



American Short Line and Regional Railroad Association

June 7, 2020

VIA WEBSITE (efiling.utc.wa.gov)

Mark. L Johnson
Executive Director and Secretary
State of Washington
Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Docket No. TR-200536

Dear Mr. Johnson,

The American Short Line and Regional Railroad Association (ASLRRA) is providing comments in response to the rulemaking by the Utilities and Transportation Commission (Commission) to implement House Bill (HB) 1841, Chapter 170 of the Laws of 2020, at WAC 480-62-255, “Minimum Crew Size on Certain Trains.”¹ ASLRRA previously provided comments on September 4, 2020 and December 18, 2020 in this proceeding. Unfortunately, the proposed regulations at WAC 480-62-255 suffer from the same deficiencies as HB 1841. Specifically, the text is preempted by the ICC Termination Act (ICCTA) and provides a disincentive to short line railroads to upgrade their infrastructure.

Like HB 1841, WAC 480-62-255 conflicts with and is preempted by ICCTA because it will manage, govern, unreasonably burden, and unreasonably interfere with rail transportation because WAC 480-62-255 requires most freight railroad in Washington State to operate with a minimum of two crew members. Under the proposed rules, it does not matter whether operating with a single crew member is just as safe as operating with multiple crew members, or whether a railroad operates with a single crew member in adjacent states.

¹ ASLRRA is a nonprofit trade association representing the entrepreneurial owners and operators of short line and regional railroads throughout North America. Short line freight is a critical part of the U.S. freight network. The nation’s approximately 600 short line carriers provide the first and last mile service for one in every five cars moving each year. Operating nearly 50,000 track miles, or 30% of freight rail in the U.S., they play a vital role in the transportation network

Additionally, by seeking to categorize certain short line railroads based on the upstream ownership structure, WAC 480-62-255 directly conflicts with and is preempted by ICCTA's classification of railroad carriers as defined by the Surface Transportation Board (STB). The STB groups carriers into three categories based upon the carrier's annual operating revenue.² In contrast, under WAC 480-62-255, a "Class I" railroad means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries *or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a Class I railroad carrier.* (Emphasis added.) WAC 480-62-255 is clearly inconsistent with the well-established STB railroad classifications.

WAC 480-62-255 uses ambiguous phrases such as "owned" and "operated" to distinguish certain short lines that may be affiliated with other short lines through a holding company structure without an appropriate understanding of the fact that these short lines are discrete legal entities. The language makes no distinction between direct or indirect ownership, recognition of minority ownership, where there are clear limits of influence, or the implications for short lines that may be affiliated with a publicly traded entity that would be deemed "owned" by individual public shareholders. Further, the use of "operated" is also flawed in that the majority of holding companies are not common carrier railroads, and as such could not "operate" the short lines at issue. Finally, there is simply no logical justification offered in the proposed rule making, based on relevant safety and performance history, to differentiate between Class III short line railroads based on ownership structure in a flawed effort to mandate two crew members.

Short line and regional railroads are innovators in the selective and safe use of single-person crews and have used single-person crews safely for years. Utilizing safe alternative crew staffing operations is one of the ways short lines have been able to remain successful in a competitive economic environment. WAC 480-62-255 suggests that Class III short line operations would be excluded from the crew size restrictions because they would choose to operate at speeds less than 25 m.p.h., qualifying for an exemption from the minimum crew size requirement under section (3). This assumption demands that short lines railroads in Washington operating with less than two crew members either increase their operating costs by adding crew or slow their operations to 25 m.p.h.³ WAC 480-62-255 thus creates a financial disincentive for small railroads to invest in their infrastructure, upgrade their track, and improve their performance times.

Further, some short line railroad operations employ a two-person crew without both crewmembers physically located on the locomotive. As an example, Tacoma Rail, a Class III railroad, operates some of its trains with a conductor located in a crew support vehicle. If the Commission chooses to direct the placement of the second crewmember

² 49 CFR § 1201.

³ The average wages and benefits of a railroad employee in Washington is \$122,920. Association of American Railroads, "Freight Railroads in Washington," January 2021. Available at: <https://www.aar.org/data-center/railroads-states/>.

pursuant to section (5), the railroad anticipates increased risk and exposure due to riding on rolling stock and having to “hold-on” to the moving equipment for potentially prolonged distances. Requiring a qualified crew member(s) to be assigned to a position on the rear of the train instead of within a crew support vehicle also increases risk and potential of a train/auto surface conflict considering that work associated with this proposed regulation requires traversing multiple railroad-highway grade crossings between the railyard and customer facilities.

ASLRRA urges the Commission to withdraw this rulemaking proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Yurasko".

Sarah Yurasko
General Counsel