

FEB 16 1995

Note! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
the WASHINGTON STATE DEPARTMENT)	
OF TRANSPORTATION, BURLINGTON)	DOCKET NO. TR-940288
NORTHERN RAILROAD COMPANY and)	
THE NATIONAL RAILROAD PASSENGER)	INITIAL ORDER
CORPORATION for Modification of)	GRANTING PETITION
Order Regulating the Speed of)	
Passenger and Freight Trains in)	
Edmonds, Washington.)	
.)	

Hearings were held in this matter in Edmonds on November 15 and 16, 1994, before Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings. The parties filed briefs by December 16, 1994.

The parties appeared and were represented as follows:

- PETITIONERS: BURLINGTON NORTHERN RAILROAD CO.
By Rexanne Gibson, attorney
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- WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
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- NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
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- RESPONDENT: CITY OF EDMONDS
By W. Scott Snyder, attorney
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- INTERVENOR: CITIZENS FOR WATERFRONT ACCESS AND SAFETY
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MEMORANDUMProceedings

This is a joint petition by the Burlington Northern Railroad, the Washington State Department of Transportation and the National Railroad Passenger Corporation (Amtrak) requesting an increase in passenger and freight train speed limits through Edmonds, Washington.

The petition seeks the following maximum speeds for trains in the city of Edmonds:

Passenger: Raise from 50 m.p.h. to 60 m.p.h.
 from milepost 17 (south corporate
 limits) to milepost 20.

 Raise from 45 m.p.h. to 50 m.p.h.
 from milepost 20 to milepost 22
 (north corporate limits).

Freight: Raise from 40 m.p.h. to 50 m.p.h.
 from milepost 17 to milepost 20.

 Raise from 40 m.p.h. to 45 m.p.h.
 from milepost 20 to milepost 22.

Jurisdiction

The petitioners do not concede that the Commission has jurisdiction to resolve train speed limit issues, arguing on brief that federal law has preempted the field. The preemption argument is based on the Federal Rail Safety Act, 45 U.S.C. §421, et seq. This legislation states that railroad safety regulation should be nationally uniform to the extent possible. States may continue to regulate areas pertaining to railroad safety until the federal government adopts a specific rule or standard concerning the same subject. Even then, a State may continue to regulate more stringently if necessary to reduce or eliminate an essentially local safety hazard. 45 U.S.C. § 434.

The petitioners contend that the maximum allowable speeds set forth by class of track in 49 C.F.R. §213.9 are such a rule or standard and that the State has no authority to set speeds different from those established by the federal government for each class of track. Through Edmonds, on class IV track, the maximum allowable speed is 80 m.p.h. for passenger trains and 60 m.p.h. for freight trains.

Under RCW 81.48.030 the Commission has the exclusive right to set train speeds within the city limits of all cities

and towns, except first class cities. RCW 81.48.040 requires the Commission to examine and balance the hazards presented by trains travelling at a proposed speed against the benefits of the proposed speed and the practical operation of the trains.

Commission Staff contends that the Commission has authority to establish speed limits pursuant to the Chapter 81.48 RCW and may set speeds at lower than the maximum allowed by Federal Railroad Administration regulations if necessary to reduce or eliminate an essentially local safety hazard. Staff believes that a local safety hazard exists in Edmonds and supports the speed limit increases only if certain steps are taken to abate the problem with trespassers. This is discussed in greater detail below.

This initial order concludes, as has the Commission in prior decisions, that the class of track establishes only a maximum allowable speed based on type and condition of track, not a required minimum speed. Thus, this order concludes that the regulation of train speeds, expressly conferred on the Commission by RCW 81.48.040, has not been preempted by federal regulation concerning maximum speeds by class of track. It is also clear that the Commission has express authority under federal law to regulate as necessary to reduce or eliminate an essentially local safety hazard.

Background

In 1992 the Federal Railway Administration designated a high speed rail corridor between Eugene, Oregon and Vancouver, British Columbia. In 1993 the Washington State Legislature enacted Chapter 47.79 RCW, entitled High-Speed Ground Transportation, which established a high-speed ground transportation program. The program's stated goals include the implementation of high-speed ground transportation service offering top speed over 150 m.p.h. between Everett and Vancouver, B.C. by 2025. RCW 47.79.020(2).

This petition was filed to enable Amtrak to begin providing passenger train service between Seattle, Washington and Vancouver, British Columbia. Starting in the spring of 1995, Amtrak will operate one passenger train per day in each direction between Seattle and Vancouver. The trains will likely have three to five cars each and the WSDOT projects that 100,000 people will use the service during the first year. Amtrak has calculated that in order to be competitive with automobile travel, the train must make this trip in less than four hours. The speed limit increases requested in this and other filings are necessary to achieve a running time of 3 hours 55 minutes.

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Passenger service between Seattle and Vancouver was last offered from 1972 through 1981. Amtrak discontinued that service because of high costs and low revenues. This was due, at least in part, to a running time of four and a half hours. Amtrak will not offer the service unless it can meet its goal of less than four hours.

In order to accomplish the project, the three petitioners have entered into an agreement to spend \$27 million to improve the Seattle/Vancouver rail corridor. The improvements include adding or upgrading signals and switches and the installation of a centralized traffic control system between Bellingham and the international border. These improvements will enhance the safety of the rail system. The signals are on predictor circuits so that the gates and lights at the signalized crossings will be activated to give adequate warning time even with increased train speeds.

Local Conditions

Burlington Northern owns the track over which the service will be provided. The rail line over which the Amtrak trains will operate is maintained to Class IV federal track standards, permitting maximum passenger train speeds of 80 miles per hour and maximum freight train speeds of 60 miles per hour.

The rail line is double track from the south into Edmonds until MP 16.5. Single tracking is in place from MP 16.5 to MP 18, where double track resumes. At MP 16.5 and MP 18 there are equilateral turnouts which restrict train speed to 35 m.p.h. However, the train only needs to slow if it is going through the turnout, i.e., if it is on the track that ends, not the one that goes straight through. A curve south of MP 17 restricts speeds to 45 m.p.h. and another curve at MP 20 restricts speeds to 50 m.p.h. The speed limits requested would allow the trains to slow down later as they enter town and begin to speed up more quickly as they leave town. In addition, the petitioners claim that the single track bottleneck in Edmonds requires both passenger and freight speed increases to move traffic through town more quickly and achieve the desired running time.

Amtrak trains currently operate through Edmonds once a day. This passenger train stops at the depot in Edmonds, located at MP 17.7. The proposed service is also scheduled to stop in Edmonds, although Amtrak indicates that if the proposed speed increases are not granted it will cancel the stop in Edmonds to save additional time. In addition, more than 30 freight trains pass through Edmonds each day. They do not stop at the depot. Some of these freight trains carry hazardous materials.

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The Commission has considered train speed increases through Edmonds in the past. The most recent decision was in 1990 in consolidated Dockets TR-2311 & TR-2248. There, the Commission granted increases in part and denied them in part, noting the unique character of the Edmonds waterfront area and concluding that the large number of trespassers constituted a local safety hazard. The Commission expressly denied the City's petition to reduce train speeds.

This record shows that the Edmonds waterfront, separated from the rest of town by the railroad tracks that run right along the shoreline, is still a hub of activity for the City. The Edmonds-Kingston ferry terminal is a point of departure and arrival for hundreds of passengers each day, all of whom must cross the railroad tracks. There are restaurants, an underwater dive park, a senior center, and many other facilities along the waterfront, all on the west side of the tracks, while the main part of town is to the east of the tracks.

There are three crossings in Edmonds. The Dayton Street crossing is at MP 17.5, the Main Street crossing is at MP 17.8 and the Lebugten Street crossing (Haines Wharf) is at MP 21. The Dayton and Main Street crossings are public crossings and are fully signalized and gated. The Haines Wharf crossing is a private crossing and is protected only by a crossbucks on the east side. None of these crossings is considered a high risk crossing by Commission Staff. There have been approximately 10 accidents or incidents on the tracks in Edmonds during the past five years. None could be attributed to train speed, and all of the accidents appear to have been the fault of the motorist or trespasser involved.

In addition to the public and private crossings, many people access the waterfront by crossing the tracks as trespassers. North of MP 18 there are residences and city streets adjacent to the tracks. Residents and visitors alike walk short trails down a small bluff or hillside to gain access to the beach. They must cross the railroad tracks to do so. The City knows of this practice but has done little to stop it. Public access occurs mainly from Sunset Avenue and Ocean Avenue. The City allows two-hour parking from dawn to dusk along Ocean Avenue.

Effect of Proposed Increases

The increased speed limits will allow Amtrak to reduce its running time between Seattle and Vancouver, B.C. by approximately one minute, assuming a stop in Edmonds. If the train did not stop in Edmonds, the increased speeds would take one and a half minutes off the run time, with an additional savings of approximately five minutes attributed to eliminating

the stop. The petitioners point out that although the amount of time saved is small, the effects of small savings along the line are cumulative and result in the desired trip time of under four hours. Petitioners argue that the increased freight train speeds are necessary to increase the capacity on the track through town, thus allowing freight to move without unnecessary delay and keeping the passenger trains (which have the right of way) running on time.

The parties opposed to the increases argue that faster trains are more dangerous. The City in particular argues this point, citing Commissioner Casad's dissent in the 1990 decision cited above. However, the dissent is not representative of what the Commission actually decided in that case. In any event, the parties opposed to the increases were unable to present any persuasive evidence, other than an argument based on intuition, that faster trains are more dangerous.¹

It was agreed that faster trains would derail with greater force than slower trains, posing a slightly increased risk for puncture of a container carrying hazardous materials. Matt Henry, director of safety and hazardous materials for Burlington Northern, testified about the increased risk. In 1993 Burlington had 17 accident releases of hazardous materials. This is less than 1/10th of 1% of all the hazardous materials shipments that year. There were no fatalities or injuries associated with those accidents. Based on the information in exhibit #7, speed was not a factor in those accidents.

Public Comment

Sixteen witnesses offered public comment in this matter. For the most part, they opposed the train speed increases. Some who supported the passenger train increases nonetheless opposed the freight train increases. These witnesses expressed concern about the increased risks of a ruptured

¹Both sides in this case presented data and statistics regarding accidents and train speeds. Unfortunately, the information does not clearly support either position. For example, it is not useful to know that more accidents occur at 50 m.p.h. than 30 m.p.h. unless one also knows how many trains travel at those speeds and for how long. If trains go 50 m.p.h. 100 times more frequently, or for hundreds of more miles than they go 30 m.p.h., it is irrelevant if there are twice as many accidents at the higher speed, because as a percentage, the accident figure would be lower overall. On the other hand, if only one train a month goes 120 m.p.h., but has two accidents a year at that speed, the raw data seems low -- only two accidents a year -- but the statistical calculation is very high, over 16%.

container if a train derailed at a higher speed. They point out the residences and businesses which line the tracks and the delicate Puget Sound marine environment on the west of the tracks which might be devastated in the event of a hazardous material spill. Other witnesses expressed general displeasure with the noise, vibration, and soot associated with living near railroad tracks.

Positions of the Parties

Petitioners

The petitioners contend that the train speed increases are necessary for the proposed service and that faster trains do not present a higher safety risk. Petitioners presented witnesses experienced in the operation of trains who established that faster trains tend to command more respect from motorists who are less likely to try to beat the train or go around gates. Petitioners argue that the increased risk of a ruptured container is so slight as to be outweighed by the operational requirements.

The petitioners argue that the presence of trespassers is a problem nationwide and is not properly characterized as an "essentially local safety hazard." They further note that although the Edmonds waterfront may be unique in Washington state, it is very similar to seacoast resort communities in Connecticut and Rhode Island. There, cars also cross train tracks to board ferries and trains are operated at speeds in excess of 100 m.p.h. Petitioners oppose Staff's recommendation that fencing be installed as a condition precedent to the speed increases, arguing that the City's involvement in the permitting process could effectively paralyze the process.

Finally, petitioners note that although the increased speeds only save one minute, each speed increase is necessary to the service. Each affected community asserts that it is uniquely situated and that a denial of the increase for it will not affect the overall service. Petitioners agree that one speed increase might not affect the service, but the cumulative effect of a denial of several small increases based on each community's asserted uniqueness would defeat the service proposal.

City of Edmonds

The City of Edmonds supports the reestablishment of passenger train service between Seattle and Vancouver, B.C. The City opposes any increase in passenger or freight train speeds. In asking the Commission to deny the petition for speed increases, the City contends that the public interests involved must be balanced to address safety issues while allowing the

public access to the waterfront. The City points to the present and future plans for development of a multi-modal facility for train and ferry passengers. This facility will cost hundreds of millions of dollars when it is finally completed. It will also achieve grade separation between the tracks and the ferry terminal access route. The City contends that local conditions create a unique and dangerous condition and that denial for this stretch alone would not set a precedent for other locations and would not kill the proposed service. The City further suggests that Burlington be encouraged to improve safety by fencing and by considering dual tracking to eliminate the bottleneck through the city.

Commission Staff

Commission Staff argues that the train speed increases should be granted only on the condition that Burlington install and repair fencing along the tracks and install stop signs and crossbucks on both sides of the Haines Wharf crossing.

Commission Staff inspected the tracks in Edmonds and found evidence of high public usage and trespassing over and near the railroad tracks. In particular, Staff would require someone (Staff takes no position on who this is) to repair fencing along Brackett's Landing Park and to install new fencing on the right-of-way along Sunset Avenue and at the end of Ocean Avenue. Staff notes that the installation of fencing may require a permit under the Shorelines Management Act and would therefore require a permit from the City Council.

Staff contends that the high incidence of trespassers and the development and public use of the waterfront is a local safety hazard which warrants a denial of the speed increases unless the above mentioned safety improvements are made. If the safety improvements are not made, Staff recommends that speed increases be permitted only north of MP 20, as requested by the petitioners.

Citizens for Waterfront Access and Safety

This party did not file a brief. However, its position at the hearing was that the requested increases should be denied for safety reasons. This party urged the Commission to keep in mind the following nine factors in considering the speed increases: sight distances; accident history; adjacent land use; motor vehicle traffic volumes; train frequency; track conditions; existing signs and signals; train control; and, municipality support.

Discussion

It is concluded that the petitioners have established that the speed limits should be increased as requested. The credible and persuasive expert testimony of Mr. Nelson, Mr. Henry, and others establishes that the proposed speeds are safe and that the operation of passenger and freight trains will benefit from the speed limit increases.

The Commission must set train speeds based on a consideration of the hazards presented and the practical operation of the trains. Here, there is no question that the practical operation of the trains requires both passenger and freight train increases. The single track through Edmonds is a bottleneck and the only way to increase capacity is to increase speeds. The petitioners have established that the future Amtrak service is dependent on all of the speed limit increases. The successful operation of freight and passenger service requires that the petitions be granted.

This order notes the concern of the public and the City about trespassers, the density of population in the area, and the high public use of the area around the tracks. The Commission considered these factors in 1990 and concluded that the trespassers amounted to an essentially local safety hazard and denied some speed increases. This order must consider that question too and decide whether local conditions constitute an essentially local hazard and whether maintaining speeds as they are would reduce or eliminate that hazard.

This order concludes that the local conditions in Edmonds do not constitute an essentially local safety hazard. As established by the testimony of Mr. Clark and the witnesses from Burlington Northern, trespassers are a universal problem for railroads. There is nothing in this record to indicate that the trespassing in Edmonds is so different in character or quantity as to constitute an essentially local hazard. Even if it were concluded that trespassers and public use amounted to a local safety hazard, it is not established that maintaining speeds at the current level would reduce or eliminate the hazard. Thus, lower speed limits could not be justified on that basis.

Finally, this order addresses the suggestions by Staff that the petitioners repair fencing along Brackett's landing, install fencing along Sunset and Ocean Avenues, and install crossbucks and stop signs on both sides of the Haines Wharf crossing. The Haines Wharf issue was addressed in the 1990 proceeding. Burlington was ordered at that time to install stop signs and crossbucks on both sides of that private crossing. If those signs are not in place yet, this order agrees that the

petitions in this case should be conditioned upon their installation.

With regard to the fence at Brackett's Landing, it does seem reasonable to require Burlington to repair it, if the fence is the property of the railroad and is on the right-of-way. If not, then it should not be required. It is not clear from this record who owns the fence. Thus, this order will not require Burlington to make the suggested repairs.

The fences at Sunset and Ocean Avenues is the final issue. The City concurs that fences should be installed there. However, there will likely be opposition by local residents, and it seems likely that the railroad would have to obtain a permit from the City to install the fences. Further, it is clear from the record that there are already substantial obstacles to access of the railroad tracks, including a steep bluff (overgrown with berry bushes in some places), which do not offer significant impediment to determined beachgoers. All in all, this order concludes that the speed limit increases should not be conditioned upon the installation of a fence, first because it is not something the railroad could do unilaterally, and second because it would not make a significant difference in terms of trespasser access and safety.

Based on the file and record in this matter, the undersigned Administrative Law Judge makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate speed limits of the operation of railroad trains.

2. On March 3, 1994, the Burlington Northern Railroad, the Washington State Department of Transportation and the National Railroad Passenger Corporation (Amtrak) requested an increase in passenger train speed limits through Edmonds, Washington.

The petition seeks the following maximum speeds for trains in the city of Edmonds:

Passenger: Raise from 50 m.p.h. to 60 m.p.h.
 from milepost 17 (south corporate
 limits) to milepost 20.

 Raise from 45 m.p.h. to 50 m.p.h.
 from milepost 20 to milepost 22
 (north corporate limits).

Freight: Raise from 40 m.p.h. to 50 m.p.h.
 from milepost 17 to milepost 20.

 Raise from 40 m.p.h. to 45 m.p.h.
 from milepost 20 to milepost 22.

3. The requested train speed limit increases with regard to Edmonds are commensurate with the hazards presented by the operation of trains and the practical operation of these trains.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this proceeding.

2. The following speed increase requests are commensurate with the hazards presented and the practical operation of the trains:

Passenger: Raise from 50 m.p.h. to 60 m.p.h.
 from milepost 17 (south corporate
 limits) to milepost 20.

 Raise from 45 m.p.h. to 50 m.p.h.
 from milepost 20 to milepost 22
 (north corporate limits).

Freight: Raise from 40 m.p.h. to 50 m.p.h.
 from milepost 17 to milepost 20.

 Raise from 40 m.p.h. to 45 m.p.h.
 from milepost 20 to milepost 22.

3. The local conditions in Edmonds, including trespassers and public use of the waterfront, do not constitute an essentially local safety hazard. Maintaining speeds at their present levels would not appreciably reduce the general safety hazards which exist in connection with railroad operations.

ORDER

IT IS HEREBY ORDERED That the petition to increase the speed limits for trains within Edmonds is granted, conditioned on the prior installation of a stop sign and crossbucks on each side of the Haines Wharf crossing, as follows:

Passenger: Raise from 50 m.p.h. to 60 m.p.h. from milepost 17 (south corporate limits) to milepost 20.

Raise from 45 m.p.h. to 50 m.p.h. from milepost 20 to milepost 22 (north corporate limits).

Freight: Raise from 40 m.p.h. to 50 m.p.h. from milepost 17 to milepost 20.

Raise from 40 m.p.h. to 45 m.p.h. from milepost 20 to milepost 22.

DATED at Olympia, Washington, and effective this 16th day of February, 1995.

OFFICE OF ADMINISTRATIVE HEARINGS



LISA A. ANDERL
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., PO Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers,

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briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.