Pacific Railroad met its burden of proof by filing its request. In order for the Commission to continue the current 35 mph limit in effect, or to set any limit below the Federal Railroad Administration limit of 60 mph, the city must show that the lower speeds are necessary to mitigate an essentially local safety condition. The Commission rule lists factors that can be considered to determine whether an essentially local safety condition exists.

Mike Rowswell, a member of the Commission's staff, will contact the city to discuss safety issues along the Union Pacific line. He will also make arrangements to visit the city to make a safety audit. You are invited to file comments or other documents in this docket for Commission consideration. Each document or cover letter should list the docket number for this matter, which is TR-051466.

RMS  
TA

The Honorable Amy Jo Sooy  
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All correspondence should be sent to:

Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

Comments and documents may also be submitted by electronic mail to the Commission's Records Center at [records@wutc.wa.gov](mailto:records@wutc.wa.gov).

After investigating the matter, Commission staff will prepare and file a report that will include recommendations. A copy will be sent to you for comment. The matter will be set for an open meeting at which the Commission will deny the request, grant the request, or set the matter for a formal hearing.

If you have any questions, please contact Mike Rowsell at 360-664-1265.

Sincerely,



*for* Carole J. Washburn  
Executive Secretary

TR-051466 (P)

**UNION PACIFIC RAILROAD COMPANY**

ENGINEERING SERVICES DEPARTMENT

J. W. TRUMBULL  
Manager  
Industrial & Public Projects



5424 S. E. McLoughlin Blvd.  
Portland, OR 97202  
(503) 872-1809  
Fax: (503) 872-1900

September 23, 2005

**RECEIVED**

SEP 28 2005

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Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
PO Box 47250  
Olympia, WA 98504-7250  
Attn: Mr. Michael E. Rowswell

Dear Mr. Rowswell:

**Subject: Train Speed Increase**

We are planning to raise the train speeds on our Ayer Subdivision in the State of Washington. The only major community we will be raising the speeds through is in the City of Cheney. I have notified the City of our intentions.

Since the train speed will increase from 35mph to 60mph, the City has concerns regarding a passive protected crossing within their City limits. I request the WUTC the Railroad and City review any issues regarding this crossing or other crossings within the City.

Please make contact with City and myself as soon as possible for this onsite review. We wish to raise the speed through this area in mid-October, so a quick response would be appreciated.

Sincerely,

John W. Trumbull  
Manager Industry and Public Projects

Cc: City of Cheney

**WAC 480-62-155 Train speeds.** (1) **Scope of commission authority.** The commission's authority to regulate the speed of trains is established in RCW 81.48.030 but limited by federal law. Under RCW 81.48.030, the commission has the power to "fix and regulate" the speed of trains within the limits of any city and town, other than a first class city and at grade crossings outside the limits of cities and towns. However, under section 205 of the Federal Railroad Safety Act, 49 U.S.C. §20106, states are limited to actions which are "necessary to eliminate or reduce an essentially local safety hazard." Accordingly, the commission will act to limit train speeds below those set by the United States Secretary of Transportation only where it finds that there exists such a local safety hazard and that reduction of the train speed is necessary to eliminate or reduce that hazard.

(2) **Procedure.** The commission will consider whether to set train speed limits below those authorized by the United States Secretary of Transportation either upon petition or upon its own motion.

(a) **Petition process.**

(i) Any person, other than a railroad company, who seeks to have the commission set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission must file with the commission a petition. Such petition must contain the following information:

(A) Name and address of the petitioner;

(B) Specific location and length of track over which the speed limit is sought;

(C) Reasons for the speed limit;

(D) If the petitioner seeks a speed limit different from the federally set speed limit, a detailed explanation of why there exists an "essentially local safety hazard" and why that speed limit is necessary to eliminate or reduce the hazard; and

(E) Any other information the petitioner deems relevant.

(ii) A railroad company that seeks to modify an existing limit set by the commission must file with the commission a petition. Such petition must contain the following information:

(A) Name and address of the railroad company, and a contact person;

(B) Specific location and length of track over which the speed limit is sought;

(C) Class of track over which the speed limit is sought;

(D) Reason for the speed limit requested; and

(E) Any other information the railroad company deems relevant.

(iii) Upon receipt of a petition, the commission will serve the petition on the railroad company, if the railroad company did not file the petition; the governing body of any local government within which the proposed speed limit is intended to apply; and the secretary of the department of transportation. The commission will ask for responses from those persons. The commission will set the matter for consideration at a regularly scheduled or special open meeting or, in its discretion, for a formal adjudicatory proceeding under chapter 34.05 RCW.

(b) **Commission-initiated process.** After investigation, the commission may also initiate a proceeding to set a train speed limit. Such a proceeding will be initiated by serving a notice on the railroad company or companies; the chief exec-

utive officer of any local government within which the proposed speed limit is intended to apply; and the secretary of the department of transportation. The notice will contain the information described in (a)(i)(A) through (E) of this subsection, the time for filing responses to the notice and the date, time, and place at which the commission will consider the matter. Such consideration may be at a regular or special open meeting or, in the commission's discretion, in a formal adjudicatory proceeding under chapter 34.05 RCW.

(c) **Burden of proof.**

(i) When a railroad company files a petition to modify an existing limit set by the commission to or within a federally set speed limit, including the information set forth in (a)(ii)(A) through (E) of this subsection, the railroad will be deemed to have met its burden of proof as to why the speed limit should be modified. The burden then shifts to the governing body of the local government, commission staff, or other interested persons to show that there exists "an essentially local safety hazard," and that a speed limit different from that proposed by the railroad company is necessary to eliminate or reduce the hazard.

(ii) When a person, other than a railroad company, files a petition with the commission to set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission, that person bears the burden of showing that there exists "an essentially local safety hazard," and that the speed limit is necessary to eliminate or reduce the hazard.

(iii) When the commission initiates a proceeding on its own motion to set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission, the commission staff bears the burden of showing that there exists "an essentially local safety hazard," and that the speed limit is necessary to eliminate or reduce the hazard.

(3) **Evidence of what constitutes an "essentially local safety hazard."** In determining whether a train speed limit, lower than authorized by federal law, is necessary to eliminate or reduce an essentially local safety hazard, the commission will include in its consideration, at a minimum, the following:

(a) Whether the local situation is one that is covered by or is capable of being adequately covered by uniform national standards;

(b) Whether there exist unusual local geographic or other conditions which contribute to the existence of the hazard;

(c) The history of accidents or potential for accidents at the location; and

(d) Whether there exist alternate means to reduce or eliminate any hazard that can be included as conditions to an order setting a train speed.

[Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-155, filed 1/30/01, effective 3/2/01.]