

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

In the Matter of the Petition of)	DOCKET NO. TR-051466
)	
UNION PACIFIC RAILROAD)	ORDER NO. 01
COMPANY,)	
)	
Petitioner,)	
)	
Requesting Modification of Orders)	ORDER GRANTING PETITION TO
Setting Train Speeds in the City of)	MODIFY ORDERS SETTING TRAIN
Cheney)	SPEED LIMITS
.....)	

BACKGROUND

- 1 On September 28, 2005, the Union Pacific Railroad Company (Union Pacific) filed a letter with the Commission requesting that orders setting speed restrictions in the City of Cheney (City) be modified to allow trains on Union Pacific’s tracks to travel at the maximum speed allowed by federal regulations. The Commission set Union Pacific’s freight train speed limits at 35 mph in the City of Cheney in 1952 in Docket No. T-8834.

- 2 Union Pacific owns the single main line tracks involved in this petition. It operates freight trains on its tracks, and is responsible for setting the actual operating speeds within the limits allowed by law and regulations. Union Pacific intends to set the operating speed for freight trains in the City at 60 mph, which is the maximum speed allowed by the Federal Railroad Administration for the class of tracks operated in the City by the Railroad.

- 3 The Commission is authorized to set speed limits for trains within the City limits of Cheney under RCW 81.48.030 and 81.48.040 commensurate with the hazards presented and the practical operation of the trains. However, because the Federal Railroad Administration (FRA) has promulgated speed limits for trains at 49 CFR Sec. 213.9, federal law limits the Commission’s authority to issue or

maintain in effect train speed orders to situations in which an additional or more stringent order is necessary to eliminate or reduce an essentially local safety hazard; the order is not incompatible with a law, regulation, or order of the United States government; and the order does not unreasonably burden interstate commerce. 49 U.S.C. §20106.

- 4 The order entered in T-8834 did not identify an essentially local safety condition. It was entered before the Federal Railroad Administration adopted regulations that preempted state law. Pursuant to WAC 480-62-155(2)(c)(i), Union Pacific met its burden of proof when it filed its request in this docket. The burden to prove the existence of an essentially local safety condition shifted to the City or Commission Staff.
- 5 Commission Staff investigated the conditions in the City as they relate to the train speeds proposed by the Railroad. Some safety concerns that previously existed were corrected when the train speed limits in Cheney for The BNSF Railway Company (BNSF) were raised from 35 mph to 79 mph for passenger trains and to 60 mph for freight trains in Docket No. TR-970838. Union Pacific's tracks are separated from the main part of the City by BNSF tracks. As a result, the concerns are generally less for Union Pacific's operations than for the operations of BNSF. Commission Staff did not identify any major safety concerns.
- 6 The City of Cheney was officially notified of the Railroad's request by a letter to the Honorable Amy Jo Sooy dated October 3, 2005. Commission Staff met with City officials on October 5, 2005, and October 14, 2005. Union Pacific's representatives attended the second meeting. City officials identified a private railroad crossing that serves the City's waste water treatment plant as a hazard.
- 7 The crossing has passive warning systems only. Sight distance is restricted in one quadrant. The City maintains that, on foggy mornings which occur frequently in the winter, sight distance is restricted in all quadrants. Train horns

are difficult to hear in one quadrant, and Union Pacific's train horns are not easily distinguishable from horns of trains operated in the same general area by BNSF. Currently, about 15 trains travel through the crossing each day. The average number of daily train trips is expected to increase to as much as 30 in the next 10 years. Approximately 50 vehicles use the crossing each day. School buses use it occasionally to transport children on field trips to the plant. Delivery vans use it daily. Occasionally, tractor-trailer trucks use the crossing. Students from Central Washington University use the crossing to gain access to the plant for class assignments. Other members of the public use the crossing to access the plant for tours.

8 Union Pacific's officials agreed to keep brush cut in all quadrants to maintain the best possible sight distance. The roadway gate to the plant, which is locked at night, may be moved to the side of the crossing away from the plant. Union Pacific officials also agreed that its train dispatchers would inform the City and school employees about train locations upon request. Union Pacific represented it would not object to converting the crossing to a public one if the City petitioned the Commission to do so. This would allow the City to apply for public funding to signalize and gate the crossing.

9 The City objects to the increase in train speeds because of the dangers it believes exist at the crossing. However, the City does not intend to contest Union Pacific's petition. The City indicates that it will decide at a future date whether to petition the Commission in the manner described in WAC 480-62-155(2)(a)(i) to set a speed limit different from the federally set speed limit because of a need to eliminate or reduce an essentially local safety condition.

FINDINGS AND CONCLUSIONS

10 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington having jurisdiction over railroad train speeds in certain cities, including the City of Cheney. Chapter 81.48.030 RCW and

WAC 480-62-155. Regulation of train speeds by the Federal Railroad Administration preempted the Commission from exercising its jurisdiction unless an essentially local safety condition is proven to exist.

- 11 (2) The Union Pacific Railroad Company petitioned the Commission in accordance with WAC 480-62-155(a)(ii) to modify an existing speed limit on its tracks within the City limits of Cheney to the federally set speed limit. Neither the City of Cheney nor Commission Staff has requested an adjudication of the petition (although the City indicated it may do so in the future) in which they would carry the burden of showing 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.

ORDER

THE COMMISSION ORDERS:

- 12 The petition of the Union Pacific Railroad Company is granted. The order setting a speed restriction in the City of Cheney in Docket No. T-8834 is modified to increase the freight train speed limit to 60 mph, which is the limit allowed by the Federal Railroad Administration.

DATED at Olympia, Washington, and effective this 9th day of November, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner