

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of the	)	
WASHINGTON STATE DEPARTMENT OF	)	DOCKET NO. TR-940288
TRANSPORTATION, BURLINGTON	)	
NORTHERN RAILROAD COMPANY and	)	COMMISSION DECISION AND
THE NATIONAL RAILROAD PASSENGER	)	ORDER AFFIRMING INITIAL
CORPORATION for Modification of	)	ORDER ON CONDITION;
Order Regulating the Speed of Passenger	)	GRANTING PETITION TO
and Freight Trains in Edmonds, Washington.	)	INCREASE TRAIN SPEED LIMITS
.....)	)	

**NATURE OF PROCEEDINGS:** This is a request by Burlington Northern Railroad Company, the Washington State Department of Transportation, and the National Railroad Passenger Corporation to increase passenger and freight train speed limits through the City of Edmonds. The City opposes the speed limit increases.

**INITIAL ORDER:** An initial order entered on February 16, 1995, by Administrative Law Judge Lisa Anderl, would grant the petition. It would conclude that the proposed speeds are safe, and that the operation of passenger and freight trains will benefit from the speed limit increases.

**ADMINISTRATIVE REVIEW:** The City seeks administrative review. It contends that existing safety problems should result in a denial of train speed increase until safety issues are resolved by grade separation, fencing, and pedestrian beach access by grade separated crossings. The staff of the Washington Utilities and Transportation Commission agrees with the City that certain fencing should be required as a condition of raising the speed limits; the Commission Staff otherwise supports the initial order. The petitioners support the initial order.

**COMMISSION:** The Commission will grant review. It affirms the initial order, on condition that certain fencing is first built.

**APPEARANCES:** Rexanne Gibson, attorney, Bellevue, represents the petitioner, Burlington Northern Railroad Company (Burlington). Jeanne A. Cushman, assistant attorney general, Olympia, represents the petitioner, Washington State Department of Transportation (DOT). Alden Clark, Senior Director - Contract Operations, represents the National Railroad Passenger Corporation (AMTRAK), W. Scott Snyder, attorney, Seattle, represents the respondent, City of Edmonds (Edmonds or the City). Gary Jones, Edmonds, represents intervenor Citizens for Waterfront Access and Safety. Ann Rendahl, assistant attorney general, Olympia, represents the Washington Utilities and Transportation Commission (Commission Staff).

**MEMORANDUM**

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.

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 maintain speeds higher than the current limits as they approach the curves, and begin to speed up more quickly as they leave the curves. 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 currently operates a passenger train through Edmonds once per 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 re Petition of the City of Edmonds, In re Petition of the National Railroad Passenger Corporation, Docket Nos. TR-2311 and TR-2248 (July 1990). 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 present there 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 directly adjacent to 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.

The increased speed limits will allow AMTRAK to reduce its running time between Seattle and Vancouver, B.C., Canada, by approximately one minute, assuming a stop in Edmonds. If the train did not stop in Edmonds, the increased speeds would take one and one-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 a 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 initial order would grant the petition. It would conclude that the proposed speeds are safe, and that the operation of passenger and freight trains will benefit from the speed limit increases.

The City seeks administrative review. It contends that existing safety problems should result in a denial of train speed increases until safety issues are resolved by grade separation, fencing, and pedestrian beach access by grade separated crossings. The Commission Staff agrees with the City that certain fencing should be required as a condition of raising the speed limits; the Commission Staff otherwise supports the initial order.

A late-filed answer was provided by the petitioners. The Commission requires compliance with the deadlines for filing pleadings, and may reject or disregard a document that is not timely filed. RCW 34.05.464; WAC 480-09-780. Network Communications, Inc. v. US West Communications, Inc., Docket No UT-910286; US West Communications, Inc. v. Hogan Communications, Docket No. UT-910781; Order Denying Complaints (February 1992). The Commission will consider the petitioners' answer; in future proceedings we will expect and require compliance with all deadlines for filing pleadings. The petitioners argue that the initial order is correct, that no local safety hazard exists in Edmonds, and that building the fencing recommended by the Commission Staff could unduly delay raising the speed limits through Edmonds.

**Legislative Policy**

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 speeds 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. AMTRAK has agreed to provide such service at the request of the State. 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 DOT 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.

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 one-half hours. AMTRAK will not offer the service unless it can meet its goal of providing the service in under four hours. Washington State and British Columbia have negotiated an agreement to speed clearance through customs which will also help achieve the faster run time.

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.

#### **The Speed Limit Increases Should Be Granted, With Condition**

The City asks that the petition be denied. If the petition is granted, the City views the recommendations of the Commission Staff regarding fencing of a portion of the right-of-way as in the best interests of public safety, and designed to address the prior Commission decision's findings regarding the pattern of trespass. The Commission Staff disagrees with the City's request; it believes that the Commission should grant the petition. It argues, however, that the Commission should condition its grant of the petition on the repair of fencing at the Brackett's Landing Park, the construction of fencing along Sunset and Ocean Avenues, and the placement of a stop sign and crossbucks at the Lebugten Street private crossing.

The petitioners argue that granting the petition for increased freight train and passenger train speeds is critical to the reinitiation of passenger service between Seattle and Vancouver, B.C. They allege that they have established by credible evidence that no local safety hazard exists to justify the condition that fencing be installed. They argue, further, that if fencing is required, it could delay granting the speed limit increases.

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 on the practical operation of the trains.

The Federal Rail Safety Act, 45 U.S.C. § 421, et seq., 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. Pursuant to the Chapter 81.48 RCW, the Commission may set speeds at lower than the maximum allowed by Federal Railroad Administration regulations. See, In re Petition of the City of Edmonds, In re Petition of the National Railroad Passenger Corporation, Docket Nos. TR-2311 and TR-2248 (July 1990).

In the prior proceeding considering cross petitions to raise and lower the maximum speed limit in the City of Edmonds, the Commission discussed the distinction between the universal hazard presented by railroads, and local safety hazards which are not generally found in other areas. See, In re Petition of the City of Edmonds, In re Petition of the National Railroad Passenger Corporation, Docket Nos. TR-2311 and TR-2248 (July 1990). The Commission concluded there that even though trespassers are a universal problem for railroads, the amount of trespassing in a one mile area of Edmonds was so great as to constitute a local safety hazard not generally found in other areas. In that proceeding the Commission granted AMTRAK's request to increase passenger train speeds from MP 19 to MP 21.75, on condition that a stop sign and crossbucks be installed for eastbound traffic at the Haines Wharf/Lebugten Street crossing. Id., page 10. However, the Commission denied AMTRAK's request to increase the passenger train speed from MP 17 to MP 19, due to the local safety conditions in that area. Id.

The City argues that the initial order ignores the findings contained in the 1990 decision regarding the danger to public health and safety created by the unique configuration of the Burlington Northern tracks as they run through Edmonds. It notes that the tracks are built along the shoreline of Puget Sound and separate citizens from many miles of public and private beach and tidelands. The tracks sever the Edmonds waterfront, public parks, beaches, the Edmonds Senior Center, the Port of Edmonds, boat ramps, a fishing pier, and the Washington State Ferry System's Edmonds Ferry Terminal from the public.

The City has initiated a program for grade separation for the tracks through the Edmonds waterfront by construction of a multimodal facility. It has embarked upon a project which will involve the expenditure of in excess of two hundred million dollars in order to alleviate the existing unsafe situation. It argues that these steps were undertaken, in part, to "keep faith with the direction of the Commission in its 1990 decision." Petition, page 4.

Due to evidence of continued trespassing presented in this proceeding, the Commission Staff recommended that passenger and freight train speeds be increased under the following conditions: (1) Fences should be constructed on the bluff parallel to Sunset Avenue and between the railroad track and the parking area on Ocean Avenue; (2) The fence along Brackett's Landing Park should be repaired; and (3) Crossbucks and stop signs should be installed at Lebugten Road.<sup>1</sup> The initial order would adopt only the third condition. The

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<sup>1</sup> The Lebugten Road crossing 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. The Commission was dismayed to learn that these safety improvements have not already been made.

Commission Staff argued that RCW 81.44.010 grants the Commission the authority to order Burlington Northern to construct the recommended fencing on its right-of-way, as well as to repair fencing and install proper crossing signs.

The Commission will grant the petition to increase maximum speed limits in Edmonds, conditioned upon all three of the safety improvements recommended by the Commission Staff first being installed. These improvements are necessitated by the local safety hazards present in Edmonds. The characteristics of the waterfront area do not appear to have changed since the 1990 hearings and Commission order. See, 1990 Order at 5-7. The Commission commends the work of the City to improve the safety of the Edmonds waterfront, and agrees with it that the only permanent solution to the existing physically unsafe situation is grade separation.

The Commission also recognizes the Legislative policy that incremental improvements to passenger train service should be made in the high speed corridor. After the improvements required by this order are made, the trains speeds sought will be commensurate with the hazards presented by the operation of trains and the practical operation of these trains.

Based on the file and record in this matter, the Commission 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 railroad train speed limits.

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. A local safety hazard exists; the Commission should deny passenger and freight train speed increases in Edmonds unless certain safety improvements are first made; (1) Fences should be constructed on the bluff parallel to Sunset Avenue and between the railroad track and the parking area on Ocean Avenue; (2) The fence along Brackett's Landing Park should be repaired; and (3) Crossbucks and stop signs should be installed at Lebugten Road.

4. After the improvements required by the prior finding are made, the requested train speed limit increases with regard to Edmonds will be 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 local conditions in Edmonds, including trespassers and public use of the waterfront, constitute an essentially local safety hazard. Absent safety improvements, maximum train speed limits should not increase.

3. After safety improvements required in Finding of Fact No. 3. are completed, the following train speed increase requests will be 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.

**ORDER**

THE COMMISSION ORDERS That the petition to increase the speed limits for trains within Edmonds is granted, after the following conditions are met: (1) Fences shall be constructed on the bluff parallel to Sunset Avenue and between the railroad track and the parking area on Ocean Avenue; (2) The fence along Brackett's Landing Park shall be repaired; and (3) Crossbucks and stop signs shall be installed on each side of the Lebugten Road/Wharf crossing. The following maximum train speeds are approved:



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.

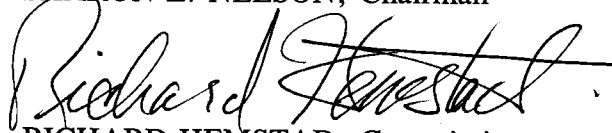
Raise from 40 m.p.h. to 45 m.p.h. from milepost 20 to milepost 22.

DATED at Olympia, Washington, and effective this 12th day of April 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).