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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

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4 In the Matter of the Petition) Docket No. TR-990656
of the) Volume III
5) Pages 40-49
BURLINGTON NORTHERN SANTA FE)
6 RAILWAY (BNSF) to Increase)
Passenger and Freight Train)
7 Speeds to BNSF's Railroad)
Between the Southern Most)
8 Boundary of Seattle's City)
Limits to the Northern Most)
9 Boundary of the City of Tacoma.)
_____)

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11 A hearing in the above matter was
12 held on March 19, 2001, at 1:33 p.m., at 1300
13 Evergreen Park Drive Southwest, Olympia, Washington,
14 before Administrative Law Judge DENNIS MOSS.

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16 The parties were present as
17 follows:

18 CITY OF PUYALLUP, by W. Scott
Snyder, Attorney at Law, Ogden, Murphy, Wallace, 1601
19 Fifth Avenue, Seattle, Washington, 98101.

20 BURLINGTON NORTHERN SANTA FE, by
Robert E. Walkley, Attorney at Law, 20349 N.E. 34th
21 Court, Sammamish, Washington, 98074.

22 SOUND TRANSIT, by Elizabeth
Thomas, Attorney at Law, Preston, Gates & Ellis, 701
23 Fifth Avenue, Suite 5000, Seattle, Washington 98104
(Appearing Via Teleconference Bridge.)

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Barbara L. Nelson, CSR
25 Court Reporter

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WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION, by Jeff Stier, Assistant Attorney
General, P.O. Box 40113, Olympia, Washington 98504
(Appearing Via Teleconference Bridge.)

THE COMMISSION, by Jonathan
Thompson, Assistant Attorney General, 1400 Evergreen
Park Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

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1 JUDGE MOSS: All right. Let's be on the
2 record. This is Dennis Moss at the Washington
3 Utilities and Transportation Commission. We are
4 convened this afternoon at the Commission's
5 headquarters in the matter captioned Petition of
6 Burlington Northern Santa Fe Railway to increase
7 passenger and freight train speeds to be BNSF's
8 railroad between the southern most boundary of
9 Seattle's city limits to the northern most boundary
10 of the city of Tacoma, Docket Number TR-990656.

11 I want to take appearances. We have a
12 number of people present in the hearing room, and
13 we'll just get the short form of appearance from
14 them, since they've all previously appeared.
15 However, for the benefit of the reporter, I will ask
16 that those of you who are participating by telephone,
17 go ahead and give us your address information, as
18 well. So why don't we just begin here in the hearing
19 room and go around, and then we'll pick up those on
20 the phone. I'll call on you by name.

21 MR. SNYDER: Scott Snyder, Ogden Murphy
22 Wallace, appearing for the City of Puyallup.

23 MR. WALKLEY: Robert E. Walkley, appearing
24 for Burlington Northern Santa Fe Railway Company.

25 MR. THOMPSON: Jonathan Thompson, Assistant

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1 Attorney General, appearing for Commission Staff.

2 MR. SCHULTZ: I am Jeff Schultz, rail
3 operations technical expert with the Washington State
4 Department of Transportation.

5 JUDGE MOSS: Okay. And I'll just note that
6 Ms. Flores is on the line for Sound Transit, but Ms.
7 Thomas, I guess you'll actually enter the appearance.

8 MS. THOMAS: This is Elizabeth Thomas at
9 Preston, Gates and Ellis, 5000 Columbia Center, 701
10 Fifth Avenue, Seattle, Washington, 98104.

11 JUDGE MOSS: Okay. That's fine. Mr.
12 Stier, go ahead.

13 MR. STIER: Yes, Jeff Stier, Assistant
14 Attorney General, representing the Department of
15 Transportation. My address is P.O. Box 40113,
16 Olympia, Washington, 98504.

17 JUDGE MOSS: Could you give the spelling of
18 your last name, Mr. Stier?

19 MR. STIER: S-t-i-e-r.

20 JUDGE MOSS: Thank you. All right. Is
21 there anyone else who wishes to enter an appearance
22 today? Hearing nothing, let's move on to business.

23 Our first order of business today really is
24 a status conference. Somebody bring me up to speed
25 on the -- I guess that's a poor turn of phrase in

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1 this particular proceeding, isn't it? If someone
2 will, however, bring me up to date on the status of
3 the discussions that have been ongoing, and I'd leave
4 the floor open to whoever wishes to speak to that.

5 MR. SNYDER: Scott Snyder. The City of
6 Puyallup and the Burlington Northern Railroad have
7 resolved their discussions generally along the lines
8 that were presented at the last prehearing
9 conference. The agreement's been signed by my client
10 and is being messengered this morning to a Burlington
11 Northern representative who's in the community.

12 Based upon that settlement, I've been
13 authorized to make a request for withdrawal of the
14 city's requests for an adjudicative procedure, and
15 basically to withdraw my name from the mailing list
16 at this point.

17 JUDGE MOSS: Well, we won't withdraw your
18 name from the mailing list until we close the docket.

19 MR. SNYDER: Certainly.

20 JUDGE MOSS: So you want to withdraw the
21 request for adjudicative proceeding, all right. And
22 where will that leave us procedurally? This was
23 actually the Railroad's application, so what more do
24 we need to do?

25 MR. WALKLEY: Your Honor, this is Robert

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1 Walkley. Mr. Thompson and I were discussing that,
2 and I think procedurally where this leaves us is as
3 if the community of Puyallup had not requested a
4 hearing. And what would normally happen in that kind
5 of thing is that an order would be prepared by
6 Commission Staff, would ordinarily be reviewed by the
7 applicant, and once that was worked out, it would be
8 placed on the Commission's open meeting event at some
9 point. And that would be -- that type of procedure
10 would be satisfactory to the Burlington Northern
11 Santa Fe Railway Company.

12 We think we can work out a resolution of
13 our differences about the jurisdiction of the
14 Commission. We have done so in a recent case, and we
15 think we probably can do that to the satisfaction of
16 both the Commission and the Railway Company, as well
17 as WSDOT and Sound Transit. So I would suggest that
18 that would be one way to proceed.

19 The other way to proceed is perhaps if you
20 were to attempt to draft up a draft order and
21 circulate it to the parties, we could work on it that
22 way, as well. I don't know how the Commission would
23 prefer to have the order prepared, but generally Mr.
24 Roswell, it is my understanding, generally does
25 prepare those orders if there is not an adjudicative

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1 proceeding. So I think the first procedure I
2 described would probably be satisfactory.

3 JUDGE MOSS: Okay. I think the -- I
4 appreciate the recommendations that you've made and I
5 -- the proceeding is a little different in that we
6 have gone a ways down the path of prehearing
7 conferences and so forth. So what I would propose we
8 do is I think I want to follow your first suggestion
9 and have staff prepare that and present it to me. Of
10 course, it should be filed, and I will in turn
11 present that to the Commission and meet with them and
12 to ascertain whether they require any further
13 process, because of course we will want their
14 signature on the order at some point, and that will
15 be the most efficient way to learn that.

16 In the event that the Commissioners, or the
17 Commission, I should say, decides that some further
18 process is required, then I would issue appropriate
19 notice and we would carry forward with that. To the
20 extent the Commission decides that it can simply vote
21 notationally or that this should be presented through
22 the open meeting forum, then of course we can go that
23 route.

24 So basically, what I'm suggesting is that I
25 have in mind what it is the parties wish to

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1 accomplish, and I will walk that through the process
2 and we will see what needs to be done. But I think
3 the key element here, as Mr. Snyder described it, the
4 main thrust has been resolved, apparently, and there
5 will be a written agreement, and that will be
6 submitted as part of the record.

7 MR. SNYDER: Very good.

8 JUDGE MOSS: We'll just make that part of
9 the record. And once I have all that and the order
10 or proposed order, then I can walk it through the
11 process and we'll get something finalized.

12 All right. Is there any other business we
13 need to conduct today? Am I missing anything that
14 you all should remind me of at this point so that we
15 don't have to meet again?

16 MR. SNYDER: Your Honor, would it be
17 sufficient if I attached a copy of the agreement to
18 my request to withdraw?

19 JUDGE MOSS: Absolutely. That would be one
20 way to submit that. Sure, that would be fine. Okay.
21 And yes, I would like something in writing on the
22 withdrawal. We typically like to have that for the
23 completeness of the file. Okay.

24 MR. THOMPSON: Your Honor, just one
25 question. Are you looking for something like a

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1 stipulation that's signed by all of the various
2 parties or just --

3 JUDGE MOSS: I think that in this instance
4 we really, as long as it's resolved between the
5 principal parties and there's no objection, that
6 would be sufficient. I don't know that it would be
7 necessary, for example, for Staff, the Commission
8 Staff, to sign onto that, but as long as Commission
9 Staff has no objection, once that's received, I'll
10 put out a brief notice to provide the due process
11 opportunity for parties to object, and I'll make that
12 a fairly short turnaround, since we have everybody
13 represented and everybody seems to be in agreement on
14 this approach. So will that be satisfactory, then?

15 MR. THOMPSON: Yes.

16 JUDGE MOSS: All right, good. Anything
17 else? All right. Well, brief though it was, I
18 appreciate you all being here today and
19 participating, because it's time well spent when we
20 can bring a proceeding more quickly to a conclusion
21 that is satisfactory to the various participants. I
22 thank you all very much.

23 MR. THOMAS: Thank you for letting Ms.
24 Flores and me participate by phone.

25 JUDGE MOSS: Oh, sure. We'll be off the

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1 record.

2 (Proceedings adjourned at 1:43 p.m.)

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