

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET TR-141348
)	
WILL KNEDLIK,)	ORDER 01
)	
To Amend WAC 480-60-010 to)	ORDER DENYING PETITION
Implement the Commission’s Duties)	
under RCW 81.104.120)	
.....)	

BACKGROUND

- 1 On June 27, 2014, Will Knedlik filed a petition with the Washington Utilities and Transportation Commission (Commission) to initiate a rulemaking to amend WAC 480-60-010 “to fulfill minimum lawful compliance with [the Commission’s] nondiscretionary duty to ‘maintain safety responsibility for passenger rail service operating on freight rail lines’” (Petition).
- 2 Mr. Knedlik expresses concern with the “geomorphological similarities between numerous existing slide zones” along the commuter train route operated by the Central Puget Sound Regional Transit Authority (Sound Transit) between Everett and Seattle “and the Hazel ridge collapse (near Oso).” The Petition proposes to amend WAC 480-60-010 to extend the rules in that chapter to passenger rail service provided by Sound Transit and any other regional transit authority and specifically to prohibit transportation of any passengers on the Everett-Seattle route when there is a heightened risk of a landslide.
- 3 The sole legal authority the Petition cites to support the proposed rule revisions is RCW 81.104.120(3), which provides in relevant part, “The utilities and transportation commission shall maintain safety responsibility for passenger rail service operating on freight rail lines.” The Petition contends that “ongoing commission failures to discharge its nondiscretionary duty” under this statute jeopardize the lives of 500 commuter rail passengers traveling between Everett and Seattle twice each weekday when slides have not already precluded Sound Transit rail operations.

DISCUSSION

4 Within 60 days after receiving a petition for rulemaking, the Commission either must

(a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rulemaking proceedings in accordance with RCW 34.05.320.

We deny Mr. Knedlik’s Petition for the reasons we explain below.

5 Any rules the Commission promulgates must derive from statutory authority. Mr. Knedlik asserts that RCW 81.104.120(3) imposes a nondiscretionary obligation on the Commission to adopt the amended rule he proposes in his Petition. We disagree.

6 Legislative grants of authority to the Commission typically, if not uniformly, are prescriptive and are included in statutes dedicated to establishing the nature and scope of the Commission’s jurisdiction and the legal obligations of the companies it regulates.¹ RCW 81.104.120(3) has neither of these hallmarks. RCW 81.104.120(3) only vaguely states that the Commission “shall maintain safety responsibility for passenger service operating on freight rail lines.”² That provision, moreover, is the only reference to the Commission in the entirety of RCW Chapter 81.104, which is devoted to high capacity transportation systems developed and operated by local governments without Commission oversight.

7 We interpret the language and location of RCW 81.104.120(3) as manifesting a legislative intent to preserve Commission jurisdiction that already existed at the time of the statute’s enactment, not as a grant of additional regulatory authority. Indeed, the plain meaning of the word “maintain” is “to keep in an existing state” or “to

¹ *E.g.*, RCW chapter 81.53 (Railroad – Crossings).

² *Compare, e.g.*, RCW 81.40.095 (“The utilities and transportation commission shall adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees . . .”).

continue or persevere in, carry on, keep up.”³ Because RCW 81.104.120(3) is not an independent source of Commission jurisdiction, that statute neither requires nor authorizes the Commission to adopt the revised rule Mr. Knedlik proposes in his Petition.

8 The Petition identifies no other statutory directive, and we are not aware of any such mandate. The Commission has some general authority over rail safety under existing law. For example, RCW 81.28.240 and RCW 81.44.010 authorize the Commission, after a hearing, to order improvements in facilities or services of any common carrier, including railroad companies. None of those statutes, however, expressly authorize, much less obligate, the Commission to halt passenger rail service in response to a risk of damage or injury that could result from forces of nature beyond the carrier’s control.

9 Even if the Commission had the discretion under existing law to impose such a requirement, we would not exercise that discretion to take the action Mr. Knedlik requests. The Commission is not the only government agency with some measure of authority over railroad safety. The Federal Railroad Safety Act gives the Federal Railroad Administration (FRA) broad preemptive jurisdiction to regulate rail safety.⁴ To the extent the FRA does not assert such jurisdiction, the legislature has directed the state Department of Transportation (WSDOT) to oversee the system safety programs of rail fixed guideway systems.⁵ WSDOT’s Rail Division, moreover, not the Commission, oversees the management of the Washington segment of the Amtrak Cascade passenger rail service from Vancouver, British Columbia to Portland, Oregon, which uses the same track between Everett and Seattle that Sound Transit uses for its commuter rail service.⁶

³ Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/maintain> (last visited Aug. 8, 2014).

⁴ 47 U.S.C. § 20101-55.

⁵ RCW 81.104.115. A “rail fixed guideway system” is “a light, heavy, or rapid rail system . . . or other fixed rail guideway component of a high-capacity transportation system that is not regulated by the Federal Railroad Administration or its successor.” WAC 468-550-030(15).

⁶ <http://www.wsdot.wa.gov/rail>.

- 10 WSDOT and the federal government are well aware of the concerns expressed in the Petition and are taking action to address them. WSDOT, with the participation of a variety of stakeholders, has developed a Landslide Mitigation Action Plan, which includes short- and long-term strategies to reduce landslide impacts and transportation reliability throughout the Pacific Northwest Rail Corridor.⁷ WSDOT has secured a \$16.1 million grant under the federal American Recovery and Reinvestment Act for mudslide prevention projects on the tracks between Seattle and Everett, and construction on those projects is well underway.⁸ WSDOT thus has developed, and is implementing, a variety of measures to reduce or eliminate the risks that Mr. Knedlik asks the Commission to address.
- 11 We do not believe that taking the unilateral Commission action the Petition requests is the best, or even desirable, way to address the stated safety concerns. The rule Mr. Knedlik proposes would affect only a portion of the passenger rail service between Everett and Seattle, may be preempted by federal law⁹, and likely would interfere with WSDOT's landslide mitigation efforts. WSDOT, in conjunction with the federal government and affected stakeholders, is addressing the concerns raised in the Petition, and we conclude that the public interest would be better served by allowing those efforts to proceed unencumbered by the measures in the proposed rule.

⁷ WSDOT's April 2014 report on the plan can be found at <http://www.wsdot.wa.gov/NR/rdonlyres/8B3B653E-5C50-4E2B-977E-AE5AB36751B7/0/LandslideMitigationActionPlan.pdf>.

⁸ *See, e.g.*, Northline Commuters Keep Faith As Slide Parks Sounder Again, The Seattle Times (Jan. 3, 2013) (available at http://seattletimes.com/html/localnews/2020054388_sounder04m.html); Slide Fixes Along Sounder Route Could Start this Summer, Snohomish County News (Mar. 6, 2013) (available at http://www.snoho.com/stories_2013/030613_mudslidefixes.html).

⁹ *See generally*, 49 U.S.C. § 20106(2)(a)-(c) and *CSX Transp. Inc., v. Easterwood*, 507 U.S. 658, 113 S. Ct. 1732, 123 L. Ed. 2d 387 (1993).

ORDER

12 THE COMMISSION ORDERS That the Petition of Will Knedlik for a rulemaking to amend WAC 480-60-010 to implement the Commission's duties under RCW 81.104.120 is DENIED.

DATED at Olympia, Washington, and effective August 12, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner