

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

2 In the Matter of the Petition)
of the WASHINGTON STATE)
3 DEPARTMENT OF TRANSPORTATION,)
BURLINGTON NORTHERN RAILROAD)
4 COMPANY, and THE NATIONAL)
RAILROAD PASSENGER CORPORATION)
5 for Modification of Order)
Regulating the Speed of)
6 Passenger Trains in)
Marysville, Washington.)
7 -----)

DOCKET NO. TR-940309
VOLUME 1
Pages 1 - 258

STATE OF WASHINGTON
UTIL. & TRANSPORTATION
COMMISSION
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8 A hearing in the above matter was held
9 at 9:20 a.m. on January 19, 1995, at City Council
10 Chambers, 1635 Grove Street, Marysville, Washington
11 before Administrative Law Judge ALICE HAENLE.

12
13 The parties were present as follows:

14 WASHINGTON UTILITIES AND TRANSPORTATION
15 COMMISSION STAFF, by ANN RENDAHL, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
16 Olympia, Washington 98504.

17 BURLINGTON NORTHERN RAILROAD COMPANY, by
REXANNE GIBSON, Attorney at Law, 110 - 110th Avenue NE,
18 Suite 607, Bellevue, Washington 98004.

19 THE NATIONAL RAILROAD PASSENGER
CORPORATION, by ALDEN L. CLARK, Consultant, 60
20 Massachusetts Avenue NE, Washington, D.C. 20002

21 WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION, by JEANNE CUSHMAN and MARY E.
22 FAIRHURST, Assistant Attorneys General, P.O. Box
40113, Olympia, Washington 98504-0113.

23
24 Cheryl Macdonald, CSR
25 Court Reporter

ORIGINAL

APPEARANCES (Cont.)

CITY OF MARYSVILLE, by THOM GRAAFSTRA and
BRUCE KEITHLY, Attorneys at Law, 21 Avenue A,
Snohomish, Washington 98290.

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	I N D E X					
1	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
2	MALLERY	11	28	43, 47	45	42
3	CLARK	49	63	71		
	ROWLEY	72	88	98	101	97
4	MILLER	105				
	BRIGGS	108				
5	CROW	113				
	EVERETT	115				
6	SULLIVAN	120				
	NELSON	123	130	140		
7		203	204			
	FRAZIER	142	157			
8	DRISCOLL	167				
	QUICKSALLL	172	179	180		
9	HENRY	182	195	201		
	BERG	207	221			232
10	ZABELL	238	250			253

11	EXHIBIT	MARKED	ADMITTED
	1	8	10
12	2	8	10
	3	8	10
13	4	8	10
	5	8	189
14	6	8	189
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19	16	206	221

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P R O C E E D I N G S

1
2 JUDGE HAENLE: The hearing will come to
3 order. The Washington Utilities and Transportation
4 Commission has set for hearing at this time and place
5 docket No. TR-940309. That docket is the petition of
6 the Department of Transportation, Burlington Northern
7 Railroad and the National Railroad Passenger
8 Corporation for modification of an order regulating
9 the speed of passenger trains in Marysville,
10 Washington. The hearing is being held at Marysville
11 on January 19, 1995. The hearing is being held before
12 Administrative Law Judge Alice L. Haenle of the Office
13 of Administrative Hearings and proper notice was sent
14 to all parties. This hearing is held under the
15 Administrative Procedures Act and the statutes and
16 rules of the Commission to hear testimony of witnesses
17 in support of the petition and to hear from persons
18 with an interest which might be adversely affected by
19 the proposal to increase train speed limits.

20 The current and requested speeds as listed
21 on the petition are the following: For passenger
22 trains between milepost 37.8 and milepost 38.5, the
23 increase from 25 to 30 miles per hour; between
24 milepost 38.5 and milepost 41.0 from 25 to 50 miles
25 per hour; and between milepost 41.0 and milepost 43.3

1 from 25 to 79 miles per hour. For freight trains
2 between milepost 38.5 and milepost 43.3 from 25 to 50
3 miles per hour.

4 The Commission is aware of public concern
5 about a proposal to open the Fifth Street grade
6 crossing. I believe there is a petition filed with
7 the Commission to that effect but that is a separate
8 matter. That's not being set for hearing today.
9 There will be a separate hearing on that, though I
10 have no jurisdiction over that matter, so that won't
11 be addressed. Members of the public, you may have
12 that concern but we won't be taking that testimony
13 today. That will be a separate hearing.

14 I would like to take appearances at this
15 time, please, beginning with counsel for the
16 petitioners, in any order you like.

17 MS. GIBSON: I'm Rexanne Gibson. I'm
18 representing Burlington Northern Railroad.

19 MS. CUSHMAN: Jeanne Cushman representing
20 Washington State Department of Transportation.

21 JUDGE HAENLE: I guess you should give your
22 addresses, too.

23 MS. CUSHMAN: P.O. Box 40113, Olympia,
24 Washington 98504-0113.

25 JUDGE HAENLE: Thank you.

1 MS. GIBSON: Rexanne Gibson, 110 - 110th
2 Avenue Northeast, Suite 607, Bellevue, Washington,
3 98004.

4 JUDGE HAENLE: Thank you.

5 MS. FAIRHURST: Mary Fairhurst from the
6 Department of Transportation. Same address as Ms.
7 Cushman.

8 JUDGE HAENLE: Mr. Clark.

9 MR. CLARK: For Amtrak, Alden Clark,
10 60 Massachusetts Avenue Northeast, Washington, D.C.
11 20002.

12 JUDGE HAENLE: If you want to be at the
13 counsel table, Mr. Clark, you do have that
14 opportunity.

15 For the city.

16 MR. KEITHLY: For the city, Bruce Keithly
17 at 21 Avenue A, Snohomish, 98201, and later on this
18 morning and throughout the rest of the hearing it will
19 be Tom Graafstra at the same address.

20 MS. RENDAHL: For the Commission staff, Ann
21 Rendahl, 1400 South Evergreen Park Drive Southwest,
22 Olympia, Washington 98504.

23 JUDGE HAENLE: I explained before we went
24 on the record the difference between persons in the
25 audience who want to give testimony as members of the

1 public and persons who want to have intervenor status.
2 Intervenor status would mean you would have the
3 opportunity to cross-examine witnesses from the other
4 parties, participate in briefing or closing
5 statements, opening statements, that kind of thing. I
6 asked before we went on the record whether there were
7 appearances by any persons or group requesting
8 intervenor status. I will ask again if there's anyone
9 who wanted to be an intervenor not as a person giving
10 testimony in the public portion of the hearing.

11 The record should reflect there was no
12 response.

13 Before we went on the record we discussed
14 scheduling of witnesses for the petitioner, the
15 respondent, the Commission and members of the public.
16 For the benefit of those attending the hearing who are
17 residents, property owners or otherwise interested in
18 this matter, we have scheduled two times to take
19 testimony from members of the public. I wanted you to
20 have the opportunity to hear evidence from witnesses
21 for the parties before you give your statements so
22 that you will understand the issues as presented by
23 the parties, but I do understand that some people have
24 scheduling conflicts that would not allow them to come
25 back at the end.

1 So, what we agreed before we went on the
2 record then is that we would take testimony from
3 members of the public at 1:00 this afternoon and then
4 the others who are able to stay through the parties'
5 presentations we would take testimony at 1:00 tomorrow
6 afternoon. This isn't to suggest you give testimony
7 twice. This is to indicate if anyone has a scheduling
8 conflict that wouldn't allow you to wait until you've
9 heard the presentations of the parties, we will take
10 your testimony this afternoon at 1:00.

11 Are there any preliminary matters before we
12 proceed other than the marking of the documents?
13 Anyone?

14 (Marked Exhibits 1 - 14.)

15 JUDGE HAENLE: The documents that were
16 given to me I premarked before we went on the record
17 as follows: Exhibit 1 for identification a one-page
18 document entitled Chapter 47.79 High Speed Ground
19 Transportation.

20 Exhibit 2 for identification in three
21 pages, a document entitled Resolution No. 445.
22 Incidentally there are copies of some of these
23 documents on the table beside the door when you came
24 in if you want, members of the public, if you want
25 copies of the documents that we're dealing with.

1 Exhibit 3 for identification is a map
2 entitled Marysville, Washington BN Track. This is
3 Exhibit 3 for identification.

4 Exhibit 4 for identification, a small blue
5 book entitled FRA Traffic Safety Standards.

6 Exhibit 5 for identification, a one-page
7 document entitled Table 25.

8 Exhibit 6 for identification, a one-page
9 document entitled Figure 1 Operational Data.

10 Exhibit 7 for identification, a one page
11 document, Figure 29, Hazardous Material Releases,
12 1993.

13 Exhibit 8 for identification entitled Table
14 16.

15 Exhibit 9 for identification entitled
16 Figure 5 Derailments.

17 Exhibit 10 for identification entitled
18 Figure 9 Train Accidents involving HAZMAT, H A Z M A
19 T.

20 Exhibit 11 for identification, Table 28.

21 Exhibit 12 for identification, Table 27.

22 Exhibit 13 for identification, Table 26.

23 And Exhibit 14 for identification is a
24 series of photographs which, when put together, is an
25 aerial photo of the area. There's going to be a large

1 one used for display purposes during the hearing.
2 This is the small one to go into the record.

3 It's my understanding that counsel have
4 stipulated to the entry of several of the documents
5 but not all of them. My understanding was that the
6 ones that were -- these are petitioners' documents
7 incidentally. It's my understanding that the ones
8 that were stipulated were 1 through 4. Is that
9 correct, Mr. Keithly?

10 MR. KEITHLY: That is correct.

11 JUDGE HAENLE: Is that correct, Ms.
12 Rendahl?

13 MS. RENDAHL: That is correct.

14 JUDGE HAENLE: I will enter 1 through 4
15 into the record then and we'll need to deal with the
16 others as presented by the witnesses then.

17 (Admitted Exhibits 1 - 4.)

18 JUDGE HAENLE: Anything else before we take
19 the first witness?

20 MS. GIBSON: Nothing else.

21 JUDGE HAENLE: Go ahead, then. Did I
22 understand correctly that Ms. Cushman will be handling
23 the first witness and Ms. Gibson the others for
24 petitioner?

25 MS. GIBSON: Yes, that's right, Your Honor.

1 JUDGE HAENLE: Go ahead and call your first
2 witness, then.

3 MS. CUSHMAN: First witness for Washington
4 State Department of Transportation will be Mr. Gilbert
5 Mallery.
6 Whereupon,

7 GILBERT MALLERY,
8 having been first duly sworn, was called as a witness
9 herein and was examined and testified as follows:

10 JUDGE HAENLE: In order to activate your
11 microphone you need to touch the front of it until the
12 red light comes on. Be sure to speak loudly and
13 slowly so that members of the public can hear and so
14 that the reporter can hear. Go ahead, Ms. Cushman.

15

16 DIRECT EXAMINATION

17 BY MS. CUSHMAN:

18 Q. Mr. Mallery, could you please state your
19 name for the record.

20 A. It's Gil Mallery.

21 Q. And would you please spell your name?

22 A. M A L L E R Y.

23 JUDGE HAENLE: You know, I left out a
24 section. Someone had indicated before the hearing
25 that you all didn't want to give opening statements

1 but I hadn't checked with the city about that. It was
2 the petitioners that indicated they weren't interested
3 in giving an opening statement unless someone else
4 did. I should have checked with you also, Mr.
5 Keithly.

6 MR. KEITHLY: I think you can guess in my
7 case that I don't want to give an opening statement.
8 Thank you.

9 JUDGE HAENLE: Ms. Rendahl.

10 MS. RENDAHL: No.

11 JUDGE HAENLE: Sorry, I left that piece
12 out. Go ahead, sorry to interrupt.

13 Q. Could you state your business address for
14 the record?

15 A. It's the Department of Transportation,
16 Olympia, Washington.

17 FROM THE AUDIENCE: Can't hear.

18 JUDGE HAENLE: Put it right in front of you
19 and get as close as you need to it. And some of
20 you in the back there's some excellent seats up a
21 little closer; if you want to move up that might help
22 a little bit. But you will have to concentrate on
23 speaking into the microphone.

24 A. It's the Washington State Department of
25 Transportation, Transportation Building, Olympia,

1 Washington.

2 Q. Mr. Mallery, what is your position with the
3 Department of Transportation?

4 A. I'm rail branch manager for the Washington
5 State Department of Transportation.

6 Q. And could you please describe your duties
7 in that position?

8 A. I'm responsible for directing and
9 implementing both the passenger rail and freight rail
10 programs for the state of Washington.

11 Q. Mr. Mallery, the Department of
12 Transportation hasn't always had a rail division, have
13 they?

14 A. No, they have not.

15 Q. Why do they have one now?

16 A. They felt that as part of a truly balanced
17 transportation system for the state of Washington
18 there has to be a rail component for both freight and
19 passenger and created a department to implement the
20 rail policy.

21 Q. Do you have your copies of the exhibits?

22 A. I do.

23 Q. Could you please refer to RCW 47.79 which
24 is marked as Exhibit 1?

25 A. Certainly.

1 Q. This exhibit has been stipulated and
2 therefore entered into the record. Referring now to
3 RCW 47.79.020, could you please explain the
4 significance of this statute in relation to the rail
5 program?

6 A. Certainly. The first thing it does is it
7 -- there is included a legislative finding that refers
8 to the projected increase in employment and population
9 and intercity travel within the corridor, and the
10 corridor I referred to is basically the corridor from
11 Vancouver, Washington up through Seattle to Bellingham
12 and on to Vancouver, B.C. In the legislative finding,
13 as a matter of fact, it states that there is a
14 projection over the next 20 years for a 40 percent
15 increase in population within the corridor, a 50
16 percent increase in employment within the corridor,
17 and that these two factors will produce over the next
18 20 years an anticipated increase in intercity travel
19 of some 75 percent. This is significant in that the
20 legislature goes on to state that rail is an
21 efficient, environmentally sound, safe, mode of
22 transportation and is part of a balanced
23 transportation system in the state. They conclude
24 that rail needs to be part of this system.

25 It further goes on and states that a series

1 of goals or objectives are adopted by the legislature
2 within that act of this RCW and included in those
3 objectives is the establishment of passenger rail
4 service between Everett and Vancouver, B.C., and it
5 specifically directs the department to implement this
6 strategy and further directs the department to follow
7 an incremental strategy of building the passenger rail
8 service within the corridor and on a statewide basis.

9 THE WITNESS: Am I speaking loud enough?

10 FROM THE AUDIENCE: No.

11 JUDGE HAENLE: Perhaps if you turn the
12 microphone around to face you. There is a podium
13 but the alternative is to have you stand during all of
14 your testimony. Go ahead.

15 Q. Mr. Mallery, you mentioned that the
16 legislature has directed that an incremental
17 implementation program be used for reinstatement of
18 train service. Could you explain the policy of
19 incremental improvement?

20 A. I certainly can. In fact, the
21 Transportation Commission, Washington State
22 Transportation Commission, has adopted a resolution
23 that directs the department to follow an incremental
24 strategy and it reflects the realization that to
25 achieve the ultimate goal, which is to produce a high

1 speed corridor from Eugene, Oregon all the way up
2 through to Vancouver, B.C., will require in excess of
3 1.2 billion dollars and that it's a reflection that
4 that magnitude of project cannot be funded in any
5 single biennium and that the concept of incrementalism
6 is that you break the large project down into phases
7 that are fundable and that you build it over a number
8 of years.

9 This policy also provides the opportunity
10 for the Commission and the legislature on a biannual
11 basis to review the benefits of that investment and to
12 either accelerate or slow down the investment based on
13 the public's response based on the actual ridership
14 that the service generates.

15 Q. Where does this request for a speed
16 increase fit into the phase program?

17 A. We have as part of our designation as one
18 of the five high speed corridors in the United States
19 a commitment to work towards a speed of 90 miles an
20 hour. Currently we are working in a corridor that is
21 categorized as a class 4 track which has a top speed
22 of 79 miles an hour. The average speed in much of the
23 corridor is currently about 47 miles an hour. And so
24 the incremental strategy is to begin raising the speed
25 throughout the corridor where it can be done in a safe

1 manner so that we can, over time, reduce the run time
2 and make progress towards achieving our ultimate goal
3 which is service at a top speed of 125 miles an hour.

4 Q. Could you please refer now to resolution
5 No. 445 which has been admitted as Exhibit 2. Are you
6 familiar with this document?

7 A. I sure am.

8 Q. What is the significance of this document?

9 A. This is a formal resolution that was passed
10 by the Washington State Transportation Commission in
11 January of 1993. The Commission is charged with
12 setting transportation policy for the state of
13 Washington. The Department of Transportation is
14 charged in carrying out that policy. This resolution
15 basically directs the department to pursue a balanced
16 transportation system of which passenger rail is a key
17 component. The resolution indicates that this
18 direction is based on the Commission's belief that
19 passenger rail is a very safe, a very efficient and
20 environmentally sound mode of transportation and then
21 in the section "therefore be it resolved," I would
22 draw your attention to a couple of key words in the
23 first point. It specifically calls out the
24 incremental strategy that we were just discussing.

25 Point No. 2, it specifically directs the

1 department to re-establish passenger rail service
2 between Seattle and Vancouver B. C., and then going to
3 the last page it also has a reference to the fact that
4 the Commission is directing the department to insure
5 that the designation of the Pacific Northwest rail
6 corridor as one of the five high speed corridors in
7 the country that the department needs to do whatever
8 is necessary to make sure that that designation is
9 maintained, and that specifically again refers to make
10 progress towards achieving a minimum standard speed of
11 90 miles an hour.

12 Q. Mr. Mallery, the term "high speed rail" is
13 a term of art. Could you please explain what it
14 means?

15 A. The Swift Rail Act of 1994 -- and this is a
16 federal legislation -- has defined high speed rail to
17 be 125 miles an hour and higher. The significance is,
18 as I indicated earlier, that currently the Burlington
19 Northern track within the corridor over which Amtrak
20 operates intercity service currently is designated as
21 class 4, which means it has a top speed of 79 miles an
22 hour, and that we are then responsible in carrying out
23 the Commission's directive and the legislative
24 directive because we need to make a series of
25 investments to that infrastructure in terms of track

1 signals, siting improvements so that we can over time
2 raise the top speed of that currently 79-mile-an-hour
3 railroad ultimately in increments up to 112 miles an
4 hour in those segments where it can be operated
5 safely.

6 Q. There's a federal statute known as the
7 Intermodal Service Transportation Efficiency Act.
8 What does that have to do with this project?

9 A. That's a major piece of federal legislation
10 that was passed in 1991. It represents a new way that
11 the federal government is suggesting that the planning
12 and implementation of transportation projects occur.
13 It represents, I think, a milestone in terms of a
14 shift in national policy to put much greater emphasis
15 on intermodal transportation and is one of the reasons
16 that the designated corridor from Eugene, Oregon to
17 Vancouver, B.C. was designated, and it's one of the
18 reasons that the Commission and the legislature have
19 had renewed interest and has adopted as official
20 policy the mandate to re-establish passenger rail
21 service, enhanced service in the corridor and to over
22 time build a true high speed system.

23 Q. Mr. Mallery, what will be the run time for
24 the re-initiated service?

25 A. To be able to offer a competitive service,

1 we have identified it would be three hours 55 minutes
2 one way between Seattle and Vancouver, B.C. To
3 achieve that run time we need to receive approval for
4 higher speeds throughout the corridor, and obviously
5 today's hearing is addressing those speeds that fall
6 within the corporate limits of Marysville.

7 Q. How does the run time of three hours and 55
8 minutes for a re-initiated service compare to the run
9 time for the service when it was discontinued?

10 A. The service between Seattle and Vancouver
11 B.C. was discontinued in 1981. At that time the run
12 time was approximately four hours and 30 minutes and
13 it could be as much as five hours because of delays at
14 the border due to customs. One of the reasons that
15 that service was discontinued is that that period of
16 time, the four hours and 30 minutes, was not construed
17 as an attractive alternative to the automobile or
18 air service and that -- and for that reason service
19 was discontinued. Neither the state of Washington nor
20 Amtrak is interested in reestablishing a service that
21 won't be competitive and will not be able to attract
22 strong ridership. For those reasons we have
23 identified the three hours and 55 minutes as the
24 minimum time necessary to offer a viable service.

25 Amtrak has made it clear in our discussions

1 with the state over the last three years that their
2 ultimate goal is to be in the three and a half hours
3 or less, but as an initial start time three 55 is a
4 time that has been negotiated and is agreeable to both
5 the state and Amtrak.

6 JUDGE HAENLE: I assume you mean it would
7 be a maximum time of three hours and 55 minutes?

8 THE WITNESS: (Nodding head).

9 JUDGE HAENLE: Perhaps I misunderstood.

10 Q. Answer in words.

11 A. As we would like to initiate the service at
12 three hours and 55 minutes.

13 Q. Have you made any agreements with Canada to
14 deal with the issue of customs clearance at the
15 border?

16 A. Absolutely. This whole project, and this
17 is one we probably should emphasize, is really not
18 only a partnership with Amtrak and Burlington Northern
19 but it really is a partnership with the state of
20 Washington and state of Oregon and British Columbia.
21 In that partnership we have been working very closely
22 with the B.C. government over the last two years to
23 address one of the problems with the previous service,
24 which was that the train actually had to stop at the
25 border. Passengers had to leave the train and were

1 held for anywhere from a half hour to 45 minutes while
2 they went through customs. That certainly was not
3 conducive to anybody's concept of a quality service,
4 certainly not consistent with our vision of a high
5 speed reliable service, and so one of the high
6 priority items before service could be re-established
7 was to work out an arrangement where the train would
8 not have to be stopped at the border and that there
9 could be a system of pre-clearance at the Vancouver
10 station for customs and immigration. To do that it's
11 taken about 18 months and it basically has required a
12 bilateral trade agreement to be negotiated between the
13 U.S. and Canada and that that is in final forms and
14 should be approved within the next 60 days.

15 Q. And if that agreement is approved what will
16 happen?

17 A. The advantages of that agreement is that
18 the train will not have to stop at Blaine and go
19 through this half hour, 45-minute delay. It will be
20 able to proceed with no stops after the Bellingham
21 stop into Vancouver and that the customs and
22 immigrations procedures will be handled in the
23 Vancouver station and that it will not detract from
24 the run time of three hours and 55 minutes.

25 A similar procedure will be handled in the

1 southbound direction in that customs and immigration
2 procedures will be handled before passengers are
3 allowed to board the train.

4 Q. Mr. Mallery, this petition is brought
5 jointly by Burlington Northern, Amtrak and WSDOT.
6 What is the relationship between the Washington State
7 Department of Transportation and Amtrak in regard to
8 this petition and this program?

9 A. Amtrak is a quasi-governmental corporation
10 that has federal authorization to exclusively operate
11 intercity passenger service, and the relationship
12 between the state of Washington and Amtrak is a
13 contractual arrangement where the state of Washington
14 is contracting with Amtrak to operate the renewed
15 service between Seattle and Vancouver B.C. We
16 currently, I should indicate, have a contract with
17 Amtrak to operate passenger service between Seattle
18 and Portland.

19 Q. And what is the significance of the
20 relationship between the Washington State Department
21 of Transportation and Burlington Northern in regard to
22 this project?

23 A. Burlington Northern is a class 1 railroad.
24 They are the owner of the rail infrastructure over
25 which Amtrak operates. The state of Washington has a

1 contract with Burlington Northern to have the railroad
2 make the upgrades to signals, track sitings, that are
3 necessary to accommodate the additional passenger
4 service that we are desiring and to be able to operate
5 in a safe and efficient manner. So it's a contract
6 relationship.

7 Q. So would you say that BN and Amtrak are
8 supportive of this effort by the Department of
9 Transportation?

10 A. BN and Amtrak both have been supportive
11 from the beginning of the project and for this project
12 to be successful requires a true partnership between
13 not only Amtrak, the state and Burlington Northern but
14 as well as the communities along the corridor.

15 Q. Mr. Mallery, do you know of any groups in
16 this area that are supporting this project?

17 A. We have made a series of presentations
18 throughout the corridor over the last two years.
19 Within this area the county is -- county commissioners
20 are on record to provide resolution in support of the
21 resumption of passenger rail service to Vancouver B.C.
22 and the Puget Sound Regional Council which is the
23 metropolitan planning organization -- that's a federal
24 designation -- which charges that organization with
25 transportation planning within the Puget Sound region,

1 they have formally also adopted by resolution support
2 for the resumption of passenger rail service between
3 Seattle and Vancouver B.C.

4 Q. Do you have any estimates of what kind of
5 ridership would be expected if the train service was
6 re-initiated?

7 A. Yes, we do. We are estimating that first
8 year annual ridership will be approximately 100,000.
9 We make that projection based on the fact that when
10 service was discontinued some 13 years ago in 1981 the
11 ridership was approximately 80,000 at that time.
12 Since that 1981 period, there has been significant
13 growth in population, employment, and that we feel
14 that the 100,000 estimate is a realistic first year
15 estimate for ridership.

16 Q. Is DOT operating under any other passenger
17 service projects at this time?

18 A. Yes. We are operating under contract with
19 Amtrak a train known as the Mt. Adams Talgo and we
20 have been operating that as a state-supported train
21 since the 1st of April, and that train has met with a
22 very strong response from the public. The ridership
23 numbers for the first six months of operation --
24 that's April 1, 1993 through September 30 -- excuse
25 me, '94 through September 30, 1994, our ridership was

1 approximately 58,000, which is almost double the
2 original ridership estimated for that six-month
3 period.

4 JUDGE HAENLE: Can you spell that name?

5 THE WITNESS: T A L G O.

6 Q. Where does the Talgo operate?

7 A. It operates exclusively between Seattle and
8 Portland. It has daily round trip service.

9 Q. Could you discuss in your opinion what the
10 cumulative effect is of the petitions for speed
11 increases between Seattle and Vancouver B.C.?

12 A. In analyzing what we had to do in terms of
13 upgrading the infrastructure to achieve our three
14 hours and 55 minutes, in addition looking at signals
15 and track conditions, the actual speed limit was a
16 major component of the overall program. What we
17 basically have done is through independent analysis by
18 the state and its consultant, through Amtrak and their
19 expertise and through Burlington Northern's
20 engineering department, we have looked at every mile
21 of the corridor between Seattle and Vancouver B.C. to
22 identify where we could operate at higher speeds in a
23 safe and responsible manner, and that has -- that
24 analysis has been done consistent with not only
25 Burlington Northern's internal engineering

1 requirements but also fully consistent with the
2 Federal Railroad Administration standards and that
3 that analysis has produced a series of speed increases
4 all the way from Seattle through to Vancouver B.C.
5 it was based entirely on the engineering feasibility
6 of the existing track conditions and the track
7 conditions that would exist after the investment of
8 state resources and that it was done with paramount
9 regard to safety in all cases.

10 Q. Do you know where -- can you give some
11 identification as to the localities where the speed
12 increases have been requested?

13 A. Speed increases have been requested in the
14 city of Seattle, Edmonds, Everett, Stanwood,
15 Marysville, Mount Vernon, Burlington, Bellingham as
16 well as unincorporated areas throughout the corridor.
17 We have received to date approval for the requests for
18 the first class cities of Bellingham and Everett
19 and approval is pending in Seattle and we are going
20 through the UTC process in most of the communities
21 that I've mentioned with the exception of Burlington.

22 Q. Ferndale is included also?

23 A. Yes, I'm sorry. Ferndale as well.

24 Q. And what will happen if any of the speed
25 increase petitions are denied?

1 A. In putting together our overall program it
2 was determined that literally every speed increase is
3 necessary to achieve the run time of three hours and
4 55 minutes. You could argue that if you lose a speed
5 increase here or there that it would not be material,
6 but the problem is that if you lose a few seconds here
7 and a few seconds there throughout the overall
8 corridor those second add up and that we would not be
9 able to achieve the run time. We have done a computer
10 simulation that actually takes into consideration
11 speed increases that we're seeking, takes in the track
12 conditions, the locomotive power and those kinds of
13 factors to actually calculate the specific run time,
14 and we do need all the speed increases that we're
15 seeking.

16 MS. CUSHMAN: I have no further questions.

17 JUDGE HAENLE: Questions, Mr. Keithly?

18 MR. KEITHLY: Certainly.

19

20 CROSS-EXAMINATION

21 BY MR. KEITHLY:

22 Q. Mr. Mallery, you've indicated that you feel
23 the Department of Transportation is acting pursuant to
24 RCW 47.79, and I note that that law has a projected
25 goal for the corridor that you're talking about of 150

1 miles an hour as opposed to the 125 miles an hour that
2 you testified to. Why is the department looking to a
3 different goal than the legislature has directed it to
4 look to?

5 A. The RCW does refer to goals of 150 miles an
6 hour for the year 2025 and 2030. Those are long-term
7 goals. What the Commission has done in their
8 resolution 445 has basically set interim goals and
9 that's consistent with the legislative direction to
10 incrementally work towards the true high speed system
11 of 150 miles an hour, so they are fully consistent
12 with one another, and I think that's the context that
13 those should be understood.

14 JUDGE HAENLE: Will you move the microphone
15 up in front of you and be sure that it's turned on,
16 please, sir.

17 Q. Mr. Mallery, what is the Department of
18 Transportation's time deadline for achieving its 125
19 miles an hour average for that corridor?

20 A. The actual timeline is heavily dependent on
21 legislative appropriation and if the funds would be
22 guaranteed, which they couldn't, would probably be
23 about a 10-year period of time to achieve that 125
24 goal. The resolution that the Commission has adopted
25 attached to that is a six-year program of which the

1 first two years actually represents the legislative
2 request for funding and represents the amount of
3 funding that was authorized by the legislature for the
4 '93-95 biennium.

5 During that six-year period of time we did
6 not envision going over the current class 4 track
7 speed of 79 miles an hour. The improvement in run
8 time will be achieved solely by raising the average
9 speed, not the top speed, so in other words between
10 now and 1999 we would not be running faster than 79
11 miles an hour anywhere in the corridor, but we will
12 have improved run time by raising the average speed,
13 which I think I referred to earlier which is
14 approximately, as an example, 47 miles an hour between
15 Seattle-Portland. By raising that average speed we
16 will improve the quality of service.

17 Q. What is the track distance between Seattle
18 and Vancouver?

19 A. I believe it's about 155 miles. I think
20 Mr. Nelson from Burlington Northern can give you the
21 specific number of miles.

22 Q. What class track is required for 125 mile
23 an hour average?

24 A. I believe it's classification 6.

25 Q. At 125-mile-an-hour class 6 corridor, do

1 you have grade crossings?

2 A. At any point where you're basically over
3 110 miles an hour you basically are looking at grade
4 separation. I think it's important to be very clear
5 that even though we have a top goal of 125 miles an
6 hour as a corridor top speed we have -- based on the
7 engineering analysis, we've indicated that probably a
8 maximum of 25 percent of the entire corridor, which is
9 some 460 miles long, would ever be suitable for that
10 top speed. So even though we have a top goal of 125
11 there will be segments that don't exceed 79 miles an
12 hour. There will be segments that probably don't
13 exceed 50 miles an hour. It really will be based on
14 the suitability of the corridor to safely operate
15 speeds.

16 Q. It's your understanding that with respect
17 to train speeds that the standard at this time is that
18 any track that would have the speed of 110 or more
19 would have grade separations?

20 A. That's my understanding.

21 Q. Is it your testimony today that this 30 to
22 35 minute time savings that is involved over the 1981
23 failed system is going to attract enough additional
24 riders that it will be an economically viable service
25 in the corridor that we're talking about?

1 A. That is -- I think it's important to note
2 that the 80,000 that was riding the train back in
3 1981, that number was growing. We were drawing
4 ridership at even the poor service in the past. But
5 clearly, given the growth that's occurred in the
6 corridor and the improved run time, we think the
7 100,000 is a conservative figure and that it will
8 provide a viable service.

9 Q. You're also asking that freight service
10 have increased rail speed through the city, are you
11 not?

12 A. Yes, we are.

13 Q. Has the Department of Transportation
14 conducted any studies or surveys -- and I'm specially
15 interested in surveys of, say, tourists that have
16 visited Vancouver in the last year -- to understand
17 whether they would be interested in taking the train
18 if they could have a 30 minute shorter ride, in other
19 words, a four-hour ride on the train as opposed to a
20 four and a half hour ride on the train?

21 A. What the department has done as part of
22 trying to make sure we understand the market, we have
23 had a series of focus groups, and those have been held
24 in Vancouver.

25 Q. Is it your answer that you have not

1 conducted any such surveys?

2 A. No, we have.

3 Q. Could you describe any surveys that you've
4 conducted?

5 A. Certainly. The approach that we followed
6 was to hold focus group meetings where we identified a
7 series -- a cross-section of the population, anywhere
8 from 10 to 15 people, and had an intensive session
9 with the group to explore with them their feelings
10 about rail ridership, their willingness or likeliness
11 to use a service such as we're proposing, and we had
12 those sessions in Seattle, Vancouver, B.C. and
13 Portland.

14 I can tell you that in all three areas
15 there was a high degree of willingness and expectation
16 about the service and in fact of the three focus
17 groups the Vancouver focus group showed the highest, I
18 guess, pent-up demand or interest in reestablishing
19 service.

20 Q. Is your answer that the Department of
21 Transportation has conducted three different meetings
22 of 10 or so citizens each to come to this conclusion?

23 A. The focus group technique is one that
24 market research firms use to get in-depth response
25 from potential users of the service. It's found to be

1 more effective than a more general survey that would
2 maybe be more widely distributed, and so it gives the
3 interviewer a chance over a two- or three-hour period
4 to at length explore all the issues surrounding rail,
5 rail service, what it would take to get citizens using
6 rail as a mode of choice, and we found that technique
7 to be very useful and provide a lot of insight in
8 terms of how to set up the service and what were some
9 of the concerns.

10 Clearly, the issue of run time was one that
11 came out over and over again along with the
12 reliability. People said that they would like to use
13 the train. They would like to have the option of
14 having the rail service there but it had to be
15 reliable and that it had to be competitive service.
16 Again, that helped reinforce that to make this a
17 viable service not only did we have to solve the
18 issues of customs so we had the reliability, not only
19 do we have to provide additional capacity in the
20 corridor for the freight traffic so that we could run
21 our passenger trains reliable, we had to have a run
22 time that was viewed by the citizens as competitive.

23 Q. Is your answer to the question yes that
24 you've come to these conclusions by three meetings of
25 10 or so citizens each?

1 A. Yes.

2 Q. Did the Department of Transportation
3 conduct those meetings or did you retain some sort of
4 a for-hire survey firm?

5 A. We used a nationally recognized marketing
6 research firm and the Department of Transportation
7 monitored the process.

8 Q. So do you have any witnesses from that
9 research firm here today?

10 A. No, we don't.

11 Q. And I gather that was the same research
12 firm that told you that that was an effective way of
13 determining a wide-based survey of the public?

14 A. We made that decision on our own. It's a
15 standard technique. Focus groups is a standard
16 technique to gauge market acceptance of new products
17 or new services.

18 Q. Well, what educational background or work
19 experience background do you have to come to that
20 conclusion, Mr. Mallery?

21 A. My background, I have a masters in
22 economics, and obviously we relied on other people
23 within the rail branch that have more marketing
24 expertise as well as other people within the DOT in
25 general. The marketing firm if you're interested is

1 Elgin Seifert. It's a Seattle-based corporation and
2 has a national reputation.

3 JUDGE HAENLE: Spell the name.

4 THE WITNESS: I'm not sure. I could get
5 that for you.

6 JUDGE HAENLE: You will need to get it for
7 the reporter before you leave.

8 Q. Do you know whether the Snohomish County
9 Council when they indicated their acceptance of
10 wanting to renew rail service between Everett and
11 Vancouver, Seattle and Vancouver, were informed of the
12 increased speed within municipalities that would be
13 required in order to have that be an economical
14 service?

15 A. What we did in each community, we developed
16 a briefing book that outlined the overall objectives
17 of the program, the specific infrastructure
18 improvements that were being proposed within the
19 community, and the specific speeds that were being
20 requested from each community. And there was a
21 briefing book prepared not only for every county but
22 for every incorporated city. I think you have
23 probably seen the briefing book that was prepared for
24 Marysville. So it's my understanding they were aware
25 of the infrastructure investment program as well as

1 the speeds, but again, their resolution speaks to
2 their overall jurisdiction as county commissioners.

3 Q. I gather given your background as an
4 economist that your focus here today as a witness is
5 on the economic side of wanting to facilitate the kind
6 of transportation between the cities that we're
7 talking about?

8 A. Certainly I would rely on my educational
9 background. I think I'm really here more as a manager
10 based on 20 years in the public sector, but clearly
11 the economics of rail is important to the overall
12 decisions that are made. We obviously are public
13 employees and we are carrying out the mandate of the
14 legislature and certainly cost efficiency and
15 effectiveness are considerations, and so certainly a
16 viable service is one that we're all interested in.

17 Q. Do you regard yourself as having expertise
18 in the area of the safety of the sorts of speeds that
19 we're talking about?

20 A. No, I'm not a safety expert and we relied
21 on others, both at Amtrak, Burlington Northern, and
22 our state consultants, as well as discussions with the
23 FRA.

24 MR. KEITHLY: I don't have any other
25 questions.

1 JUDGE HAENLE: Before we take Ms. Rendahl's
2 cross-examination, if any of you members of the public
3 have come in since we started, we have scheduled
4 sessions for taking testimony from members at 1:00
5 this afternoon and at 1:00 tomorrow afternoon. Go
6 ahead, Ms. Rendahl.

7

8

CROSS-EXAMINATION

9

BY MS. RENDAHL:

10

Q. Good morning, Mr. Mallery.

11

A. Morning.

12

Q. You referred to the Washington State

13

Transportation Commission in your testimony and the

14

exhibit. This Commission is a different agency than

15

the Utilities and Transportation Commission, is it

16

not?

17

A. That's correct.

18

Q. And you've also mentioned the partnership

19

between the state Department of Transportation, Amtrak

20

and Burlington Northern. Through your contract with

21

Amtrak, what is the funding arrangement for this

22

project? Are you the witness to speak to that?

23

A. Certainly, yes. It's a contractual

24

arrangement. It's based on an annual service

25

agreement whereby the state contracts with Amtrak to

1 run -- would contract with Amtrak to run one daily
2 round trip.

3 Q. So I take it that it is Washington state
4 that would be paying Amtrak to provide that service?

5 A. Right. It's a shared relationship in that
6 Washington state would be paying 70 percent of the
7 cost and Amtrak would be providing 30 percent of the
8 funds.

9 Q. And also of your contract with Burlington
10 Northern, does that contract involve Washington state
11 funding as well for this project?

12 A. It certainly does. The state of
13 Washington has contracted with Burlington Northern for
14 some 24 million dollars of improvements to the signal
15 and track system. That is to basically take a one
16 track main line railroad and provide additional
17 sitings to allow greater capacity so we can run the
18 passenger service. It also provides for upgrading the
19 signal system and making the improvements to the grade
20 crossing activation throughout the corridor. I think
21 Marv Nelson is prepared to go through in more detail
22 the specific improvements.

23 Q. You also mentioned ISTEA or the Intermodal
24 Service Transportation Efficiency Act. Is the state
25 receiving any funding from the federal government for

1 this project?

2 A. We are. We're receiving -- under section
3 1010 of ISTEA we're receiving funds to assist in the
4 upgrading of grade crossings. We also through our
5 partnership with several communities along the
6 corridors, several communities are receiving federal
7 ISTEA enhancement funds to facilitate the remodeling
8 for construction of new multimodal facilities. These
9 are rail stations that we are trying to make truly
10 intermodal so that convenience to the public of using
11 rail will be increased so that when you arrive at a
12 station there will be convenient connections to local
13 transit, local city bus, taxi, potentially
14 Renta-Cars where appropriate, connection to the ferry
15 system, so that's another area of federal funding
16 that's been incorporated into this program.

17 Q. I'm not sure if you're the witness to
18 answer this, so you can tell me. There's recently
19 been in the news information about Amtrak receiving
20 cuts in funding potentially. What impact, if any,
21 will that have on this project?

22 A. There will be the -- the announced cuts by
23 Amtrak do not in any way impact the high speed
24 corridor. The impact was solely affecting the Empire
25 Builder, which it runs daily between Chicago and

1 Seattle, so that that portion of the train running
2 between Everett and Seattle there will be less
3 frequent service; instead of seven days a week I
4 believe on February 1 that service will go to four
5 days a week. But in terms of Amtrak's willingness and
6 enthusiasm to operate the renewed service to Vancouver
7 B.C. under a contract with the state of Washington
8 they have reaffirmed that the recent cutbacks in no
9 way jeopardize the initiation of that service.

10 Q. And also, who conducted the computer
11 simulation that you discussed of the rail and the
12 track between -- I believe -- was it Vancouver,
13 Washington and Vancouver, B.C. or did it go all the
14 way down to Oregon?

15 A. We have actually done the simulation on the
16 entire corridor all the way from Eugene to Vancouver
17 B.C. That work was done by Morrison Knutsen and
18 Wilbur Smith and Associates. Those are two national
19 consulting firms under contract to the DOT and that
20 computer simulation has been reviewed and validated by
21 independent work at Amtrak as well as by Burlington
22 Northern.

23 MS RENDAHL: I have no further questions,
24 Your Honor.

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EXAMINATION

BY JUDGE HAENLE:

Q. You referred to the Intermodal Service Transportation Efficiency Act. Do you have a citation for that, either the witness or counsel?

MS. CUSHMAN: I will get it for you, Your Honor.

Q. You testified that freight train speeds were also being -- that you were requesting that freight train speeds also be increased. Why are you asking that?

A. I can certainly give you an initial response. Obviously Burlington Northern has people prepared to testify. The concern is that we basically have a one-track railroad and that to provide the capacity that we need to add the additional passenger service to Vancouver, B.C. that the higher speeds for both passenger and freight speeds are required. If you have a differential in speeds between the faster moving passenger speeds and the slower moving freight speeds, that differential affects the capacity. The state of Washington is spending some 24 million dollars to create the capacity necessary to run one round trip and that we don't want to on the one hand spend those resources to create the capacity and then

1 on the other hand increase the differential between
2 freight and passenger speeds losing the capacity that
3 we've just purchased.

4 Q. My other question was you referred to a
5 standard that if a track had a 110-mile-per-hour-or-
6 more speed limit it must also have grade separations.
7 Whose standard is that?

8 A. That standard is a Federal Railroad
9 Administration standard.

10 JUDGE HAENLE: Thank you. Counsel, any
11 redirect?

12

13

REDIRECT EXAMINATION

14 BY MS. CUSHMAN:

15 Q. Mr. Mallery, could you step over to this
16 aerial exhibit, please.

17 JUDGE HAENLE: Counsel is now referring to
18 a photo that we don't have -- I have it in the record,
19 Counsel doesn't have it, but remember, Counsel, that
20 when you refer to things on it there won't be any way
21 for the record to show what you're pointing to unless
22 you specify milepost or street name or number.

23 MS. CUSHMAN: We'll have the witnesses give
24 identification information, Your Honor.

25 JUDGE HAENLE: Go ahead.

1 Q. Mr. Mallery, this has been marked for
2 identification as Exhibit 14. Do you know what it is?

3 A. It's an aerial photograph of the corridor
4 through the city of Marysville. Basically flown an
5 aerial through the entire corridor and we've used
6 these to assist us in the engineering issues related
7 to the resumption of service.

8 Q. Are you familiar with this corridor?

9 A. Yes, I am.

10 Q. Is this an accurate representation of the
11 rail line through Marysville?

12 A. Yes, it is.

13 MS. CUSHMAN: I move to admit.

14 JUDGE HAENLE: Any objection, Mr. Keithly?

15 MR. KEITHLY: No, Your Honor.

16 JUDGE HAENLE: Any objection, Ms. Rendahl?

17 MS. RENDAHL: No, Your Honor.

18 JUDGE HAENLE: Exhibit 14 will be entered
19 into the record.

20 MS. CUSHMAN: No further questions.

21 (Admitted Exhibit 14.)

22 JUDGE HAENLE: Any recross, Counsel?

23 MR. KEITHLY: I had a question.

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RECROSS-EXAMINATION

BY MR. KEITHLY:

Q. Did I miss it, Mr. Mallery, or could you help me with the total capital outlay government and railroad, if you know the number, to bring the track up to this speed that you're talking about?

JUDGE HAENLE: Which speed? Specify.

Q. The average 79-mile-an-hour -- or the top speed, excuse me.

A. For the first phase of this program, which is the '93-95 biennium, and that's the time frame within which we plan to restore service to Vancouver B.C., the total legislative appropriation was 40.2 million dollars, and of that amount 24 million dollars was specifically being invested between Seattle and the international border to provide capacity improvements to run the service. In addition to that Burlington Northern is investing approximately 3 million dollars in Canada, so the total investment required to re-establish passenger rail service in terms of the capital program is some 27 million dollars.

Q. And that would be over a period of basically two years or three?

A. If you -- over the biennium '93-95 that

1 investment will basically be completed by June 30 of
2 this year, and with that investment that is what will
3 allow the capacity necessary to operate the single
4 daily round trip.

5 Q. And if I understand your numbers correctly,
6 that's to accommodate a ridership of approximately 300
7 people a day on the passenger service?

8 A. Approximately, yes. Again, I think it's
9 important to note that this is an incremental program.
10 The 1995-97 biennial request from the department to
11 the legislature would provide approximately 20 million
12 of additional funding which would go into the corridor
13 to make another round of improvements elsewhere in the
14 corridor that would provide us capacity to operate a
15 second round trip. So if the legislature approves the
16 department's request then that investment would occur
17 between 1995 and 1997 with the service hopefully
18 beginning as soon as that investment was completed.
19 And with obviously that additional service then the
20 annual ridership we would anticipate would increase as
21 well.

22 Q. Am I right that that's something like
23 \$200,000 per passenger per year?

24 A. I haven't calculated in that manner but I
25 would trust your math.

1 Q. Well, I'm just doing long hand. It's 27
2 million dollars divided by 100,000 people.

3 MR. KEITHLY: I don't have any other
4 questions.

5 JUDGE HAENLE: Anything more?
6

7 REDIRECT EXAMINATION

8 BY MS. CUSHMAN:

9 Q. Mr. Mallery, this 27 million dollars is
10 intended to serve upgrades for more than one year -- I
11 mean, is intended to serve passenger service for more
12 than one year, isn't it?

13 A. Absolutely. It's an ongoing incremental
14 program. As attached to Resolution 445, it shows
15 you there is a six-year capital improvement program.
16 It shows that we're adding -- our plan is to add an
17 additional round trip service each year for at least
18 the next three bienniums so that by 1999 we would be
19 operating three daily round trips between Seattle and
20 Vancouver B.C. and that in the long-term the potential
21 ridership in the corridor is some 5 million people
22 annually, but again, we aren't going to have that kind
23 of ridership until we make those incremental
24 improvements so we have more frequent service,
25 increasing the reliability of service, do the remodels

1 and new construction to the depots and provide that
2 overall increase in the quality of passenger rail
3 service of the state.

4 MS. CUSHMAN: No further questions.

5 JUDGE HAENLE: Anything more of the
6 witness?

7 Thank you, sir. You may step down. We
8 have Exhibits 1 through 4 and 14 entered. Were those
9 the only ones you intended to address with this
10 witness?

11 MS. CUSHMAN: Yes.

12 JUDGE HAENLE: Why don't we take a 10-
13 minute break, come back at 25 minutes to and we'll
14 take the next witness.

15 (Recess.)

16 JUDGE HAENLE: Let's go back on the record
17 after our morning recess. You had something, Ms.
18 Cushman.

19 MS. CUSHMAN: Yes, Your Honor. For the
20 record, the envelope which contains the reduced
21 version of Exhibit 14, contains the information that
22 this exhibit was photographed on August 1, 1993.

23 JUDGE HAENLE: We have Mr. Graafstra has
24 arrived now, and you will be taking over for Mr.
25 Keithly for the rest of the hearing?

1 MR. GRAAFSTRA: That's correct.

2 JUDGE HAENLE: The microphones turn on and
3 off with the button so when you're doing your
4 questions, please be sure you use the microphone.

5 We've also moved the witness's microphone
6 up in the air to try to make it easier on the
7 witnesses so they don't strain their necks. Next
8 witness, please, Ms. Gibson.

9 MS. GIBSON: We have Alden Clark on the
10 stand.

11 Whereupon,

12 ALDEN CLARK,
13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

16 DIRECT EXAMINATION

17 BY MS. GIBSON:

18 Q. Would you state your full name for the
19 record, please, and spell your name.

20 A. My name is Alden Clark, A L D E N C L A R
21 K.

22 Q. Your address, Mr. Clark?

23 A. My home address is 9516 Wallingford Drive,
24 Burke, Virginia. I'm representing Amtrak. Business
25 address is 60 Massachusetts Avenue Northeast

1 Washington D.C., 20002.

2 Q. In what capacity are you testifying at this
3 hearing today?

4 A. I'm a consultant. I'm representing -- I'm
5 authorized by Amtrak to speak on matters relating to
6 Amtrak as they relate to the series of speed hearings
7 between Seattle and Vancouver, Washington. Until
8 December 1 of last year I was senior director of
9 contract operation and planning for Amtrak.

10 Q. What other positions did you hold at
11 Amtrak?

12 A. I was with Amtrak for 23 years. I'm a
13 director of operations planning. I've been division
14 superintendent, variety of different titles, but my
15 primary responsibilities over most of those years
16 including the last years involved passenger train
17 schedules and operations over freight railroads, new
18 routes and services, matters relating to grade
19 crossings and speed ordinance. In the assessment of
20 our passenger train operations I've ridden nationwide
21 many thousands of miles in the locomotives of our
22 passenger trains. As a member of our operating
23 engineer task force I participated in evaluation of
24 approximately 25,000 route miles of railroad and in
25 grade crossing matters I've testified in federal court

1 as an expert witness and before state commissions
2 including the WUTC in a number of hearings.

3 Q. Have you had any other railroad experience?

4 A. Yes. My whole career basically has been in
5 the railroad industry for about 40 years except two
6 years in the military and specifically I spent over 10
7 years with freight railroads in Pennsylvania, New York
8 Central Railroad.

9 Q. What positions did you hold with those
10 railroads?

11 A. I was in the engineering department as a
12 designer and the track department as assistant
13 supervisor of track and train master at a number of
14 locations, transportation superintendent when I left
15 the New York Central Railroad.

16 Q. Briefly, what is your educational
17 background, Mr. Clark?

18 A. I'm a graduate of civil engineer.

19 Q. Right now does Amtrak own and operate any
20 of its own trackage?

21 A. Yes. Amtrak has approximately 700 route
22 miles of its own trackage between Washington D.C. and
23 Boston, Massachusetts with the exception of part of
24 Connecticut. It also operates or, I should say, owns
25 and maintains track in Michigan, in California and in

1 upstate New York.

2 Q. Well, how does Amtrak operate throughout
3 the rest of the country where it doesn't actually own
4 the track?

5 A. We have about 20,000 route miles of
6 operations, so we have a little over 19,000 of our
7 route miles is conducted in accordance or under
8 operating agreements made with the various freight
9 railroads including, of course, the Burlington
10 Northern as one of those railroads.

11 Q. And does Amtrak operate on Burlington
12 Northern track in this area?

13 A. Yes. Amtrak operates on Burlington
14 Northern from Chicago west to Denver and from the Twin
15 Cities to Minneapolis -- from Twin Cities to Seattle,
16 and from Portland, Oregon to Seattle and on to
17 Everett.

18 Q. How many trains a day does Amtrak operate
19 in the state of Washington?

20 A. Washington we currently operate 10 trains a
21 day with a change in frequency on one pair of trains
22 proposed for February 1st.

23 Q. And is that what Mr. Mallery referred to
24 earlier on the Empire Builder?

25 A. Yes, it is.

1 Q. Now, why is Amtrak committed to time
2 savings in its routes?

3 A. Well, there's several different reasons
4 we're committed to time savings. First, I won't say
5 foremost, but first is we're mandated by federal law
6 by the Rail Passenger Service Act to achieve or strive
7 to achieve a 60-mile-an-hour average speed for all of
8 our services. In addition, perhaps more importantly
9 yet certainly related to that, is the fact that
10 Amtrak's job is by law mandated to operate a modern
11 passenger service and slow trains are not conducive to
12 increasing ridership. They're not attractive to the
13 public, and in general they constitute a negative
14 burden, so to remove that negative burden and to
15 improve service we strive to run trains on appropriate
16 schedules.

17 Q. Were you present this morning and did you
18 hear Mr. Mallery's testimony regarding Amtrak's prior
19 service between Seattle and Vancouver B.C.?

20 A. Yes. I was present and I did hear it.

21 Q. Do you agree with his assessment of what
22 the run time was on that route?

23 A. Yes. It was scheduled for four hours and
24 30 minutes when it was discontinued in 1981.

25 Q. Why was it discontinued?

1 A. The revenues were low, the expenses were
2 high, the reliability was poor and appeared to be no
3 hope to turn the situation around.

4 Q. Now, Mr. Mallery talked about the three
5 hour 55 minute run time between Seattle and Vancouver
6 B.C. How did Amtrak arrive at that particular time?

7 A. Well, actually, Amtrak felt and still feels
8 that the three hour and 55 minute schedule is not as
9 desirable as what we would like to see. We believe a
10 schedule to be truly competitive with I-5 should be
11 closer to a three hours and 30 minutes. However, when
12 the various speed improvements that could be more or
13 less readily achieved with the kind of investment
14 that's been mentioned by Mr. Mallery were evaluated in
15 terms of schedules and in terms of providing stops at
16 intermediate locations, we concluded that three hour
17 and 55 minute schedule was the best that could be
18 achieved at that time or initially, and we do believe
19 a three hour and 55 minute schedule will attract the
20 ridership and provided it is a reliable service.
21 Reliability was one of the problems with our past
22 service and great effort is going into making this a
23 reliable operation when it's implemented.

24 Q. If the petition for passenger train speed
25 increases is granted as a result of this hearing, and

1 so I'm referring to the speed increases through the
2 city limits of Marysville, how much time would that
3 save an Amtrak train?

4 A. The UTC order covers approximately 5.5
5 miles of track and the maximum speed authorized at
6 this point by that order is 25 miles an hour, which if
7 you do the mathematics indicates it will take
8 approximately 13 minutes to go through the city
9 limits of Marysville. I might add parenthetically
10 that 13 minutes at 25 miles an hour it just kills any
11 concept of modern or expedited passenger service.
12 With the speeds that have been requested that
13 operation will take roughly six minutes to go through
14 the city limits, so there's a savings of approximately
15 seven minutes.

16 Q. Are you familiar with the track in the
17 surrounding area here in Marysville?

18 A. I've been over the track and I've been
19 through the city and I've visited the crossings. So,
20 in a general way, yes.

21 Q. In your opinion, are there any local safety
22 hazards which would preclude the requested speed
23 increases?

24 A. No, there aren't.

25 Q. Have you examined the number of crossings

1 here?

2 A. Yes. I think there's 11 public crossings,
3 plus some private crossings, and they are really not
4 materially different from crossings that Amtrak
5 operates over throughout the United States. We
6 operate over grade crossings under similar conditions,
7 many of them at 79 miles an hour, some at 90 miles an
8 hour. In the past we've operated it up to 100 miles
9 an hour over crossings of a similar nature.

10 Q. Now, if the petition for the speed
11 increases is denied through the town of Marysville,
12 would that affect the Seattle-Vancouver, B.C. project?

13 A. I think a seven-minute additional time
14 required would certainly affect the service and I
15 don't believe Amtrak would operate the service. It
16 certainly, in its conditions to the state for
17 operating that service, has held out that it would not
18 operate the service if the speed increases were not
19 granted.

20 Q. We've had some testimony earlier
21 referencing the FRA. What is the FRA?

22 A. The FRA is the Federal Railroad
23 Administration, which is a part of the United States
24 Department of Transportation.

25 Q. Are you familiar with statistics that the

1 FRA keeps regarding high rail crossing accidents and
2 incidents?

3 A. Yes, I am. They publish a bulletin each
4 year. They've done it now for 16 years with
5 statistical summaries of highway rail crossings and
6 accident/incidents. They're presented in a number of
7 statistical manners. The most -- I think most telling
8 presentation in there is their table 16, which is page
9 43, which is the Exhibit 8, has been mentioned as
10 Exhibit 8.

11 Q. Are these statistics actually published
12 then? Are they published statistics?

13 A. Yes. They are published in this booklet or
14 book which the FRA distributes to those people that
15 request it.

16 Q. Are they published then by the U.S.
17 Department of Transportation Federal Railroad
18 Administration?

19 A. Yes, by the office of safety of the Federal
20 Railroad Administration U.S. Department of
21 Transportation.

22 Q. In the edition that you're referring to
23 from which table 16, Exhibit 8 for identification, was
24 taken, what is that edition?

25 A. That's for calendar year 1993 and it's the

1 last, most recent edition that's yet been published.
2 '94's figures will probably be available by this
3 summer.

4 Q. This edition was published when?

5 A. Last summer.

6 Q. In the summer of '94 then?

7 A. Yes.

8 Q. Referring then to Exhibit 8 for
9 identification, table 16, what does that table depict,
10 Mr. Clark?

11 A. It's entitled and depicts Accidents and
12 Incidents at Highway Rail Crossings by Consist Speed,
13 Circumstances and Visibility, and the page that we
14 have distributed or has been marked for Exhibit 8
15 specifically addresses the subject of the speed of
16 train or speed of consist, as they call it, which is
17 what most of us would think of being the speed of the
18 train. And it has a summary of the number of
19 incidents by time of day or at least by dawn, day,
20 dusk, dark and total where vehicles have struck
21 trains, trains have struck vehicles, and a grand total
22 of that, and I think what's very pertinent there is
23 that, number one, it shows that approximately one in
24 every --

25 MR. GRAAFSTRA: Objection, Your Honor.

1 This is not responsive to the question.

2 MS. GIBSON: Well, the question is what
3 would it depict.

4 MR. GRAAFSTRA: He can't testify to the
5 exhibit unless it's in evidence and it's not in
6 evidence.

7 JUDGE HAENLE: I agree that the number
8 should not be recorded into the record until it is in
9 the record. You may tell us in general what the
10 document depicts but not use figures. I will sustain
11 the objection.

12 MS. GIBSON: We'll offer the exhibit, Your
13 Honor.

14 JUDGE HAENLE: Any objection to the entry
15 of the document?

16 MR. GRAAFSTRA: Objection, Your Honor.
17 It's hearsay and lack of foundation.

18 JUDGE HAENLE: Ms. Gibson.

19 MS. GIBSON: Your Honor, it's a government
20 publication, that reliability is clear. I think it's
21 an exception to the hearsay rule.

22 MR. GRAAFSTRA: Your Honor, we do not know
23 how the materials that are in this table came to be
24 compiled. We do not any of the methodology, any of
25 the background of the preparation of this document.

1 Because of that it still has lack of foundation even
2 if it might otherwise be authentic. Her argument is
3 it's authentic. I don't dispute that. I dispute that
4 it's hearsay and there's a lack of foundation to admit
5 it for any relevant purpose to this hearing.

6 JUDGE HAENLE: I assume that your purpose
7 in offering it goes beyond the fact that it was
8 published in this document, Ms. Gibson.

9 MS. GIBSON: Yes, Your Honor.

10 JUDGE HAENLE: Have you an objection?

11 MS. RENDAHL: I have no objection to the
12 document.

13 JUDGE HAENLE: Has the -- let me back up.
14 There are other documents that say table number
15 whatever, schedule number whatever. Are they pulled
16 from the same document, Ms. Gibson?

17 MS. GIBSON: They are, Your Honor.

18 JUDGE HAENLE: Has the document been made
19 available to counsel in case counsel has a question
20 about whether it's an accurate copy?

21 MS. GIBSON: It can be made available to
22 him. I have it here, Your Honor.

23 JUDGE HAENLE: I understand that was not
24 your objection.

25 MR. GRAAFSTRA: That is not my objection.

1 I am not objecting to authenticity.

2 JUDGE HAENLE: I'm going to overrule the
3 objection and allow the document to be put into the
4 record. Whether the Commission would be able to use
5 it as evidence of more than the fact that it was
6 published in a document, I think that goes to the
7 weight of the document rather than to the
8 admissibility of the document. I don't know whether
9 there is a description in the document of the manner
10 in which the figures were compiled, but if there is
11 that might be a useful addition to this record. In
12 any case I'm going to enter the document and the
13 Commission -- caution the Commission that it will need
14 to review the weight to be given to the document.

15 (Admitted Exhibit 8.)

16 Q. Now, Mr. Clark, what does Exhibit 8
17 indicate with relation to the number of accidents or
18 incidents that occurred relative to train speed?

19 A. Well, of course it has many numbers but I
20 think the pertinent, some of the pertinent things it
21 shows are that, one, of the total 4,240 accidents or
22 incidents, 1,069, or approximately 25 percent of
23 them, occurred where vehicles struck trains rather
24 than where trains were involved in striking the
25 vehicles. So, quite clearly, in that 25 percent of

1 accidents speed of train had absolutely no impact on
2 the cause of the accident. In fact, the less time
3 that a train is occupying a crossing, the less time,
4 the less exposure exists for this type of accident.

5 A second point that I think that might be
6 made from these that's significant is that
7 approximately 88 percent of the accidents involved
8 trains operating at less than 50 miles per hour, and
9 indeed approximately 54 percent of the accidents
10 involve trains operating at less than 30 miles per
11 hour. We're looking -- or looking at it the other
12 way, less than 2 percent of the accidents, involve
13 trains operating at 70 miles per hour or more. Now,
14 obviously, the number of accidents there's some
15 relationship between the number of accidents occurring
16 and the speeds at which different trains are operated
17 at, but this is a very clear message here, I believe,
18 that running trains at a slow speed is not a panacea
19 for eliminating accidents. Indeed, observation shows
20 -- has shown to me and to others but I can only
21 testify to myself -- that trains that operate at a
22 slow speed inflate people to be careless and take
23 chances and drive in front of trains and sometimes
24 they are struck. I myself have personally seen
25 elderly couples go in front of a train when it was

1 moving at slow speed. I've seen women that looked
2 like they were very dependable family types take a
3 chance and drive their cars in front of trains moving
4 at slower speeds. Conversely, trains moving at fast
5 speeds engender a situation where the people know that
6 if they're struck there is undoubtedly going to be
7 serious consequences, the train will not occupy the
8 crossing for as long a period of time so they do what
9 they're supposed to do and obey the signs and signals
10 that have been installed, so you have much better
11 crossing compliance where trains are operating at
12 higher speeds.

13 MS. GIBSON: Thank you. No other
14 questions.

15 JUDGE HAENLE: Did you have questions, Mr.
16 Graafstra?

17 MR. GRAAFSTRA: Yes, Your Honor.

18

19

CROSS-EXAMINATION

20 BY MR. GRAAFSTRA:

21 Q. You will agree with me, sir, that a train
22 operating at a greater speed carries a greater amount
23 of force with it?

24 A. Yes.

25 Q. And you will agree with me that if that

1 train has an accident it will have more catastrophic
2 consequences?

3 A. Are you speaking of grade crossing
4 accidents?

5 Q. I don't care. It can be rail or hit
6 somebody.

7 A. If you're speaking about grade crossings
8 accidents I will not agree with you necessarily. If
9 you're speaking about a derailment there is more
10 momentum, more energy to be absorbed.

11 Q. More force?

12 A. More energy.

13 Q. So if there's a derailment a train
14 traveling faster will have more catastrophic effects;
15 is that correct?

16 A. Not necessarily. There's more energy to be
17 absorbed.

18 Q. Well, how is that energy going to be
19 absorbed?

20 A. It can be absorbed in the ground through
21 compression.

22 Q. But that's not where it's going to be
23 absorbed if it runs off the track. It will do more
24 damage to the ground then, right?

25 A. Yes.

1 Q. Now, are you telling me that when this
2 train is carrying more force, has a grade crossing
3 accident, it's not going to do more damage?

4 A. No, I haven't told you that.

5 Q. I thought you said that a moment ago,
6 excuse me.

7 A. I said it may or may not.

8 Q. Why will it not do more damage?

9 A. It may brush aside a vehicle.

10 Q. And the slower speed train wouldn't?

11 A. It may or may not. It may roll it.

12 Q. Have you studied that?

13 A. I have seen the effects of it.

14 Q. How many anecdotes of that have you seen?

15 A. I don't have a precise number to give you.

16 Q. So what's the basis for your opinion?

17 A. 40 years in the business.

18 Q. Based upon how many incidents?

19 A. I don't know how many. There's been a
20 number of them.

21 Q. Now, your basic premise is that if a train
22 goes faster people are going to be more careful?

23 A. Yes.

24 Q. Is that your basic premise?

25 A. Yes.

1 Q. And on what sort of study or information do
2 you base that conclusion?

3 A. I base it on my observation. I base it on
4 states or communities where they have fast trains they
5 put up signs to bring that to the attention of
6 motorists because apparently they also believe the
7 same things.

8 Q. So what type of signage where?

9 A. Warning "high speed trains," "high speed
10 trains operate," signs of that type.

11 Q. Now, in those areas are all the trains high
12 speed?

13 A. Not always.

14 Q. How does the driver in the dead of night
15 know whether the train is approaching at 79 miles an
16 hour or 30 miles an hour?

17 A. He doesn't and he doesn't need to if he
18 complies. If he lives in an area and forms his own
19 opinion over time then the danger of presumption comes
20 up.

21 Q. It's sort of like the dog gets the first
22 bite? In other words, we have to have a certain
23 number of accidents and that will train the
24 population?

25 A. I don't agree with that.

1 JUDGE HAENLE: Remember, sir, that you're
2 going to need to speak relatively close to the
3 microphone.

4 Q. This Exhibit No. 8 that you were speaking
5 to a while ago, and you drew the conclusion from that
6 that there were fewer accidents at high speed; is that
7 correct?

8 A. That is correct.

9 Q. Do you know the number of crossings and so
10 forth that are involved in that study to know how many
11 of the crossings where there were accidents at lower
12 speed compared to the number of crossings where there
13 were higher speeds?

14 A. This is a statistical summary for all
15 crossings in the United States.

16 JUDGE HAENLE: And the question was do you
17 know how much -- how many of them were high speed as
18 opposed to slower speed. Sir?

19 A. My answer to that is that the number of
20 crossings are delineated by -- in the text. The
21 number of crossings at which trains operate at various
22 speeds, to the best of my knowledge, is not shown in
23 that.

24 Q. Would you agree with the principle that for
25 most of the track miles where there was high speed

1 we're talking about sparsely populated areas?

2 A. No, sir.

3 Q. You would not?

4 A. No, sir.

5 Q. So it would be --

6 A. The reason is because we operate trains
7 through densely populated areas at high speed.

8 Q. Do you operate trains at high speed in
9 nondensely populated areas?

10 A. True.

11 Q. Is it farther from Chicago to Seattle than
12 it is from Washington to New York?

13 A. Yes.

14 Q. And would you agree with me that the number
15 of accidents correlate both to the speed of the trains
16 and the number of automobiles that are crossing?

17 A. I would think that they would correlate to
18 the number of automobiles crossing. I can't --

19 Q. In fact the number of automobiles crossing
20 would be a better correlation than the speed of the
21 trains, wouldn't it? Wouldn't it be a better
22 predictor?

23 JUDGE HAENLE: Let the witness answer your
24 question before you go on to another one.

25 MR. GRAAFSTRA: I thought he was going to

1 say "I don't understand" so I apologize.

2 JUDGE HAENLE: Sir, do you understand?

3 THE WITNESS: No. What is the question?

4 Q. The question is what's a better predictor
5 of whether an accident is going to occur and would it
6 be a true statement that the number of automobiles
7 that cross would be a better predictor of the number
8 of accidents than the speed of the trains?

9 A. In my opinion it would be the number of
10 automobiles would be a better predictor since if you
11 have no automobiles you would have no accidents.

12 MR. GRAAFSTRA: Thank you. I don't have
13 any further questions.

14 JUDGE HAENLE: Questions, Ms. Rendahl?

15

16 CROSS-EXAMINATION

17 BY MS. RENDAHL:

18 Q. Mr. Clark, were you involved in developing
19 the three hour and 55 minute schedule?

20 A. I was involved in looking at the
21 improvements and when the impact of the improvements
22 was analyzed the three hour and 55 minute schedule
23 evolved from that analysis. So I think the answer is
24 yes.

25 Q. This schedule includes different

1 components, doesn't it, like train running time,
2 stopping at stations and something that is akin to
3 what's used in airline schedules where there's some
4 sort of time factor for delay; is that correct?

5 A. Yes. It reflects, as you said, running
6 time, station dwell time, acceleration -- the
7 acceleration time and what I would call recovery also.

8 JUDGE HAENLE: Sorry. Didn't hear the last
9 word.

10 THE WITNESS: Recovery or cushion or
11 rubber. Various phrases for the difference between a
12 precise operation with no backup or emergency or
13 recovery time. So we call it recovery time.

14 Q. Do you know how much time has been factored
15 in for recovery time in the three hour and 55 minute
16 schedule?

17 A. I know how much was factored in initially.
18 I do not know how much the latest computer simulations
19 have shown.

20 Q. How much was the initial time?

21 A. I have it here. 12 minutes.

22 MR. RENDAHL: Thank you. No further
23 questions.

24 JUDGE HAENLE: Are you a self-employed
25 consultant now, Mr. Clark, or who are you employed by

1 now?

2 THE WITNESS: I am employed -- I'm
3 self-employed at this point.

4 JUDGE HAENLE: That was it. Thank you.
5 Any redirect?

6

7

REDIRECT EXAMINATION

8 BY MS. GIBSON:

9 Q. There was some questions about a driver
10 knowing whether a high speed or a low speed train was
11 approaching the crossing. Now, if you take the
12 situation, Mr. Clark, where the crossing is signaled
13 with lights and gates, does that remove some of the
14 driver's decision making problem with either the
15 approach of a high or low speed train?

16 A. Yes. The modern signalization -- signal
17 protection for crossings and the type that will be in
18 place on this route has in it mechanisms for
19 determining the speed of the approaching train and
20 therefore when to turn the warning system on so as to
21 provide a constant warning time to the motorist. In
22 other words, it's set up so that there's approximately
23 30 seconds of warning time between when the lights
24 start to flash and the train crosses the crossing
25 regardless of whether it's moving at a higher or lower

1 speed.

2 Q. Thank you. Nothing else.

3 JUDGE HAENLE: Anything else of the
4 witness?

5 MR. GRAAFSTRA: No, Your Honor.

6 MS. RENDAHL: No, Your Honor.

7 JUDGE HAENLE: You may step down. Let's go
8 off the record to change witnesses.

9 (Recess.)

10 JUDGE HAENLE: Let's be back on the record.
11 The petitioners have called their next witness.
12 Whereupon,

13 THOMAS ROWLEY,
14 having been first duly sworn, was called as a witness
15 herein and was examined and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MS. GIBSON:

19 Q. Would you say your full name, please, for
20 the record.

21 A. Thomas Rowley, R O W L E Y.

22 Q. And your occupation?

23 A. I'm currently terminal manager at Everett,
24 Washington for Burlington Northern Railroad.

25 Q. What other positions have you held at

1 Burlington Northern?

2 A. Prior to Everett I was terminal manager at
3 Spokane, Washington and for 12 years prior to that I
4 was a train operation supervisor at Pasco, Washington,
5 supervising between Pasco and Spokane, Pasco and
6 Portland and Pasco and Ellensburg.

7 Q. What are your current responsibilities in
8 the position you hold now as terminal manager at
9 Everett?

10 A. My primary function is to direct the daily
11 operations of the Everett terminal, the arrival and
12 departure of trains, classification of cars and to
13 supervise the approximately 200 people that work
14 there.

15 Q. What kinds of people? What jobs are they
16 doing, the ones that you're supervising?

17 A. We have a 24-hour switchyard operation, a
18 two location at Everett. We have a clerical staff.
19 We have a mechanical staff, we have a maintenance of
20 equipment and a maintenance of way staff.

21 Q. Do you supervise the train crews?

22 A. Yes. They report to me through my other
23 supervisors at Everett.

24 Q. What is your territory?

25 A. In addition to the Everett terminal itself

1 I also supervise between Everett and the Canadian
2 border. I do that through three train masters
3 headquartered at Everett and one who is headquartered
4 at Bellingham.

5 Q. The Everett train masters, do they monitor
6 the train speeds through the city of Marysville?

7 A. Yes. They have responsibility for
8 operation between Everett and Kruse Junction, which is
9 just north of downtown Marysville. As a matter of
10 course, they also work up to Mount Vernon and assist
11 the train master at Bellingham.

12 Q. You mentioned Kruse Junction. That's K R U
13 S E; is that correct?

14 A. Yes.

15 JUDGE HAENLE: It would be helpful any time
16 you use proper names or words that could sound like
17 each other if you could spell them.

18 THE WITNESS: Will do.

19 Q. Why do the train masters monitor the train
20 speeds?

21 A. It's our obligation to monitor the
22 operation of train crews both in compliance with
23 internal standards that we set, as well as to comply
24 with the standards of the Federal Railroad
25 Administration.

1 Q. So how do the train masters make sure that
2 the trains are running at the speeds that are the
3 limits on the track?

4 A. There would be three ways to do it. One of
5 course is to perform an on-board observation, actually
6 ride the train, observe the crew in action and verify
7 if they're complying with the existing speed
8 restrictions. The second way, which is the matter of
9 testing without being seen, is to use the use of
10 radar, and we do that, and finally you can analyze the
11 data from a locomotive data tape which records speed
12 of trains, and we can do those and then find the
13 location in which they were operated.

14 Q. What does Burlington Northern do if it
15 finds a train being operated in excess of the speed
16 restriction?

17 A. Of course we conduct an internal
18 investigation to verify that that exception is indeed
19 a fact. If it is then we comply with the terms of the
20 existing contracts, the requirements, and schedule
21 formal hearings for the employees involved.

22 Q. Is discipline then assessed as appropriate?

23 A. As the facts are warranted, as determined
24 at those investigations and hearings then discipline
25 could be a result.

1 Q. How many trains a day use this track that
2 goes through Marysville?

3 A. Currently average about 14 movements a day
4 through Marysville.

5 Q. Is that 14 freight trains?

6 A. They would all be freight trains. There
7 are no passenger trains at this time.

8 Q. Do the type of freight trains vary?

9 A. We have probably two distinct types. They
10 would be the local freight, we operate two which
11 serve the area between Everett and Mount Vernon and
12 make a trip up and return on the same day. In
13 addition we service the area between Everett and the
14 Canadian connections at New Westminster, British
15 Columbia and Sumas, British Columbia with eight
16 movements a day in and out of those territories, and
17 we also deliver to the Bellingham, Ferndale, Cherry
18 Point area once a day.

19 Q. So I believe you said 14 trains a day?

20 A. That would be eight movements, that would
21 be four northbound movements to Canada, four
22 southbound. It would be one movement to and from --
23 comes out two movements serving Cherry Point, bringing
24 cars from and returning to Cherry Point and then the
25 local freights would pass through Marysville twice

1 each for a total of four local freight movements.

2 Q. So that would be two locals from Everett to
3 Mount Vernon. That's one each way; is that right?

4 A. That's two each way, that's four movements
5 through the town.

6 Q. Thank you. Now, why are the freight train
7 speeds being requested to be increased along with the
8 passenger speeds at this hearing?

9 A. The issue of speed differential becomes one
10 of how do we accommodate a passenger train within the
11 capacity of our existing track structure and in the
12 light of the improvements that are going to be made as
13 part of this program. The passenger train itself
14 when it's operating is operating on a single main
15 track between Everett and the Canadian border. The
16 only way that it can share that track with freight
17 trains is to make sure -- and to achieve its schedule
18 -- is to make sure that we can move the freight trains
19 efficiently out of the passenger train's way to avoid
20 the delay to the passenger train. Besides the
21 passenger train moving the same direction that
22 passenger train also has to face the opposing -- I
23 think we just summarized about eight opposing
24 southbound movements if we had a northbound train a
25 day.

1 I guess the analogy is that passenger train
2 going northbound, as an example, on a single track can
3 only move as fast as the slowest train in front of it.
4 If we authorize passenger speed at 79 miles an hour
5 but a freight speed substantially lower than that then
6 we are not going to be able to accommodate the
7 movement of that passenger train efficiently to
8 achieve the goals of the program.

9 Q. Now, I would ask you to go over to this
10 large map, Exhibit 3, there's a pointer here laying
11 underneath it, and would you tell the court and the
12 citizens here just which freight train speeds are
13 being requested to be increased?

14 A. Well, currently we have a WUTC order that
15 allows 25 miles an hour for freight in this area. Our
16 current operating speed is 20 miles an hour.

17 Q. And you're indicating there between --

18 A. That would be the area south of Marysville
19 between approximately milepost 37.8 and milepost 38.5,
20 which their milepost 38.5 is at approximately First
21 Street in Marysville.

22 At that point we are requesting that
23 freight speed be increased from First Street from its
24 existing 25 miles an hour to 50 miles an hour through
25 the corporate limits of Marysville to 136th Street.

1 Q. Are you familiar with the crossings in that
2 area from milepost 38.5 to 43.3?

3 A. Yes, I am.

4 Q. And does the track stay the same all the
5 way through that area?

6 A. It is a single main track throughout the
7 area except for a small portion in downtown Marysville
8 that intersects at the Eighth Street crossing where
9 there is a short siting track and also a house track
10 where rail cars would be spotted. At the Eighth
11 Street crossing are three tracks in the crossing. The
12 others would be single.

13 Q. Is there any kind of a siting track or
14 switch track at First Street?

15 A. There is a spur track serving the Welco
16 Lumber Company that originates in switches north of
17 First and then opens to the north and the track
18 extends southward into Welco from First Street.

19 JUDGE HAENLE: Are the names of the
20 crossings that you've been using indicated on the map?

21 THE WITNESS: I believe the crossing names
22 are going to be located out a little bit to the left
23 on that map in probably a light green print.

24 JUDGE HAENLE: Thank you. My test for
25 determining how you're doing in terms of the record is

1 not to watch you point but to see if I can follow you
2 on the map so I will let you know if I can't.

3 Q. On the map, Exhibit 3, just for the record
4 now, for clarification, Mr. Rowley, is the green
5 writing corresponding with the little green circles on
6 the rail line to depict the crossings?

7 A. Yes, it is.

8 Q. Now, would your locomotive engineers
9 actually be able to operate the trains -- the
10 freight trains -- at 50 miles per hour all the way
11 from milepost 38.5 to milepost 43.3?

12 A. No, they would not.

13 Q. Why not?

14 A. There are several factors that enter into
15 it. Number one is the slower speed south of First
16 Street is a speed restriction for an entire train.
17 Therefore, a train coming northbound must get the rear
18 end of the train out of the existing 25-mile-an-hour
19 order before we can begin to accelerate up to 50.
20 Therefore, he may be as much as three to 5,000 feet
21 with the locomotive north of First Street before he
22 begins to accelerate. At that point the rear end
23 would have been released from the 25 mile an hour
24 restriction.

25 Q. How long are the freight trains that are

1 operating out of Everett?

2 A. We operate trains as long as 7500 feet. I
3 would say the average -- we try to keep it at 6,000
4 feet for the Canadian destiny freight trains.

5 Q. Then how long does it take for the train to
6 pick up speed to reach 50 miles per hour? What does
7 that depend on?

8 A. You're looking at several factors. Number
9 one is the weight of the train itself. Number two is
10 the locomotive power assigned to that train to
11 determine how fast you can accelerate, and then the
12 only other factor that might enter into it there would
13 be any other restrictions other than the WUTC orders
14 which might be ahead of him. He could in theory be
15 operating at some temporary restriction also.

16 Q. Assuming that there were no temporary
17 restriction of speed ahead of the engineer, on a
18 typical train -- is there such a thing as a typical
19 train that you could say you would expect them to have
20 picked up to 50 miles per hour at a certain point in
21 Marysville?

22 A. I would use a typical train as being 6,000
23 feet long. That's just the length of train we're
24 trying to operate at. So he would be a mile and a
25 quarter north of First Street before he could begin

1 his acceleration from 20 miles an hour towards 50. I
2 would have to sit here -- he's going to be somewhere
3 in the vicinity of 80th Street, I would say, before he
4 begins his acceleration, and he would then be
5 accelerating the entire time between 80th and 136th
6 and whether he achieved the speed of 50 miles an hour
7 would again be relative related to the weight of the
8 train and the horsepower.

9 Q. Right now you've been talking so far about
10 a northbound freight train. What about the southbound
11 freights? What kind of speeds would they actually be
12 operating at?

13 A. Well, the speed north of the corporate
14 limits of Marysville, the maximum track speed as it
15 exists is 50 miles an hour. So coming southbound the
16 train, if he's operating at maximum speed, will be at
17 50 and could maintain that speed down into a portion
18 of this corporate limits, but I would estimate
19 probably about a mile and a half to two miles north of
20 his next restriction which would begin at First
21 Street. That's his next lower speed restriction. He
22 would begin to position his controls on the locomotive
23 to begin slowing it down, so at the point the
24 locomotive reaches the 25-mile-an-hour restriction
25 that would be the appropriate speed.

1 So you're going to be decelerating probably
2 no later than the vicinity of 106th Street -- 116th
3 crossing. He could easily start farther north than
4 that depending on the braking ability of the train.
5 So again, he would not be able to take advantage of
6 the 50-mile-an-hour increase for the entire distance
7 but it allows him to maintain the 50 miles an hour for
8 a long period of time coming southbound before he
9 needs to slow down.

10 Q. You can take your seat again. Thank you,
11 Mr. Rowley. Now, at what speed do Burlington Northern
12 freight trains generally operate down the Washington
13 state coast line?

14 A. Between Everett and Seattle maximum speed
15 is 50 miles an hour.

16 Q. And are there any greater number of
17 accidents on that part of the line as compared to
18 parts of the line where freights operate at slower
19 speeds?

20 A. No, there are not.

21 Q. Are you familiar with the accident history
22 for the town of Marysville with respect to
23 derailments, collisions and pedestrian accidents for
24 the last five years?

25 A. Yes, I am.

1 Q. Are you familiar with an incident that
2 occurred on August 15, 1990?

3 A. Yes, I am. I had the opportunity to review
4 that information.

5 Q. And what happened in that incident, just
6 generally?

7 A. August 25, 1990 involved the --

8 JUDGE HAENLE: 15 or 25th?

9 THE WITNESS: Excuse me. 25th.

10 MS. GIBSON: Yes. I'm going to correct my
11 question to show that date. August 25, 1990.

12 JUDGE HAENLE: Please concentrate on making
13 your speech clearer so -- clearer and slower so that
14 the reporter can take it all down because if she
15 doesn't get it down it doesn't officially exist and it
16 won't have done you any good to say it.

17 A. The record of pedestrian incidents between
18 1988 and 1993 in the corporate limit of Marysville
19 reflects one incident. It occurred on August 25, 1990
20 at 10 minutes before midnight. That involved a
21 pedestrian who was struck by a southbound freight
22 train near 108th Street Northeast and that resulted in
23 a fatal injury to the person that was struck.

24 Q. Are you also familiar -- well, let's see.
25 First of all, what was that person doing that was

1 struck? Did you have information on that?

2 A. Yes, I did. I was able to talk to the
3 investigating officer on that case, railroad officer,
4 as well as to obtain a report of the incident. That
5 individual was sitting on the railroad tracks, smoking
6 cigarettes with alcoholic beverages sitting next to
7 him. The person did not respond to the whistles or
8 bell from the locomotive and the locomotive struck the
9 individual and fatally injured him when he was not
10 clear of the right-of-way.

11 Q. Are you also familiar with the Commission's
12 records of grade crossing accidents for that same
13 period 1988 to 1993?

14 A. Yes, I am. The records between 1988 and
15 1993 of the Utilities Commission show two grade
16 crossing accidents that occurred within the corporate
17 limits of Marysville.

18 Q. And for the accident for March 7, 1991,
19 where did that occur?

20 A. That was at milepost 38.7.

21 Q. And is that known as the Fourth Avenue
22 crossing?

23 A. That would be the Fourth Street crossing,
24 yes.

25 Q. What was the assessment of the cause of

1 that accident?

2 A. That incident did not involve a locomotive
3 or train. That involved a driver error by a motorist
4 who struck the crossing arm and broke it off with his
5 trailer.

6 Q. Anyone injured?

7 A. There were no injuries and there were no
8 fatalities and there was no property damage.

9 Q. Other than to the gate arm?

10 A. Other than to the gate arm, yes.

11 Q. March 27, 1993, where is that accident
12 listed?

13 A. That accident occurred at 88th Street
14 Northeast milepost 40.4.

15 Q. What did that involve?

16 A. A description of that incident is that a
17 car turned right off of State Street onto 88th and
18 the train struck the car.

19 Q. Any injuries or fatalities?

20 A. There were no injuries and no fatalities.

21 Q. What was the cause of the accident?

22 A. The cause of that accident is recorded as
23 driver error by the motor vehicle operator.

24 Q. And did you find any record of any other
25 accidents or incidents at all?

1 A. No, I have not.

2 Q. Now, do you supervise a locomotive engineer
3 who is involved in a program known as Operation
4 Lifesaver?

5 A. Yes, I do.

6 Q. Who is that person?

7 A. That is Mr. Dennis Heatherington, H E A T H
8 E R I N G T O N.

9 Q. What is Operation Lifesaver?

10 A. Operation Lifesaver is a joint effort
11 between railroads, municipal and state entities who
12 deal in the operation of pedestrian and motor vehicles
13 over railroad crossings. It's an effort of all of
14 those bodies to reduce the number of accidents and
15 incidents that occur at or near railroad crossings.

16 Q. What does Mr. Heatherington in particular
17 do in that regard?

18 A. Mr. Heatherington is a trained locomotive
19 engineer. He has been assigned to Operation Lifesaver
20 full-time for an extended period. He is involved in
21 scheduling presentations to public schools, public
22 transportation operators, private transportation
23 operators, actually to any group that requests his
24 presentation. It is focused on providing information
25 about the hazards that may exist at or near railroad

1 property, the hazards of trespassing, the hazards of
2 not obeying the existing traffic signals and as an
3 educational tool when used in the public schools to
4 try to start that training at the earliest possible
5 stages.

6 Q. Does Mr. Heatherington's territory include
7 the city of Marysville?

8 A. It does.

9 MS. GIBSON: I have no further questions at
10 this time.

11 JUDGE HAENLE: Questions, Mr. Graafstra?

12

13

CROSS-EXAMINATION

14 BY MR. GRAAFSTRA:

15 Q. Do you know what the train speed is for a
16 freight train going through the city of Everett?

17 A. Depending on the location it could be
18 between 25 and 15 miles an hour.

19 Q. And why are the speed limits in the city of
20 Everett 15 to -- is it 20 miles per hour?

21 A. 25.

22 Q. I'm sorry, 25 miles per hour.

23 A. They would be set -- I did not research
24 those specifically but they would either be set by a
25 Washington Utilities order or if they're a class 1

1 city could indeed be set by the city itself.

2 Q. Do you think that perhaps hazards and
3 safety issues could have been factored into those
4 speeds?

5 A. I would not presume to know why they did it
6 but that would be one thing I would take into
7 consideration.

8 Q. Now, you deal with Everett north; is that
9 correct?

10 A. That's correct.

11 Q. Do you know what the train speeds are in
12 Edmonds? Is that out of your jurisdiction or area?

13 A. It is out of my jurisdictional area.

14 Q. What are the train speeds inside the city
15 limits of Mount Vernon?

16 A. Currently we operate through Mount Vernon
17 at 20 miles an hour.

18 JUDGE HAENLE: The question was -- was the
19 question train speed limit or the operating speed they
20 actually use?

21 MR. GRAAFSTRA: It was actually the train
22 speed.

23 A. That's the maximum authorized.

24 Q. That's the maximum authorized for Mount
25 Vernon?

1 A. Yes.

2 Q. Do you know why it is set at that rate?

3 A. That is a Washington Utility Commission
4 order.

5 Q. Do you know whether that order is being
6 petitioned to change?

7 A. Yes, I do. It is.

8 Q. Do you know what the requested change there
9 is?

10 A. I don't have it with me at this time, no.

11 Q. Do you know whether there's a petition to
12 change the operating speed within the city of Everett?

13 A. There is not.

14 Q. Do you know what the operating speed is
15 inside the city of Bellingham?

16 A. It would vary between 10 miles an hour and
17 25 -- 20, excuse me. Between 10 and 20 miles an hour.

18 Q. And is that the speed limit also?

19 A. That is the maximum speed, yes.

20 Q. Do you know whether there's a petition to
21 change the speed limits there?

22 A. No, I'm not aware of a petition at
23 Bellingham.

24 Q. Now, I understand there is a petition to
25 change the speeds in Stanwood; is that correct?

1 A. I believe that application for petition has
2 been withdrawn.

3 Q. How about Ferndale?

4 JUDGE HAENLE: Counsel, do we have any
5 update on that?

6 MS. RENDAHL: I understand the Commission
7 has approved the request to dismiss the petition but
8 there is a hearing scheduled I believe on the 27th of
9 this month in Stanwood, a preliminary hearing, a
10 pre-hearing conference, to discuss how to proceed
11 further on that case. I understand the city has
12 requested that the train speed be decreased. There is
13 a current standing Commission order to allow the
14 trains to travel at 79 miles an hour through Stanwood.

15 JUDGE HAENLE: Thank you. I wanted some
16 kind of representation from counsel on that because I
17 thought we were going to have a hearing next week so I
18 wanted to know what it was about if that was correct
19 or not. Go ahead.

20 MS. RENDAHL: 27th.

21 Q. Is there a petition to increase the train
22 speeds in Ferndale?

23 A. Yes, there is a petition and the hearing
24 has already been conducted.

25 Q. Do you know what the current speed limit in

1 Ferndale is?

2 A. The current speed through Ferndale I
3 believe is either 40 or 45.

4 Q. And what is the requested change in speed?

5 A. The request for freight speed was 50.

6 Q. Do you know what it was for the passenger
7 trains?

8 A. Excuse me, there was no request for freight
9 speed increase at Ferndale. There was passenger speed
10 application only.

11 Q. What about Blaine --

12 JUDGE HAENLE: What was the request for
13 increase to in Ferndale? If you know. If you don't
14 know --

15 THE WITNESS: I don't know specifically on
16 the passenger increase.

17 Q. Do you know whether there was a petition
18 for increase in speed for Blaine?

19 A. Yes, there was.

20 Q. Do you know what the existing speed limit
21 in Blaine is?

22 A. That speed limit I believe is 15 miles per
23 hour.

24 Q. Do you know what the requested change in
25 Blaine is?

1 A. I would have to go back and pull that out.
2 I don't know it offhand.

3 Q. Now, just south of the city limits of the
4 city of Marysville I understand that there is a
5 railroad bridge that has to cross a slough or
6 something like that; is that correct?

7 A. The first bridge immediately south of
8 First Street is Ebey Slough and it is numbered as
9 bridge No. 12 on Burlington Northern.

10 Q. Now, is that a somewhat old railroad
11 bridge?

12 A. I don't know the age of the bridge. It's
13 been there for a while.

14 Q. And does Burlington Northern maintain its
15 own standard for speed which trains can cross that
16 bridge?

17 A. Yes, we do.

18 Q. What's that speed?

19 A. Currently it is 20 miles an hour.

20 Q. Do you have plans to change that?

21 A. Part of the upgrade during this project is
22 to include a lock and signal system which will allow
23 the increase in speed up to 25. Until that is
24 accomplished the speed will remain at 20.

25 Q. Do you know when that projected change is

1 planned?

2 A. I believe the plan for bridge 12 and the
3 bridge south of it, bridge 11, is in phase two of the
4 biennial project which would be at the earliest --
5 biennium two begins July 1st of this year.

6 Q. In your testimony when you are describing
7 the activities of the freight train moving south, I
8 understood that you said that the train would start
9 braking to match the speed limit that's projected at
10 the south end of Marysville about 116th Street; is
11 that correct?

12 A. We use a general target of approximately
13 two miles north or two miles from a speed change to
14 begin adjusting the throttle and brake setup of the
15 train so that it's prepared to be at the appropriate
16 speed when it reaches the speed restriction.

17 Q. So at this point under the proposed change
18 in speed you're talking about being able to travel 50
19 miles per hour on a southbound freight for about one
20 mile inside the city of Marysville, about 20 blocks?

21 A. It would depend on the size of the train.
22 The largest trains would of course need to begin
23 slowing earlier than the smaller ones. Local freight
24 trains would be able to take advantage of the speed
25 increase for a greater distance; because of their

1 lighter weight they would be able to slow more rapidly
2 to meet the south end restriction.

3 Q. Now, as I understand it, the rationale for
4 increasing the freight train speeds is to accommodate
5 the passenger train; is that correct?

6 A. That is correct.

7 Q. There's really no practical advantage to
8 Burlington Northern in its movement of freight trains;
9 is that correct?

10 A. It may have the parallel feature of making
11 the operation more efficient. The intent is to
12 accommodate the passenger service.

13 Q. Now, you said there were 14 freight train
14 movements through Marysville per day; is that correct?

15 A. Yes.

16 Q. And so how many minutes or hours per day
17 are freight trains within the city of Marysville?

18 A. Those 14 trains, if they moved --

19 Q. Using today's speed limits.

20 A. Well, the current running time assuming
21 instant acceleration and deceleration at the speed
22 change point is just over 13 minutes.

23 Q. So on 14 train movements you're telling me
24 we have 14 train movements times 13 minutes; is that
25 correct?

1 A. That would be the minimum. Of course we do
2 not have instant acceleration or deceleration.
3 Therefore, it would be in excess of the 13 minutes per
4 train. I think probably 15 to 20 minutes through the
5 corporate limits would be more accurate from 136th
6 down to First.

7 Q. So adding the benefit of the doubt, we've
8 got something in the order of three hours of dead end
9 silence sitting in Marysville; is that correct?

10 A. I can accept your computation.

11 Q. And what you're really telling me is that
12 you can't accommodate the passenger trains on the
13 other 21 hours a day without increasing the speeds?

14 A. The scheduling of the passenger trains will
15 put it in and on the track at the same time as
16 existing freight service.

17 Q. And that's because of management choices;
18 is that correct?

19 A. That is because of the operation of freight
20 service as it exists today.

21 Q. Because of your choices and how you want to
22 operate the freight trains, correct?

23 A. We are operating the freight trains today
24 to accommodate the needs of our customers and public,
25 and that's how we operate.

1 JUDGE HAENLE: And you make the decision,
2 your company makes the decision about on what schedule
3 they're operated, sir?

4 THE WITNESS: That is correct.

5 MR. GRAAFSTRA: I don't have any further
6 questions.

7 JUDGE HAENLE: Questions, Ms. Rendahl?

8 MS. RENDAHL: I have no questions.

9

10 EXAMINATION

11 BY JUDGE HAENLE:

12 Q. I did not understand the description of the
13 bridge. You said some kind of an upgrade to a lock
14 and signal system. What are you talking about?

15 A. It would probably be more appropriate for a
16 couple of gentlemen that are also on the list to
17 discuss it, but it is an improvement in the system.

18 JUDGE HAENLE: Well, if someone can do it
19 who would I ask about it?

20 MS. GIBSON: Mr. Driscoll.

21 JUDGE HAENLE: That's all I had. Any
22 redirect?

23 MS. GIBSON: Yes.

24

25

1 REDIRECT EXAMINATION

2 BY MS. GIBSON:

3 Q. You accepted counsel's version, I think,
4 that there was three hours total during the day when
5 trains would be in the town of Marysville. If you
6 take your estimation of 20 minutes for each train and
7 you've got 14 trains, I'm not going to ask you to sit
8 in that chair and do the math, but would you have to
9 work that out rather than just accepting what someone
10 else said?

11 A. It's going to be in excess of four hours.
12 Just on an off-the-cuff it's going to be closer to
13 five.

14 MS. GIBSON: If I may show the witness a
15 document.

16 JUDGE HAENLE: Yes.

17 Q. And the document that I've just handed you,
18 Mr. Rowley, is that a form that's known as an F27?

19 A. Yes, it is.

20 Q. What generally is an F27?

21 A. That is an internal report that we
22 generate. It's a wire notification of an accident or
23 an incident involving on-track equipment.

24 Q. That's an internal Burlington Northern
25 document, is it?

1 A. That is correct.

2 Q. And how is the information generated for an
3 F27? How is it input into the system?

4 A. After the field investigation is done and
5 the information is entered onto our form we transmit
6 it to our F27 center in Lincoln, Nebraska, where it is
7 then made part of the general database for the
8 railroad.

9 Q. Now, the particular F27 that I've just
10 handed you, does that reflect another accident at
11 Marysville that we didn't talk about earlier?

12 A. It does, according to the date on it, yes.

13 Q. What is the date of that?

14 A. It's December 19, 1992.

15 Q. What kind of an accident was it?

16 A. This is an incident in which a train struck
17 a pedestrian.

18 Q. Does it say at what location?

19 A. That would be at milepost 39.1.

20 Q. And so milepost 39.1 on Exhibit 3 is --
21 that's not a crossing, is it? Do you have a copy of
22 the map there?

23 A. I do not believe it is a grade crossing,
24 that's correct.

25 Q. According to the F27, what happened at

1 milepost 39.-- what did you say -- 1?

2 A. 39.1.

3 Q. What happened there?

4 A. A southbound train on the main line struck
5 a female trespasser who stepped over the guard rail
6 and stood between the rails and was struck by the lead
7 locomotive. Apparent suicide. Death occurred on
8 December 25. It was not instantaneous.

9 Q. Other than that incident and the others
10 that we've talked about previously, are you aware of
11 any other accidents here in Marysville regarding
12 freight trains or passenger trains and citizens?

13 A. In the time period that was covered on
14 these reports, no.

15 MS. GIBSON: Nothing else.

16 JUDGE HAENLE: I did have one question that
17 I forgot to ask in that regard and that is you told us
18 about the time period 1988 through 1993. Is 1993 the
19 most recent period for which data was available?

20 THE WITNESS: From the WUTC summary, that
21 is correct.

22 JUDGE HAENLE: Any recross?

23 MR. GRAAFSTRA: I have a couple of
24 questions.

25

1 RECROSS-EXAMINATION

2 BY MR. GRAAFSTRA:

3 Q. Talking about train accidents, do you have
4 any information about an accident occurring on
5 December 7, 1994?

6 A. I can look to see if I brought it with me.
7 I may have.

8 I do not have any information on December
9 7. I do have a report reflecting an incident on
10 December 6 which might be the one to which you're
11 referring.

12 Q. And that was a train-truck crash; is that
13 correct?

14 A. That was a freight train which struck a
15 truck, that is correct.

16 Q. And what about an event on December 15,
17 1994 where a truck was totaled?

18 A. I do not have any data on that with me.

19 Q. Do you have any knowledge about an incident
20 in March of 1994 where a train was just left blocking
21 the streets in Marysville and the crew disappeared?

22 A. I have knowledge of an incident although I
23 would not agree with your facts.

24 Q. This was a train crew that just took a taxi
25 home?

1 A. No, they did not just take a taxi.

2 JUDGE HAENLE: Was the question whether you
3 are familiar with the incident?

4 A. I'm familiar with an incident on that date
5 but not as he described it.

6 Q. Now, I understand that just outside the
7 jurisdiction of the city of Marysville there was a
8 train blaze in December of 1991?

9 A. I'm aware in general that a derailment
10 occurred at that location but I was not involved in
11 that incident.

12 Q. And going back a little further in history,
13 are you aware of an incident in 1981 where tank cars
14 derailed and thousands of people were evacuated from
15 this area?

16 A. No, sir.

17 Q. You're not familiar with that?

18 A. No.

19 Q. In the historic information that might be
20 available to you, do you have any knowledge of train
21 wreck and derailment in 1969 in Marysville?

22 A. I do not.

23 Q. You're not aware of whether that event
24 occurred or didn't occur?

25 A. I have no idea.

1 MR. GRAAFSTRA: I don't have any further
2 recross.

3 JUDGE HAENLE: Anything else of the
4 witness?

5 Thank you, sir. You may step down. Let's
6 break for lunch at this point. We'll come back at
7 1:00. We'll take those members of the public who want
8 to give testimony today and then we'll continue with
9 petitioner's witnesses. This room will not be locked,
10 as I understand.

11 (Lunch recess.)

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1 AFTERNOON SESSION

2 (1:00 p.m.)

3 JUDGE HAENLE: Let's be back on the record
4 after our lunch recess. We have scheduled public
5 testimony at 1:00. Before we start with that, you had
6 something you wanted to take care of procedurally, Mr.
7 Graafstra?

8 MR. GRAAFSTRA: Yes. In my questioning of
9 the last witness I inquired about a December 15, 1994
10 incident. The information supplied to me was
11 incorrect and it was duplicative of the December 6 or
12 7, 1994. I would like to withdraw my questions in
13 reference to that.

14 JUDGE HAENLE: Is that all right with
15 everyone if we just ignore that question and the
16 answer?

17 MS. GIBSON: Yes. We appreciate the
18 clarification.

19 JUDGE HAENLE: I appreciate it also. I
20 like to have a good record.

21 The next portion of the hearing, as I
22 indicated, is for those members of the public who
23 wanted to give testimony rather than waiting to hear
24 the rest of the testimony of the parties. I have
25 five people who have specifically said they want to do

1 this today. At the end of that time I will break, ask
2 if there's anyone else in the audience who also wanted
3 to testify today. You will be giving your testimony
4 from the witness stand over there where you've seen
5 the other witnesses give their testimony. Ms. Rendahl
6 will be asking you just the foundation questions and
7 then ask you to state your position. Remember, you
8 might want to lead off with whether you oppose the
9 increase limit -- speed limit increase, whether you
10 oppose it or favor it might be the first thing you
11 want to say to give people an idea of what your
12 position is.

13 May I have Robert Miller, please.

14 Whereupon,

15 ROBERT MILLER,
16 having been first duly sworn, was called as a witness
17 herein and was examined and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MS. RENDAHL:

21 Q. Would you please state your full name for
22 the record.

23 A. Robert A. Miller, M I L L E R.

24 Q. Please state your address for the record.

25 A. It's 2216 - 122nd Place Southeast, Everett,

1 98208.

2 Q. So you're not a resident of Marysville?

3 A. No, I'm not.

4 Q. Are you a property owner or a business
5 owner in Everett?

6 A. I own my own home in Everett and also one
7 in Granite Falls.

8 Q. Are you testifying on your own behalf today
9 or on behalf of any organization?

10 A. I'm testifying on my own behalf.

11 Q. Please go ahead and make your statement.

12 A. The reason that I am here, I'm a retired
13 locomotive engineer, worked for the Burlington
14 Northern and former Great Northern Railroad for 39
15 years, and I want to tell you people that if we had a
16 video camera that we could have used in the windshield
17 of that locomotive it would sure give you a different
18 perspective of what's happening. Now, there's been
19 testimony today in effect that at different speeds
20 that the locomotive and accident and so forth, and I
21 can tell you from my experience, the slower you go the
22 more you hit. I have never had an accident running 50
23 miles an hour or 79 miles an hour but I had a lot of
24 accidents in 25 miles an hour and below.

25 Now, I don't know what it is about people.

1 I think they're crazy. Obviously, the more
2 automobiles on the road, the more hazard that there
3 is. But in Marysville for an example, one of the main
4 problems here is people get lined up to go across the
5 track waiting for a traffic signal. They don't stay
6 back until they can clear the crossing, the arms come
7 down on them. They tear the arms off or they drive
8 through them or they drive around them, and I think
9 that one of the things that could cure a problem would
10 maybe have a law enforcement out there to write a few
11 tickets to these people that do this kind of stuff.

12 Now, I don't know what all the answers to
13 this is but I can tell you from my own experience it
14 was never the speed that the locomotive would cause
15 the problems. That's all I got to say.

16 Q. Are you testifying in favor or against?

17 A. I'm in favor of increasing the speed. You
18 bet.

19 JUDGE HAENLE: Questions, Counsel? Anyone?
20 Thank you, sir, for your testimony. You may step
21 down.

22 Forrest Briggs, please.

23 Whereupon,

24 FORREST BRIGGS,

25 having been first duly sworn, was called as a witness

1 herein and was examined and testified as follows:

2

3

DIRECT EXAMINATION

4 BY MS. RENDAHL:

5 Q. Would you please state your full name for
6 the record and spell your last name, please.

7 A. Forrest Briggs, B R I G G S.

8 JUDGE HAENLE: Actually you probably should
9 spell the first one too, if you would.

10 THE WITNESS: Forrest, F O R R E S T.

11 Q. And would you please state your address for
12 the record, as well?

13 A. 12115 - 19th Southeast G103, Everett,
14 Washington.

15 Q. So you are not a resident of Marysville
16 either?

17 A. No, ma'am.

18 Q. Are you here on your own behalf or on
19 behalf of an organization?

20 A. On my own behalf to offer a perspective
21 from experience.

22 Q. What is your position on the train speeds
23 petition here before us?

24 A. A locomotive engineer.

25 Q. Why don't you go ahead and make your

1 statement.

2 JUDGE HAENLE: Are you supporting the speed
3 increase or opposing the speed increase?

4 THE WITNESS: I'm supporting it. Definite
5 support.

6 A. The experience ranges from 1945 as a
7 teenager to the 1988 when I retired, encompassing a
8 period of 43 years, 40 of it in engine service out on
9 the road. Started with the Milwaukee, then the great
10 Northern, subsequent merger as Burlington Northern,
11 finally retired on Amtrak. Might say that I've had a
12 ringside seat to watch this thing develop and the
13 order of magnitude with regard to vehicular traffic
14 congestion, population explosion, the city limits
15 moving out and that length of time with very little
16 being done to design, in the way of design, but just
17 watching expediency as a result of not regarding the
18 problems as a physical engineering one. So, we're
19 stuck here with a situation that must be corrected.

20 With regard to speed, I'm not going to
21 cover anything that hasn't been except to make the
22 analogy that regardless of a bullet speed, if you
23 get in the way of it you're going to get hurt, but the
24 problem seems to be one of more like the old chicken
25 and the egg thing, who got there first. The railroads

1 maintain, well, the towns grew up around the railroads
2 because, after all, they provided the transportation
3 link that actually developed this country after the
4 industrial revolution. And now the cities say that
5 the railroads are in the way. Well, where does the
6 responsibility lie? In this case with the operator of
7 the motor vehicle or the railroad, one is blaming the
8 other and one is vice versa, and it's come down to
9 almost a contest of speed versus responsibility, whose
10 it is and rights and privileges, including trespassing
11 and all sorts of things that pop up in court if you
12 had been like I have, and I was also experienced as a
13 labor representative for the Brotherhood of Locomotive
14 Engineers.

15 Well, from the experience standpoint, again
16 without any detail, I will summarize with this. I do
17 know that roughly 94 percent of these accidents that
18 happen occur in these townships -- occur within a
19 radius of 25 miles of where the person actually lives.
20 In other words, the old expression "familiarity breeds
21 contempt" is a valid one here. This guy -- this
22 person, excuse me -- will go back and forth over that
23 same section of track and seldom see a train
24 approaching. In other words, not paying attention.
25 I'm not here to put the onus of responsibility

1 completely on the vehicle operator, but merely to
2 point out that there is an element there of
3 responsibility that's been ignored, with the boom box
4 going in the car and not being -- I've had people tell
5 me that they didn't even hear the whistles blowing and
6 I've had my share of experiences firsthand in that
7 regard. And I will agree with Mr. Miller who preceded
8 me here that the effect that the accidents happen at
9 low speed.

10 I would say this with regard to speed and
11 the limit imposed: that we can expect them to keep
12 moving further and further out as the population will
13 double within the next 10 to 15 years according to the
14 RTA, Rapid Transit Authority, and then what are we
15 going to do? The first thing you know from the
16 Canadian border clear to Portland you're going to have
17 what amounts to imposed speed regulations, in other
18 words, you're looking at an impasse. Something that
19 should be taken into consideration.

20 So much for speed. One recommendation I
21 would say about the crossings themselves, now that the
22 vehicular operator hasn't taken the responsibility
23 upon himself to look out for the trains with the
24 trains having to more or less look out for them, the
25 way the protective devices such as gates, flashing

1 lights, et cetera, let's move those gates back.
2 They're too close to the tracks. That's the enticing
3 thing for the motor operator to try to beat the train,
4 especially if these moving -- appears to be moving
5 slowly. Appears to be. A train is so massive that it
6 looks like it's barely moving until it's right on top
7 of you and boom. Have you ever been down at SeaTac
8 and watch a jet coming at you taking off? It's just a
9 dot in the distance and all of a sudden -- vroom,
10 it's gone. Well, you get the same impression here.

11 That would be number one, to move the
12 crossings back from the right-of-way itself, and
13 number two, reader boards. Putting up a stop sign or
14 gates doesn't mean anything any more to the average
15 person but you will notice on the freeway, when the
16 lanes are out or changing or anything they put them up
17 on reader boards with big flashing light so that you
18 can't ignore them. Imagine out on that freeway just
19 putting up a sign Left Lane Closed Ahead. They would
20 still be picking them up.

21 I will conclude with the idea in mind that
22 this is a problem that has to be dealt with now and
23 speed is not a relative factor in that regard. Thank
24 you very much.

25 JUDGE HAENLE: Counsel, questions?

1 MS. GIBSON: I don't have any questions.

2 MR. GRAAFSTRA: No questions.

3 JUDGE HAENLE: Thank you, sir.

4 Whereupon,

5 DALLAS CROW,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MS. RENDAHL:

11 Q. Would you please state your full name for
12 the record and spell your full name for the record.

13 A. Dallas K. Crow, Jr., D A L L A S C R O W.

14 Q. And would you please state your address.

15 A. 7122 - 67th Street Northeast, Marysville,

16 and I'm speaking in favor of the speed limit

17 increases. I'm a homeowner.

18 Q. Are you speaking on your own behalf or on
19 behalf of any group or organization?

20 A. On my own behalf.

21 Q. Please go ahead and make your statement.

22 A. All right. It's obvious that there's a lot

23 of public money being spent on restoring passenger

24 trains between Seattle and Vancouver, and I think that

25 if this investment is going to pay off at all, the

1 trains are going to have to operate at a speed which
2 is competitive with the highway, because if you can't
3 get from Seattle to Vancouver in a shorter time by
4 train or at least in the same time as driving your
5 car, people aren't going to use it, they're going to
6 use their cars.

7 My second point is that if you do have the
8 temerity to stop your car on the tracks it doesn't
9 matter if that train is going 25 miles an hour or 70
10 miles an hour, the result is going to be the same.
11 That's all I had to say.

12 JUDGE HAENLE: Counsel, questions?

13 MS. GIBSON: I have nothing.

14 JUDGE HAENLE: Where is your residence
15 located in connection to any of the crossings? Are
16 you near any of the crossings in particular?

17 THE WITNESS: I live on the east side of
18 town and I cross at Fourth Street to get to the
19 freeway.

20 JUDGE HAENLE: Thank you. You may step
21 down, sir. Patricia Everett.

22 Whereupon,

23 PATRICIA EVERETT,
24 having been first duly sworn, was called as a witness
25 herein and was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. RENDAHL:

3 Q. Would you please state your full name for
4 the record and spell your name.

5 A. Patricia E. Everett.

6 Q. Would you please spell it.

7 A. P A T R I C I A E V E R E T T.

8 Q. What is your address?

9 A. 3924 - 122nd Street Northeast in
10 Marysville.

11 Q. How long have you been a resident of
12 Marysville?

13 A. My family has owned that property since
14 1947 and we built a new home there in 1990.

15 Q. Are you testifying today on your own behalf
16 or on behalf of any organization?

17 A. On behalf of my husband and myself.

18 Q. What is your position on the train speed
19 increase?

20 A. Against.

21 Q. Please go ahead and make your statement.

22 A. Our property borders Burlington Northern.
23 We have approximately two acres, and it's not so much
24 for the high speed rail, because I can't testify to
25 what effect that has on us, I have not had a train by

1 there, but I can testify to what effect the freight
2 trains have.

3 When we originally built our house in 1990
4 we had never had the experience of living next to a
5 railroad. We figured, okay, there's going to be
6 noise. We built our house, invested \$200,000 of our
7 own money into building it. It was not a tract house.
8 We get vibration because originally when we moved in
9 we were not part of the city limits of Marysville.
10 The speed limit was 50 miles an hour. We put our
11 house back in the middle of our property, which I am
12 guessing without actually measuring we're about 200
13 feet back in from Burlington Northern's boundary or
14 their right-of-way. I have china vibrate, my floors
15 vibrate.

16 When we had an appraisal on our house --
17 when we ran out of our \$200,000 to have -- get a loan
18 from, a bank came out, the county had appraised our
19 house first at \$217,000. That's not including the
20 land. When we went to get an appraisal for the bank
21 and our appraisal came in it came in at a flat 200.
22 They said because of, quote, the area, the train noise
23 and the vibration that we could not sell our house for
24 what we already had into it. They would not give us a
25 loan, wouldn't appraise it as high.

1 So then I had the county come back out to
2 do a reappraisal because therefore they were taxing me
3 on a house -- a loan, not the property because we got
4 it in between when our property they hadn't
5 reevaluated. They came back out and said, well, we
6 hope that you have -- when they did the appraisal
7 -- that they were good appraisals and they had to go
8 around between Arlington and every place. And the
9 county agreed that we're taxing you too much even
10 though we had that kind of money into our house plus.

11 We -- now the county says our house is
12 worth 150,000-some dollars and that our property on
13 top of it. Now, we've already lost money that we
14 can't even cooperate plus we put up with this
15 vibration. Now I don't know if it's the ground. It's
16 very sandy, but I'm telling you what you felt this
17 morning, whatever they were doing outside when a heavy
18 freight train goes by our house at 50-some miles an
19 hour, because it was like that, we get vibration and
20 our house was built very, very strong.

21 I don't know what to say but I figured that
22 I'm going to have more damage to my house if you put
23 the freight train speed limit back up to 50. Since it
24 was put down to 25 when we were incorporated into the
25 city it isn't as bad, but I've had nails vibrate loose

1 and we've purposely left them to show, hey, this has
2 happened all along the inner structure of my house in
3 different rooms. And if it isn't my house and my
4 property, what other is happening?

5 There's a big development that just went in
6 at Strawberry Vista just across from us, and that is a
7 tract development. Now, those houses aren't going to
8 be built as sturdy. You know, I can't understand, you
9 know, we're paying our tax money to help build this
10 system, but in retrospect we're being hurt by the
11 system, and that's all I have to say.

12 JUDGE HAENLE: When, if you know, was the
13 change so that the speed limit was reduced from 50 to
14 25?

15 THE WITNESS: It was when we were
16 incorporated into the city limits of Marysville.

17 JUDGE HAENLE: Do you recall when that was,
18 just month and year or season?

19 THE WITNESS: No. It has been over a year
20 though but I know the railroad did take a while to
21 reduce it, to come down to the 25, but I would think
22 the city attorney would know. We were in that north
23 annex.

24 JUDGE HAENLE: I was trying to --

25 THE WITNESS: I think it's about two years

1 maybe. I'm guessing. It may be just a little less.

2 JUDGE HAENLE: Questions, Counsel?

3 Q. Where is your house located?

4 A. I can show you on the map.

5 Q. When you indicate on the map can you
6 describe where it's showing on the map by some reading
7 off some street on the map?

8 A. If I see 122nd, my property is -- I don't
9 have my glasses on but I think -- my husband and I own
10 approximately right there off 122nd, two acres, and we
11 butt up right next to Burlington Northern
12 right-of-way.

13 Q. Where you're pointing, is that indicating
14 just to the left of where it says Kruse Junction?

15 A. Yes. And there's a housing development all
16 around us.

17 MS. RENDAHL: I have no other questions.

18 JUDGE HAENLE: Counsel, questions?

19 MR. GRAAFSTRA: No questions.

20 JUDGE HAENLE: Thank you for your
21 testimony.

22 MS. GIBSON: One matter of clarification.
23 When you were indicating with your finger the housing
24 development location, that's to the west of your
25 property, is that it?

1 THE WITNESS: It's to the northwest and
2 south, yes. It's all the way around the outside.

3 MS. GIBSON: Thank you. Nothing else.

4 JUDGE HAENLE: Let's see. I have a John
5 Campbell. Did he want to testify today?

6 Apparently he's not in the hearing room.
7 There was a Frances Chamberlain who did not indicate
8 whether he or she wanted to testify today.

9 No response. Mary Maddox. Is she here?
10 Did she want to testify today?

11 Two more that didn't. Thomas Sullivan,
12 please. Come on up.

13 Whereupon,

14 THOMAS SULLIVAN,
15 having been first duly sworn, was called as a witness
16 herein and was examined and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MS. RENDAHL:

20 Q. Would you please state your name for the
21 record and spell it for the reporter.?

22 A. My name is Thomas D. Sullivan, T H O M A S
23 S U L L I V A N.

24 Q. And would you please state your address for
25 the record.

1 A. 12933 - 234th Street Northeast, Arlington,
2 Washington.

3 Q. So you are not a resident of Marysville?

4 A. That's correct.

5 Q. Are you here on your own behalf or on
6 behalf of an organization?

7 A. On my own behalf.

8 Q. What is your position on the train speed
9 petition?

10 A. I would like to see it increased.

11 Q. Why don't you go ahead and make your
12 statement, sir.

13 A. I think the transportation as it stands
14 right now in Western Washington needs to be upgraded
15 significantly in that the only alternative I have if I
16 want to go down south mainly to go to the airport or
17 go down to Seattle for a night or even to go north is
18 to use 5, and 5 is not going to get less crowded in
19 the years to come. One of the previous speakers noted
20 that the population may double. If that's the case
21 either the road is going to have to be widened or
22 something else is going to have to happen. The town
23 that I live in, the mayor is against -- there's a
24 certain percentage of people who are against putting
25 an airport there. And I think the town of Marysville

1 from what I've read is against from having an airport
2 because of the noise that would be involved in planes
3 going over. But if people -- if the population is
4 going to increase the people want to go places it's
5 going to be 5.

6 The way I look at it driving into
7 Marysville coming from Everett coming up this way, one
8 of the main sticking points would be the first
9 crossing right here. I think it's Fourth Street that
10 goes into the reservation. Is that it? Is that
11 Fourth? When a train comes through there you still
12 have all these people coming off the highway. It's
13 just backed right up onto the highway. Either a
14 bridge or something should be built there so that the
15 trains could bypass that place and not affect traffic
16 at all. I don't know what the situation is on the
17 trains south down in the Seattle area or near the
18 airport is concerned, but it would be pretty nice to
19 be able to jump on a train north of here and go down
20 and catch a plane out of the state or somewhere else,
21 and that's all I have to say.

22 JUDGE HAENLE: Questions, Counsel?

23 MS. GIBSON: I have no questions.

24 JUDGE HAENLE: Thank you for your
25 testimony. You may step down. That's all the people

1 that I have listed who indicated they might want to
2 testify. Is there anyone else in the hearing room
3 who wants to give testimony as opposed to tomorrow at
4 1:00, would you raise your hand.

5 I see no one indicating so we will then
6 continue with the testimony of the witnesses for the
7 parties now, and as I indicated we will take
8 additional public testimony, if there is any
9 additional public testimony, tomorrow at 1:00.

10 MS. GIBSON: We'll call Marvin Nelson.
11 Whereupon,

12 MARVIN NELSON

13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15

16 DIRECT EXAMINATION

17 MS. GIBSON:

18 Q. Would you say your full name and spell your
19 last name for the record, please.

20 A. Marvin Nelson, N E L S O N.

21 Q. And your address, your business address,
22 Mr. Nelson?

23 A. 777 Main Street, Fort Worth, Texas 76102.

24 Q. What is your occupation?

25 A. I work in the Burlington Northern Railroad.

1 Q. What do you do for Burlington Northern?

2 A. My current job position is senior manager
3 engineering and the primary responsibility for that
4 position is the implementation of these high speed
5 rail projects.

6 Q. What other positions have you held at
7 Burlington Northern over the years?

8 A. I've been with the Burlington Northern be
9 28 years this spring.

10 Q. How many years?

11 A. 28 years this spring. I've had positions
12 as road master working at a bridge department,
13 maintenance way planning and regional engineer and now
14 the engineer special projects.

15 Q. What is a road master?

16 A. A road master is a position that has
17 primary responsibility of the track when on his
18 territory.

19 Q. What is your educational background?

20 A. I have a degree in civil engineering 1965
21 from North Dakota State University.

22 Q. Do you have any professional certifications
23 in engineering?

24 A. I'm a registered professional engineer in
25 the state of Washington in 1971.

1 Q. You mentioned that one of your job duties
2 involves rail projects. How long have you been in the
3 Seattle to Vancouver B.C. rail project?

4 A. I've been spending approximately 75 percent
5 of my time working on this project since January of
6 1993.

7 Q. During that time period -- initially how
8 did you go about determining what speeds the trains
9 would have to go in which areas?

10 A. When we looked at this here corridor
11 knowing that the objective was to get down to a three
12 hour and 55 minute schedule, we looked at every speed
13 limit on the entire corridor knowing that the maximum
14 speed would be 79 mile an hour. The conditions that
15 we had to contend with was curvature which restricts
16 the train speed and other physical features I will get
17 into in a little bit here.

18 Q. When you speak of curvature, do you mean
19 curvature of the track itself?

20 A. Yes. The railroad is no different than a
21 highway. You have a curve in the highway in the
22 mountains you have a speed limit on it. The speed
23 limit is determined by the degree of curve. On the
24 Seattle to Vancouver route there is 210 curves and
25 these curves encompass approximately 51 miles of the

1 155-mile district. Also, the distances between these
2 curves are controlled by the curves so that when you
3 get all done, the curves on this route control the
4 restricted speed at least 75 percent of the mileage.

5 In addition to the curves we have six draw
6 bridges, one located up in Frazier River in Canada,
7 one in Colbrook, Canada, three between Marysville and
8 Everett and one in Ballard. All of these structures
9 also have maximum speeds of 30 and some of them are
10 15, so all of these here conditions made it imperative
11 that every speed restriction we looked at had to be
12 the maximum that the track geometry would allow or we
13 could not make the three hour and 55 minutes.

14 Q. Were you present here today earlier when
15 there was questioning and testimony regarding lower
16 train speeds in Everett, Mount Vernon and Bellingham?

17 A. The train speeds that are --

18 JUDGE HAENLE: Were you present?

19 A. Yes, I was here.

20 Q. Do you have an explanation for why train
21 speeds are lower in Everett, Mount Vernon and
22 Bellingham?

23 A. Yes. The train speeds at these locations
24 are determined by the track structure. It is not a
25 city ordinance, and if you go through those areas you

1 will see the high degree of curvature and it's a
2 restricting factor.

3 Q. Now, you had responsibility of the three
4 hour 55 minutes run. Does that mean that the
5 passenger trains have to travel at a certain speed
6 through Marysville in order to accomplish that total
7 run period?

8 A. Yes. That means that every speed request
9 on the entire route would have to be raised to that
10 limit, and the train would have to operate without
11 another train slowing it down or any other
12 obstructions in order to make that schedule. Every
13 speed restriction looked at in all locals were done.
14 We actually went out and realigned the little curves
15 so it raised them a little faster when that was
16 possible. Every opportunity that was available, that
17 was done as the first priority. And without raising
18 the speed through the city of Marysville we have not
19 been able to get to the three hours and 55 minute
20 schedule.

21 Q. Have you calculated how much time would be
22 saved by freight trains if the speed increases at
23 Marysville are granted?

24 A. The speed increase in Marysville for
25 freight trains is about five and three quarters

1 minutes.

2 Q. That's how much time would be saved?

3 A. That's how much time would be saved.

4 Q. The administrative law judge has admitted
5 Exhibit 4 as an exhibit here today. What is Exhibit
6 4?

7 A. That's the FRA Track Safety Standards.

8 Q. And who publishes this booklet?

9 A. This is published by the Federal Railroad
10 Administration and it's a guideline for railroad
11 track safety for construction and maintenance of the
12 tracks.

13 Q. What does it mean when you talk about class
14 of track?

15 A. When you talk about class of track that
16 allows the trains to operate at a different set of
17 speeds and that has different standards for different
18 sets of speeds.

19 Q. The track through Marysville, what class
20 is it according to the FRA regulations?

21 A. It is class 4.

22 Q. What does that mean in terms of speed?

23 A. Class 4 track will allow you to run 60
24 miles an hour for a freight train, 80 miles an hour
25 for a passenger train.

1 Q. What kind of maintenance and inspection are
2 performed on this class 4 track here in Marysville?

3 A. The class 4 track, normally the road master
4 or his track inspector inspects it at least two or
5 three times a week, and we have other inspections with
6 the geometry car coming through which go through and
7 measures the track conditions in place under load. We
8 have rail detector cars that come through annually and
9 they actually go in and inspect the rail internally by
10 looking at the rail ultrasoundly.

11 JUDGE HAENLE: I missed it.

12 THE WITNESS: Ultrasoundly.

13 MS. GIBSON: Using ultrasound.

14 Q. Have there been any recent improvement to
15 the track through this town?

16 A. Yes. As part of this program here, the
17 entire track structure through the city of Marysville
18 has been resurfaced and we have a curve called curve
19 41 just north of the milepost 41, and you can see it
20 on the bend in the map there. That has been replaced
21 with new rail.

22 Q. When you calculated this three hour 55
23 minute running time and then set out the speeds
24 through all the different areas that both passenger
25 and freight trains would have to go, does it matter to

1 you in terms of that total run time whether freight
2 train speeds are also increased along -- under the
3 terms of the petitions that have been filed?

4 A. Yes. As I believe Mr. Rowley mentioned
5 earlier, the passenger trains on a single track can't
6 go any faster than the freight trains ahead of them
7 and if it takes extra time for these trains to clear
8 the line to get off the line in Everett, the other
9 trains are restricted to leave the line until they can
10 clear it. They need to be able to get away to get
11 ahead of them so the other trains can proceed without
12 any restrictions.

13 MS. GIBSON: No other questions at this
14 time.

15 JUDGE HAENLE: Questions, Mr. Graafstra?

16

17

CROSS-EXAMINATION

18 BY MR. GRAAFSTRA:

19 Q. So, if freight trains use the tracks four
20 or five hours a day, you can't manage to schedule
21 these passenger trains in the other 20 hours a day?
22 Is that what you're saying?

23 A. It's not a matter of how many hours are on
24 the track. It's how they catch up to each other.
25 When one train is moving slower the other train has to

1 be away from it and it's a matter of catching up to
2 that other train. They need to have a place that they
3 can pass without one train slowing down the other.

4 Q. And you just can't arrange the schedule to
5 accommodate it all. Is that what you're saying?

6 MS. GIBSON: I'm going to object to the
7 form and the foundation.

8 JUDGE HAENLE: I don't understand the
9 objection, I guess.

10 MS. GIBSON: Well, I think, Your Honor,
11 number one, Counsel is badgering the witness. That's
12 the objection as to the form. Foundation, this
13 witness has not said anything about and in fact does
14 not have any background in scheduling and the question
15 is about scheduling trains.

16 JUDGE HAENLE: Will you have a witness of
17 whom that question can be asked?

18 MS. GIBSON: Well, freight trains are not
19 scheduled.

20 JUDGE HAENLE: Let me try it again. Will
21 you have a witness of which that kind of question can
22 be asked?

23 MS. GIBSON: We can recall Mr. Rowley.
24 He's probably the appropriate person to talk about
25 that.

1 JUDGE HAENLE: What I hear counsel saying
2 is that an alternative the city may request the
3 railroad to pursue is some change in scheduling which
4 would allow these trains to miss each other in some
5 manner. I think that a description of how freight
6 trains are scheduled and whether this is possible
7 might be useful to the record to support or dispose of
8 one of these alternatives that counsel may wish to
9 pursue. I wasn't wild about the form of the question,
10 but I see where the question is going.

11 You would not then be the person that would
12 be able to address freight train scheduling, sir?

13 THE WITNESS: Not precisely but a lot of
14 our business does meet with the trains that come in
15 from Chicago-Seattle, and other areas, they meet and
16 get business from there. They are obligated to meet
17 that business. They have to bring the business down
18 from the line up to the north Cherry Point and other
19 points. They bring it down to Everett, and then they
20 switch it out. These trains go all the way across the
21 country so they do have a national network, in
22 essence, all of these trains, and it would be very
23 difficult to adjust that type of a schedule for one
24 city.

25 Q. Mr. Nelson, were you part of the

1 decision-making process that made the determination
2 that a train from Seattle to Vancouver had to get
3 there in three hours and 55 minutes?

4 A. No, I was not part of that.

5 Q. Who made that decision?

6 A. I believe that was brought up this morning
7 by Mr. Mallery and Mr. Clark, and in the engineering
8 department we're charged with trying to find ways of
9 making improvements and do work that would allow that
10 to happen and find locations where speeds could be
11 safely run to allow that to happen.

12 Q. Now, you were here earlier during their
13 testimony; is that correct?

14 A. That is correct.

15 Q. And I can be corrected because I may have
16 missed some of the testimony myself this morning, but
17 I understood the testimony was that back when there
18 was train service between Vancouver and Seattle, that
19 train proceeded on that trip for four hours and 30
20 minutes; is that correct?

21 A. That was mentioned this morning, yes.

22 Q. Based upon your experience, would that have
23 been consistent with the types of trains that were
24 running during the time frame that we're talking
25 about?

1 A. I can't specifically identify to that.

2 Q. But you were involved in the decision
3 making on how to accommodate a three hour and 55
4 minute trip; is that correct?

5 A. We were looking at the track structure as
6 to where the speed could be raised so that it could be
7 accommodated, yes.

8 Q. Now, you mentioned that in order to
9 accommodate this time limit that Burlington Northern
10 has already engaged in some curve straightening; is
11 that correct?

12 A. Yes. We've straightened the Red Line
13 slightly, some of the curves where they were out of
14 line a little bit. We did not do any major
15 restructuring of them because that would have involved
16 purchasing properties and other issues outside the
17 scope of the work that we were not authorized.

18 Q. So what are you talking about? Moving the
19 tracks a 16th of an inch or something?

20 A. Couple, two, three inches.

21 Q. And how much was expended to move this
22 track two or three inches?

23 A. That is part of the Burlington Northern
24 obligation that was mentioned this morning when we
25 readjusted the curves in that we spent approximately

1 \$700,000 up and down the entire corridor.

2 Q. You spent \$700,000 for curve straightening?

3 A. That is correct.

4 Q. When you were involved in selecting the
5 various speeds for this route from Seattle to
6 Vancouver, did you take into consideration any factors
7 involved with the land adjoining the tracks or the
8 jurisdictions adjoining the tracks or was your
9 determination solely I got to get from point A to
10 point B and I will adjust speed limits accordingly
11 without consideration of the adjoining land?

12 A. We looked at the track structure and we
13 gave the locations where we can provide it from the
14 track structure standpoint and running the computer
15 simulations and then made the three 55 by making every
16 increase that the track structure would allow.

17 Q. So the sole criteria in making the --
18 setting the speed limit was the track structure
19 itself?

20 A. That is the most restrictive factor that
21 the standards won't allow you to run over a certain
22 speed depending on the type of curvature you have.

23 Q. To conclude, then, you didn't consider any
24 of the adjoining land or features of the adjoining
25 land, just the track itself and the right-of-way?

1 A. I said the main feature we would look at
2 was the track because that was the limiting fact.

3 JUDGE HAENLE: And the question was did you
4 consider any of the features of the land adjoining the
5 track in making this decision?

6 A. I'm not sure exactly what he means by
7 features.

8 Q. Population, roads, rivers, just about any
9 physical characteristics of the adjoining land.

10 A. Nothing that we saw we felt that had to be
11 factored into. We did high road the line several
12 times with the local operating officers and looked at
13 all of these features, talked about the speed
14 increases that we thought we could run, and it was
15 jointly agreed upon that they would be safe speeds.

16 Q. Who was involved in this decision that
17 these would be safe speeds?

18 A. It was the whole series of Burlington
19 Northern personnel including some people from the
20 state.

21 Q. Did anybody suggest the speeds weren't
22 safe?

23 A. That also included a lot of upgrades of the
24 signal system to modernize the signals so that they
25 had the motion sensing.

1 Q. So somebody must have suggested that maybe
2 some of these speed increases weren't safe; is that
3 correct?

4 A. That is not correct.

5 Q. Well, then why were you upgrading things?

6 A. To meet the new standards.

7 Q. What standards?

8 A. For the grade cross improvements.

9 Q. Why were you doing grade crossing
10 improvements?

11 A. I think Mr. Frazier probably would be one
12 in the signal department that would answer that
13 better. He's a witness later on.

14 Q. But it wasn't for a safety reason?

15 A. Pardon me?

16 Q. It wasn't for a safety reason?

17 A. No.

18 Q. I wouldn't think so.

19 MR. GRAAFSTRA: No further questions.

20 JUDGE HAENLE: Once we got the witness's
21 answer, Ms. Gibson, I don't know if anyone else would
22 be able to add detail to what he indicated. What I
23 heard him say is that they need to consider the entire
24 network into which these trains are tied, the schedule
25 of the entire network and that makes it difficult to

1 adjust one set of schedules. I don't know whether
2 anyone else of your witnesses might have more detail
3 on that, but that was the kind of answer that I was
4 expecting someone to be able to give.

5 MS. GIBSON: I will see what I can do about
6 developing testimony to that issue.

7 JUDGE HAENLE: Did you have questions, Ms.
8 Rendahl?

9 MS. RENDAHL: I just have a few.

10

11

CROSS-EXAMINATION

12 BY MS. RENDAHL:

13 Q. Giving your testimony that you've been
14 involved in this project from the beginning, isn't it
15 true that there are several phases to the project?

16 A. Yes, that is correct.

17 Q. And in each later phase there will be
18 additional speed increases projected? Is that true?

19 A. If there's additional speed increases in
20 the future that would have to come off new technology,
21 and the additional improvement in the type of railroad
22 equipment that you operate. The current equipment
23 we're running at the maximum conditions of would
24 have to be something similar as to the Talgo train we
25 were talking about earlier, once the new standards

1 are approved allowing you to run faster.

2 Q. Would any of the later phases of the
3 project involve any double track being constructed?

4 A. No. These would just simply allow the
5 trains to meet and be out of the way so the freight
6 trains would not affect the operation of the passenger
7 trains.

8 Q. The reason why I'm asking is that I would
9 like to show you the petition that was filed in this
10 case.

11 JUDGE HAENLE: Is what you've given the
12 witness part of the original petition from the --

13 MS. RENDAHL: It is the original petition
14 or a copy of the original that was filed in this case.

15 JUDGE HAENLE: Thank you. Go ahead.

16 Q. In the area that's marked, does it indicate
17 that double track would be constructed in the second
18 phase or later phase?

19 A. Yes. That the current funding levels
20 that's available for the second phase we would be
21 putting a couple, extending a couple of sitings at
22 English, Stanwood, Marysville. We would place a
23 single track in Ballard but no double track other than
24 that. There's no current funding available that we're
25 aware of in the 1995 to 1997 state biennium. We're

1 not aware of what may be coming up after that, and
2 that all depends upon future government expenditures
3 and policies.

4 Q. So the statement in the petition is
5 basically a best case scenario, if there's more money
6 appropriated then more double track will be
7 constructed?

8 A. Yes. I think that would be a fair
9 statement to make. If the train received the
10 ridership that the state is looking forward to and
11 appropriate more money, it would be more track
12 required in the future.

13 Q. Thank you.

14 MS. RENDAHL: I have no other questions.

15 JUDGE HAENLE: Any redirect?

16 MS. GIBSON: Yes.

17

18

REDIRECT EXAMINATION

19 BY MS. GIBSON:

20 Q. Again, drawing your attention to the
21 petition that was filed in this matter, and
22 particularly to page 3 of that petition, with
23 reference to the question you were asked earlier about
24 whether other safety issues were considered, looking
25 at that, does that refresh your recollection at all as

1 to whether the issue of grade crossing safety was
2 considered in conjunction with the development of the
3 train speeds?

4 A. Yes. The train speeds were the reason for
5 the upgrading of the signals which are a safety factor
6 as actually between the border at Blaine and downtown
7 Seattle, there's 81 locals where the road crossing
8 signals have been improved to meet the higher speeds.

9 Q. And does that include a number of crossing
10 upgrades here in the town of Marysville?

11 A. Yes, it did.

12 Q. Those are set out in the petition at page
13 3, are they?

14 A. Yes.

15 Q. Now, does -- how would you characterize the
16 track running through Marysville in terms of
17 curvature?

18 A. There's only one slight curve that I
19 mentioned earlier, curve 41, and the rail has been
20 replaced on that and new rail was replaced on that.
21 The remaining track was relatively flat and perfectly
22 straight.

23 Q. And just generally when you have relatively
24 straight flat track, what does that do to the
25 visibility for a driver -- a highway user, approaching

1 a railroad crossing?

2 A. In this case the railroad track is setting
3 slightly up above the highway, and the visibility of
4 the train is -- appear to be very good from the
5 highway.

6 MS. GIBSON: I have nothing else.

7 JUDGE HAENLE: Any additional cross?

8 Anyone else?

9 Thank you for your testimony, sir. You may
10 step down. Let's go off the record to change
11 witnesses, please.

12 (Recess.)

13 JUDGE HAENLE: Let's be back on the record.

14 During the time we were off the record the next
15 petitioner's witness has been called.

16 Whereupon,

17 RUSSELL FRAZIER,

18 having been first duly sworn, was called as a witness
19 herein and was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MS. GIBSON:

23 Q. Will you say your name and spell your last
24 name for the record.

25 A. Russell James Frazier, F R A Z I E R.

1 Q. Business address?

2 A. 999 Third Avenue, 2000 First Interstate
3 Center, Seattle.

4 Q. And your position?

5 A. I'm manager of signal maintenance.

6 Q. And is that for Burlington Northern?

7 A. Yes, it is.

8 Q. How long have you held that position?

9 A. Eight and a half years.

10 Q. And what territory does your job encompass?

11 A. I have the territory between Vancouver,
12 British Columbia and Beaver, California, and from
13 Aberdeen, Washington to Williston, North Dakota.

14 Q. What responsibilities do you have in that
15 line?

16 A. I'm responsible for all the signal
17 maintenance. That's maintenance of wayside signals
18 and crossing signals, and managing budget for that
19 maintenance, developing capital funding programs.

20 Q. So does your territory include the signals
21 through the city of Marysville?

22 A. Yes, it does.

23 Q. I would like to ask you to approach the
24 exhibits, Mr. Frazier, either Exhibit 14, the aerial
25 photo or Exhibit 3, the map, whichever you prefer to

1 use in order to describe what the crossing protection
2 is in each location through Marysville. Are you going
3 to use the map?

4 A. I will use the map.

5 Q. Witness will be referring to Exhibit 3
6 then. Could you start from the south end of
7 Marysville and describe the -- first of all, is there
8 a bridge at milepost 37.8? Is there a railroad bridge
9 there?

10 A. Approximately milepost 37.8, bridge 11, I
11 believe it's called on Burlington Northern.

12 Q. And what body of water is that over?

13 A. Steamboat Slough.

14 Q. Would you look? Is there one north of that
15 at Ebey Slough?

16 A. Yes, there is.

17 Q. Is that known as bridge 12?

18 A. Yes, milepost 38.26.

19 Q. Is there any signal equipment on that
20 bridge?

21 A. Yes, there is.

22 Q. Would you explain that?

23 A. We have signals that are governing movement
24 over that bridge. They are tied in with what we call
25 an easer bar on the bridge.

1 Q. Easer?

2 A. E A S E R. And that allows the wheel to
3 transition from the fixed portion of the bridge to the
4 movable portion of the bridge, and we check that for
5 surface alignment through the signal circuits and also
6 the bridge for locking before we'll allow a signal to
7 become clear for train movement over that bridge.

8 Q. And when you say "we check" it, how do you
9 mean it's checked?

10 A. It's checked through the signal circuits.
11 We have devices mounted on the bridge that check the
12 physical position of the devices and then through the
13 signal circuits either being open or closed allow the
14 signal to clear or put it at a stop.

15 Q. Who is doing the checking then? Is it one
16 person on the ground?

17 A. No. It's electronics.

18 Q. So is there a message given to the train
19 crew then?

20 A. Through the wayside signal, yes.

21 Q. What is the first crossing that you come to
22 going north of bridge 12?

23 A. The first crossing would be First Street.
24 That crossing is at milepost 38.4 approximately, and
25 that crossing is protected with gates and cantilevered

1 flashing light signals. The activation equipment on
2 that crossing looks like a 400 motion detector.
3 It's an older piece of equipment used to detect motion
4 of the train approaching the crossing.

5 Q. Are there any planned upgrades for that
6 crossing?

7 A. That crossing activation equipment will be
8 completely upgraded with the latest state-of-the-art
9 activation equipment and the approaches will be
10 lengthened to allow for the higher Amtrak speed.

11 Q. Let's first take the first part of that.
12 You said they will be completely upgraded, activation
13 circuits. What does that mean?

14 A. We will be installing what's referred to as
15 an HXP3 highway crossing predictor. That's an
16 electronic device that looks at the track, to a
17 predetermined length of track, and calculates the
18 speed of the train as it approaches the crossing, and
19 activates the crossing to provide a minimum of 20-
20 second warning to the motorist at the crossing.

21 Q. Was there a second part to the upgrade that
22 you're referring to?

23 A. The approach length -- and that's the
24 distance that the equipment looks down the track
25 -- will be lengthened to allow 79-mile-an-hour train

1 speeds.

2 Q. Now, are those improvements true at all of
3 the crossings in Marysville that's going to take
4 place?

5 A. Not all of the crossings are going to get
6 HXP activation equipment. Several of the crossings
7 through Marysville have got activation equipment that
8 calculates the speed of the train and they're a
9 constant warning or predictor type of device. Those
10 will not be replaced. The approaches will be adjusted
11 to allow for higher train speeds.

12 Q. And how does that affect a driver who is
13 using a crossing, the fact that you're adjusting the
14 approaches?

15 A. The driver, when he comes up to the
16 crossing, the only thing -- if he's watching the
17 signals, the signals will be activated for a minimum
18 of 20 seconds regardless of the speed at the terminal.
19 If it's a train doing 79 miles an hour, they will have
20 a minimum of 20 seconds warning time. If the train is
21 doing 79 miles an hour he will have 20 seconds.

22 Q. What's the next crossing north of First
23 Street?

24 A. The next crossing would be Fourth.

25 Q. What kind of protection is there now?

1 A. Currently Fourth has gates and cantilevers.
2 Fourth is also intertied to the highway traffic
3 signals.

4 Q. What does that mean?

5 A. That means that when the train activates
6 the crossing it sends a signal over to the traffic
7 controller and then the city's traffic engineers
8 decide how they're going to manipulate that, but it
9 will put the signals that stop for the highway traffic
10 in addition to the railroad signals being flashing to
11 prevent motorists from accessing the tracks.

12 Q. Are there any planned improvement there
13 other than the upgraded activation circuits that you
14 mentioned already?

15 A. That would just be an adjustment of the
16 activation equipment.

17 JUDGE HAENLE: So there will not be an
18 upgrade of the activation here. Is that what you're
19 saying?

20 THE WITNESS: The activation equipment
21 there is already predictors so it will just be an
22 adjustment to the circuits.

23 Q. When you say it's already predictors, what
24 does that mean?

25 A. It's got the activation equipment that

1 predicts the speed of the train and the time for the
2 train to reach the crossing.

3 Q. Is that the equipment you earlier referred
4 to as the state-of-the-art equipment?

5 A. Yes.

6 Q. Is Eighth Street the next grade crossing
7 that you come to going north?

8 A. Yes, it is.

9 Q. What kind of protection is there currently?

10 A. Currently Eighth Street has gates and
11 cantilevered signals.

12 Q. When you talk about these cantilevered
13 signals that means the flashing lights on a
14 cantilever?

15 A. Yes. It's a flashing light signal that is
16 shoulder mounted with an arm over the traffic lights
17 with lights on the arm.

18 Q. Any kind of improvements that are planned
19 there at Eighth Street?

20 A. Eighth Street will get new activation
21 equipment and 12-inch lights will be installed.

22 Q. Is Grove Street then the next crossing
23 going north?

24 A. Yes, it is.

25 Q. What kind of equipment is there now?

1 A. Grove Street has gates and cantilevered
2 signals.

3 Q. And what sort of activation circuit do you
4 have?

5 A. Grove Street will get new activation
6 equipment in the form of an HXP.

7 Q. Right now an HXP, that's the predictor
8 system?

9 A. Yes.

10 Q. State-of-the-art?

11 A. Yes.

12 Q. Going north, is 80th Street the next
13 crossing?

14 A. Yeah. 80th Street currently has gates and
15 cants, gates and cantilevered flashing lights.

16 Q. What about circuitry?

17 A. The current activation equipment is the
18 predictor equipment so it will just be an adjustment
19 to the approaches.

20 Q. And again the adjustment to the approaches
21 is for faster train speeds?

22 A. Yes.

23 Q. So that the driver will still have the 20
24 second warning?

25 A. That's correct.

1 Q. Is the next crossing 88th Street?

2 A. Yes, it is.

3 Q. What kind of protection is there right now?

4 A. 88th just has cantilevered flashing lights.
5 It also has a traffic intertie.

6 Q. And traffic intertie is what?

7 A. It interties to the highway traffic signals
8 to allow the -- prevent the cars from turning onto
9 the railroad tracks.

10 Q. And are there any improvements planned for
11 88th Street in conjunction with this project?

12 A. Yes. At 88th Street we'll be installing
13 the HXPs for the activation equipment. We will also
14 be installing gate mechanisms on that crossing.

15 Q. Is 104th Street the next crossing going
16 north?

17 A. Yes, it is.

18 Q. What kind of protection is there now?

19 A. 104th has gates and cantilevered flashing
20 lights signals.

21 Q. And what about the circuitry?

22 A. That has a motion sensor in it now, but
23 that particular motion sensor is upgradable and we're
24 going to add the necessary modules to make it into a
25 predictor and then adjust the approaches.

1 Q. Is the next crossing 116th Street?

2 A. Yes, it is.

3 Q. What kind of equipment is there?

4 A. 116th has gates and cantilevered flashing
5 light signals and a traffic intertie.

6 Q. Is any improvement planned?

7 A. Yes. That activation equipment will be
8 replaced with HXP3.

9 Q. When you talk about the improvements that
10 are planned what kind of time frame are we talking
11 about?

12 A. Well, all the improvements have to be made
13 before any higher train speeds would be allowed. The
14 actual time frame I don't have with me as to whether
15 --

16 Q. Is 122nd Street the next crossing going
17 north?

18 A. Yes, it is.

19 Q. And what kind of protection is there now?

20 A. 122nd has gates with flashing lights
21 mounted on the gate mechanism mast.

22 Q. What kind of improvements are planned
23 there?

24 A. There again we'll be converting the
25 existing equipment to predictors. Take that back.

1 It's already predictors. We will be changing the
2 frequency on those to make it compatible with the
3 other crossings and the longer approaches and
4 adjusting the approaches.

5 Q. And is there signals and gates? Do they
6 exist at 124th Street also?

7 A. Yes, they do. That's a private crossing.
8 Contura Corporation I believe is the name of the
9 company.

10 Q. Do you know how to spell that?

11 A. C O N T U R A. Those were installed at
12 their request back in the early '80s.

13 Q. Are you changing those at all along this
14 project?

15 A. Just the approach lines will be adjusted to
16 provide the additional warning time.

17 Q. The next public crossing then, is that
18 136th Street?

19 A. Yes, it is.

20 Q. What kind of protection is there?

21 A. 136th has gate and cantilevered flashing
22 lights signals.

23 Q. Any improvement planned?

24 A. I don't have that file with me, but having
25 recently been at 136th I would say that would just be

1 a crossing approach adjustment for the higher train
2 speeds.

3 Q. You can resume your seat, Mr. Frazier.
4 Thank you. In terms of the signals and gates that are
5 installed at the crossings in Marysville, is there any
6 failsafe mechanism?

7 A. All signal equipment, including the
8 crossing signals, are designed around a failsafe
9 principle, and that principle is that if there's a
10 failure in the equipment or on the track it would not
11 allow the activation equipment to detect the motion of
12 a train towards the crossing. The gates will be
13 lowered and the lights will begin flashing until such
14 time as it can determine through its own self testing
15 or repairs are made that it can detect the presence of
16 a train.

17 Q. So is it possible for the system to fail
18 and the gates to remain upright?

19 A. Not unless they were vandalized to the
20 point where the mechanism would not work but then the
21 lights would still flash. There's also a battery
22 backup system so in the event of a power failure we
23 have battery backup that will continue to operate the
24 crossing for a minimum of 24 hours.

25 Q. What is a failed equipment detector?

1 A. Failed equipment detectors are devices that
2 are placed along the right-of-way that inspect or
3 check cars, the rolling stock, for defects. There's a
4 couple of different types that we use on Burlington
5 Northern. One is a dragging equipment detector that
6 simply is paddles that are on the track and are set at
7 a height that anything that would be dragging off of a
8 car would trip the paddle and cause the train to be
9 stopped. There's also an infrared heat detector that
10 we install along the track that measures the
11 temperature of the wheel journal, and that's the
12 journal where the axle that the wheel is mounted to is
13 mounted to the car or to the truck frame. We measure
14 the temperature of that to detect overheating in that
15 journal.

16 Q. When you talk about car and truck frames
17 are you talking about the rail car and the trucks
18 underneath it?

19 A. Yes.

20 Q. Now, are there any of these devices in the
21 vicinity of Marysville, any of the fail detector
22 equipment?

23 A. Yeah. We have two dragging equipment
24 detectors, one at English, one at Stanwood. We also
25 have what we call the hot box detector, the infrared

1 detector at Stanwood. On the south end we've just
2 installed a new one at milepost 27. That's between
3 Everett and Edmonds, and then there's an additional
4 one located between Everett and Monroe at Snohomish
5 Junction. Both of these new installations are
6 dragging equipment and infrared heat detectors.

7 Q. Are you familiar with the percentage of
8 trains that have dragging equipment or overheated
9 journal defects?

10 A. We did some testing this last year down in
11 the Columbia River Gorge area where we have a series
12 of detectors that we were able to monitor on a daily
13 basis and we've determined on that particular piece of
14 railroad that we have less than one tenth of one
15 percent with a defect in the train.

16 Q. Now, do your people do regular inspections
17 of the signals at the grade crossings here in
18 Marysville?

19 A. Yes, we do. BN has always had at least a
20 monthly inspection of all crossings signal equipment,
21 and it's extensive inspection on a month to month
22 basis. They check for the actual operation of the
23 signals to determine that all lights are lit, that the
24 bell rings, that the gates operate properly, and that
25 the equipment will detect the presence of a train.

1 In addition to that, on quarterly and
2 annual basis, there are other tests that are done and
3 general maintenance items, cleaning the lens, cleaning
4 the mirrors, checking voltages on the lights, that
5 type of thing that's done periodically throughout the
6 year.

7 Q. Does the FRA do any inspections of crossing
8 signals?

9 A. As of January 1st of this year the FRA now
10 has rules governing maintenance and inspection of
11 crossing signals and they are -- they haven't made any
12 formal inspection on my territory as of this time but
13 I know they're planning. In the past they have
14 inspected our wayside signals and in conjunction with
15 that have made spot check of crossing signals.

16 Q. Thank you. No further questions.

17 JUDGE HAENLE: Questions, Mr. Graafstra?

18

19

CROSS-EXAMINATION

20 BY MR. GRAAFSTRA:

21 Q. Mr. Frazier, when you were discussing the
22 crossings there, sounds like you discussed one of the
23 private crossings; is that correct?

24 A. There's only one private crossing that is
25 currently signaled that I am aware of.

1 Q. Do you know how many private crossings
2 there are within the city limits in the city of
3 Marysville?

4 A. No, I do not.

5 Q. And I take it as to the remainder of those
6 private crossings nothing is planned?

7 A. There is nothing that I am aware of that is
8 planned.

9 Q. I also wanted to clarify a point. With
10 regard to 122nd Street crossing, are there gates at
11 that location now?

12 A. Yes. At 122nd, there are gates.

13 Q. Just a point of illumination. The drag
14 detectors or whatever you called them, infrared
15 detectors, what are those things designed to do?

16 A. Dragging equipment detector is designed to
17 pick up anything that might be dragging on a car or a
18 derailed car, and through a radio system announce
19 that defect to the train crew and they stop the train
20 and inspect it. The infrared detectors are designed
21 to measure heat and we've got a device mounted
22 alongside the track that looks up at the bottom of the
23 journal box of the car and actually measures the
24 temperature of that journal as compared to the ambient
25 air temperature.

1 Q. In most cases why are you doing that?
2 Because of your concern for what?

3 A. We're concerned for the failed journal. A
4 journal that has got a slipped ring in it -- it's a
5 bearing similar to what you have in the front wheel of
6 your car and if that runs out of grease or should
7 become loose or a defect in it that would develop heat
8 and eventually would cause that to burn off.

9 Q. And if those events occur, what happens to
10 the train?

11 A. Anything from just simply a burned off
12 journal and dropping the wheel down and putting the
13 train into emergency or to a catastrophic derailment.

14 Q. How many derailments, if you know, that
15 occurred within your system last year?

16 A. I don't have a count for that.

17 JUDGE HAENLE: Could you move the
18 microphone up closer to you so the people in the back
19 can hear.

20 Q. You don't know how many derailments
21 occurred last year on the system; is that correct?

22 A. That is correct, I do not.

23 Q. And then just speaking within the area of
24 your primary concern, you described from North Dakota
25 to the coast and Vancouver to some point in

1 California, do you know the statistics within that
2 area?

3 A. Not with me, no.

4 Q. Were there some?

5 A. Yes.

6 Q. Now, just so that I understand, you're
7 responsible as part of your duties for the grade
8 crossings, signals and the activators or detectors and
9 all of that; is that correct?

10 A. That's correct.

11 Q. And you're not responsible for the
12 condition of the track?

13 A. I do not have direct responsibility for the
14 track structure, no.

15 MR. GRAAFSTRA: Thank you.

16 JUDGE HAENLE: Ms. Rendahl.

17

18 CROSS-EXAMINATION

19 BY MS. RENDAHL:

20 Q. Mr. Frazier, you mentioned the intertie
21 between some of the crossings signals and the traffic
22 intersection signals. Are all of the 10 public
23 crossings in Marysville intertied with traffic
24 intersections?

25 A. No, they're not. There's only four of them

1 through Marysville that are intertied.

2 Q. And are the other six close to
3 intersections? Do they need to be -- should they be
4 intertied?

5 A. They're close to intersections but on most
6 of them, if I recall, there's no traffic signal
7 to intertie to.

8 Q. Just for clarification, isn't the purpose
9 of the traffic signal intertie to allow any cars that
10 are on the tracks to clear the tracks and get through
11 the intersection if a train is coming through?

12 A. It's dual purpose. Initially it's to clear
13 the crossing, get the cars that are stopped on the
14 crossing off the crossing, and the other thing is to
15 prevent other cars from turning onto that crossing or
16 into that conflict area.

17 Q. And in terms of the crossings, are all of
18 the 10 grade crossings going to be upgraded so they
19 all have HXP3 activators?

20 A. They won't all have that particular brand
21 name but they will all be predictors type equipment.
22 There's two major vendors. One of them being Harmon
23 that calls their equipment HXP. The other one is Safe
24 Tran and they've got different names for their
25 equipment.

1 Q. But they're equivalent? They allow for
2 equivalent activation time?

3 A. That's correct.

4 Q. You were talking about bridge No. 12. You
5 said that there's a message that's given to the train
6 crews through the wayside signal that indicates that
7 the bridge is locked; is that correct?

8 A. There's a signal located at each end of the
9 bridge and that signal would be read telling the train
10 crew that they have to stop before the train crosses
11 -- goes by that signal. If everything on the bridge
12 were properly lined and the easer bars properly
13 seated, the signal will be green and it will allow the
14 engineer to proceed by that signal.

15 Q. Is that signal currently connected into the
16 dispatcher, the central dispatcher?

17 A. No, it is not.

18 Q. Do you know if that's part of any upgrades
19 in the system that it will be connected into the
20 central dispatch system?

21 A. Those particular signals will not be.

22 JUDGE HAENLE: I don't have any questions.
23 Any redirect?

24 MS. GIBSON: No, Your Honor.

25 JUDGE HAENLE: Anything else of the

1 witness?

2 MR. GRAAFSTRA: Yes, Your Honor.

3

4 CROSS-EXAMINATION

5 BY MR. GRAAFSTRA:

6 Q. I would like to talk about Fourth Street.

7 Are you familiar with that crossing; is that correct?

8 A. I know where it's at.

9 Q. You know that that's the one that deals
10 with the primary access to Interstate 5?

11 A. I know that there's an interchange just
12 west of the crossing, yes.

13 Q. Now, I understand the point of your
14 activators and the signaling equipment is to give a
15 20-second warning before a train arrives in an
16 intersection; is that correct?

17 A. That's a minimum of time.

18 Q. Well, what's the practical amount of time?

19 A. Through our engineering department we allow
20 for a five-second reaction time of the equipment and
21 then we also allow for a five mile an hour overspeed.

22 Q. Have you examined Fourth Street at all
23 during the rush hour?

24 A. Not recently, no.

25 Q. Have you at any time examined Fourth Street

1 during rush hour period of time?

2 A. I've been at Fourth Street during rush
3 hour.

4 Q. So are you familiar with the fact that
5 there are a lot of cars there?

6 A. Yes.

7 Q. I understood that there was a dual purpose
8 in the detection equipment. One of the things was
9 with an intertie was to prevent more cars from
10 entering an area; is that correct?

11 A. That's correct.

12 Q. And another reason was with this 20-second
13 delay was to give the existing cars an opportunity to
14 clear?

15 A. It's not just 20 seconds at Fourth Street.
16 At Fourth Street the engineering for that is provided
17 for a 40 second warning time. Now, the additional
18 warning time is the intertie time to allow the traffic
19 signals to clear out the traffic on Fourth and then
20 the crossing would be activated, gates would descend
21 and that should -- if the traffic is paying attention
22 to the crossing they should be stopping short of the
23 crossing and the cars that are ahead of them proceed
24 through the intersection with the clear-out.

25 Q. So no car will cross the tracks before the

1 car in front of it clears the tracks?

2 A. We cannot tell you how a person is going to
3 react to it.

4 Q. Is that how you react to a railroad
5 crossing?

6 A. I try to observe the lights faithfully.

7 Q. But now the lights haven't come on yet. If
8 the lights haven't come on do you do that as a driver?

9 A. I stop -- if traffic is backed up I'm not
10 going to stop on the railroad track.

11 Q. No, but you might stop past the gate before
12 the track?

13 A. I wouldn't.

14 Q. You wouldn't?

15 A. No.

16 Q. Is that what you've observed regular
17 drivers to do?

18 A. I observe regular drivers to disobey every
19 law in the book.

20 Q. And in particular that one, correct?

21 A. Not just there but at noon I saw cars with
22 -- driving on the shoulder with a big sign on the
23 shoulder that said Do Not Drive On Shoulder.

24 Q. Do you know whether the traffic in fact
25 does clear within 40 seconds if that's what the time

1 period is for Fourth Street during rush hour?

2 A. I don't understand your question.

3 Q. I understand that there's a 40-second lead
4 time and the purpose for that is to provide an
5 opportunity for traffic to clear on Fourth Street. Is
6 that correct?

7 A. The initial 10 seconds of the 40 seconds,
8 yes.

9 Q. Do you know whether that in fact allows an
10 adequate period of time for traffic to clear?

11 A. I have not been there to observe that.

12 Q. What's the stopping distance for a freight
13 train moving 50 miles per hour?

14 A. I don't know.

15 Q. Do you know what the stopping distance is
16 for a passenger train moving that speed?

17 A. No, I do not.

18 MR. GRAAFSTRA: No further questions.

19 JUDGE HAENLE: Anything more of the
20 witness?

21 MS. GIBSON: No.

22 JUDGE HAENLE: Thank you, sir. You may
23 step down. Let's go off the record to change
24 witnesses.

25 (Recess.)

1 JUDGE HAENLE: Let's be back on the record.
2 During the time we were off the record a new witness
3 assumed the stand.

4 Whereupon,

5 THOMAS DRISCOLL,
6 having been first duly sworn, was called as a witness
7 herein and was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MS. GIBSON:

11 Q. Would you say your name and spell your
12 last name.

13 A. Thomas J. Driscoll, D R I S C O L L.

14 Q. And your business address?

15 A. 2900 Bond Street, Everett, Washington.

16 JUDGE HAENLE: Spell the name of the
17 street, please.

18 THE WITNESS: B O N D.

19 Q. By whom are you employed?

20 A. Burlington Northern Railroad.

21 Q. What is your job?

22 A. I'm B and B supervisor, bridge and building
23 supervisor.

24 Q. You call that B and B?

25 A. Yes.

1 Q. How long have you held that position?

2 A. I've been in the Seattle-Everett area for
3 12 years now.

4 Q. What other positions have you held with
5 Burlington Northern?

6 A. Started out as a carpenter on bridge crews
7 and as supervisor in Livingston, Montana.

8 Q. As bridge and building supervisor now, what
9 is your territory?

10 A. My territory runs from bridge 4 at Ballard
11 north to Canada and east to Spokane, Latah bridge.

12 Q. Does that territory include bridge 12 then
13 here in Marysville?

14 A. Yes, it does.

15 Q. What are your duties in your job currently?

16 A. I'm in charge of maintenance and
17 construction of buildings and bridges, supervision of
18 that.

19 Q. Are you familiar with bridge 12 located at
20 milepost 38.26?

21 A. Yes, I am.

22 Q. Could you describe this bridge, please.

23 A. Do you want each individually or just a
24 general?

25 Q. Just a general description of what the

1 bridge is.

2 A. It's a concrete and steel railroad bridge
3 across the Ebey Slough with a draw span towards the
4 north end.

5 Q. What type of inspection and maintenance are
6 performed on this bridge?

7 A. We have minimum of four inspections a year
8 with a bridge inspector. I personally inspect it
9 twice a year and after a flood we will inspect that
10 bridge or after high water in the north area we will
11 inspect that bridge.

12 Q. Does the bridge have some kind of a lock
13 device on it?

14 A. The draw span, 250 foot pin connected truss
15 has a locking device, yes.

16 Q. What does that locking device do?

17 A. It assists in the aligning of the bridge to
18 align the rail and it insures that the bridge is in
19 the proper position for the wedges to drive and lift
20 the bridge up and elevate it for track speed or for
21 the rails to come into place.

22 Q. Is that locking device inspected in the
23 inspections that you referred to earlier?

24 A. That lock has a signal, signaling
25 inspection on it.

1 JUDGE HAENLE: So was that a yes or no?

2 Q. So would that be?

3 THE WITNESS: It's inspected electronically
4 at all times, I guess is what I'm saying.

5 Q. So would that be something that would --
6 inspections would be done by Mr. Frazier's people?

7 A. It's done electronically. Mr. Frazier's
8 people do the maintenance of the machinery, yes.

9 Q. Is there a bridge tender assigned to bridge
10 12?

11 A. Yes, there is.

12 Q. What does a bridge tender do?

13 A. He opens and closes the bridge, gives it a
14 cursory inspection once a day, inspects for line and
15 circuits derail and provides access to the river for
16 the boaters.

17 Q. What train speed do the trains run at now
18 on bridge 12?

19 A. 20.

20 Q. Is that both passenger and freight?

21 A. Freight only. We have no passenger right
22 now.

23 Q. I'm sorry, of course. Is the bridge
24 capable of handling a passenger train at 30 miles per
25 hour over it?

1 A. Structurally, yes. The rail lock keys on
2 that bridge are limiting it to 20 at present time.
3 Amtrak proposal is to replace them.

4 Q. So the improvement then would be to the
5 locking device?

6 A. To the rail lock, yes, not -- well, there
7 are two locks on that bridge, one that locks the
8 bridge itself and one that locks the rail and it's the
9 rail lock that needs to be updated.

10 Q. And are those improvements to that rail
11 lock then part of the proposal with this project in
12 order to run the train, the passenger trains, at 30
13 miles an hour over the bridge?

14 A. They're in phase 2 of the Amtrak proposal,
15 yes.

16 MS. GIBSON: I don't have any other
17 questions. Thank you.

18 JUDGE HAENLE: Mr. Graafstra.

19 MR. GRAAFSTRA: No questions.

20 JUDGE HAENLE: Ms. Rendahl.

21 MS. RENDAHL: No questions.

22 JUDGE HAENLE: I had no questions either.
23 Thank you, sir, for your testimony. You may step
24 down.

25 MS. GIBSON: Call my next witness. Mr.

1 Quicksall, please.

2 JUDGE HAENLE: I don't know whether we got
3 on to the record at the beginning -- I'm trying to
4 recall what we did on and off the record -- but it's
5 by agreement of counsel that Ms. Cushman did one
6 witness and you're doing the remaining witnesses for
7 the petitioner, Ms. Gibson; is that correct?

8 MS. GIBSON: Yes.

9 JUDGE HAENLE: The petitioners have just
10 kind of decided that among themselves?

11 MS. GIBSON: That's right, Your Honor.
12 Whereupon,

13 EDWARD QUICKSALL,
14 having been first duly sworn, was called as a witness
15 herein and was examined and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MS. GIBSON:

19 Q. Would you say your name and spell your last
20 name?

21 A. It's Edward Quicksall, Q U I C K S A L L.

22 Q. And your business address?

23 A. 303 South Jackson, Seattle, Washington.

24 Q. By whom are you employed?

25 A. By the National Railroad Passenger

1 Corporation, which is Amtrak.

2 Q. What is your job with Amtrak?

3 A. Transportation manager, manager of field
4 operations.

5 Q. What are your duties and responsibilities?

6 A. I'm responsible for safety of train and
7 engine men, rule compliance, efficiency testing,
8 budget compliance. Anything to do basically with a
9 train traveling over a designated portion of the
10 railroad belongs to me.

11 Q. What is your designated portion of the
12 railroad?

13 A. Currently it's Seattle to Spokane and
14 Seattle to Portland with some interloping duties with
15 Pendleton crews and Eugene, Oregon crews.

16 Q. What other jobs have you held for Amtrak?

17 A. I have been a locomotive engineer for
18 Amtrak in my early career with Amtrak. I went from
19 that to a road foreman in New Orleans and from road
20 foreman to transportation manager in Chicago,
21 Illinois.

22 JUDGE HAENLE: I'm not sure I understand.
23 Is it the Seattle and Spokane link that brings this
24 witness's -- brings the area in question within this
25 witness's scope?

1 Q. Do the people that you supervise operate
2 Amtrak equipment over the line that runs through
3 Marysville?

4 A. If we indeed run to Vancouver, I will be
5 supervising the people that run -- that operate those
6 trains.

7 Q. What other railroad experience do you have
8 other than Amtrak?

9 A. I began with Southern Pacific Railroad in
10 December of 1971 as a locomotive fireman, was promoted
11 to engineer in 1973 operating both freight trains and
12 Amtrak passenger trains until 1988 at which time
13 Amtrak took over the actual operation of the passenger
14 trains and I came straight to Amtrak.

15 Q. What year was that?

16 A. 1988 I came over to Amtrak as a locomotive
17 engineer.

18 Q. Now, in general where you have Amtrak crews
19 operating trains through towns that are within your
20 territory, do you monitor the train speeds to make
21 sure that they are not exceeding the speed limit?

22 A. Yes, we do. There's several ways we do
23 that. I would assume that's going to be the next
24 question. We do that by radar. We do that by vent
25 recorders which are speed tapes. We run speed tapes

1 on a random basis. We do it as well following any
2 kind of incident. The speed tapes will give us the
3 speed of the train at any given time at any portion of
4 the railroad.

5 Q. In your years of operating locomotives and
6 supervising other locomotive engineers, have you made
7 any observations about driver behavior in relation to
8 the speed of the train?

9 A. Yes, I have. I really enjoyed previously
10 hearing a retired engineer talk. It's been my
11 experience as well that the more near misses and the
12 actual grade crossings accidents involving vehicles
13 are at lower speeds.

14 Q. I would ask you now, Mr. Quicksall, to step
15 over to Exhibit 3, if you would. Maybe you could just
16 adjust it a little bit so that the administrative law
17 judge can see more what you're pointing to. Can you
18 move the easel.

19 JUDGE HAENLE: I moved it over to allow the
20 public witnesses access. Now that they no longer need
21 it you can put it anywhere you want.

22 Q. Now, would you point out on Exhibit 3 the
23 locations where Amtrak is requesting speed increases?

24 A. We're requesting from milepost 37.8 to
25 milepost 38.5, an increase from the current 25 to 30

1 miles per hour.

2 We're also requesting from milepost 38.5 to
3 milepost 41, an increase from the current 25 to 50
4 miles per hour, and then from milepost 41 through the
5 rest of the city, we're requesting an increase from 25
6 to 79 miles per hour.

7 Q. Let's look at starting in the southbound
8 portion, the southern most portion is what I meant to
9 say. Would Amtrak be able to actually operate at 30
10 miles over that portion that's delineated on Exhibit 3
11 with the color orange?

12 A. Quite honestly, I don't know why that's not
13 30 miles an hour right now for freight trains.

14 JUDGE HAENLE: So your answer is yes?

15 THE WITNESS: Yes.

16 Q. Then the portion that is delineated in pink
17 going from milepost 38.5 to 41.0, would Amtrak trains
18 going northbound actually be operating at 50 miles per
19 hour through that entire portion?

20 A. Well, you wouldn't because at this point at
21 milepost 38.5 you would be going 30. You would have
22 some acceleration time in here that it would take to
23 actually get up to 50 miles per hour.

24 Q. How many cars is Amtrak expecting to take
25 on this route initially?

1 A. I'm not positive on the negotiation on
2 that. I believe it's four to five but I'm not sure
3 because we're also discussing using the Talgo
4 equipment, is my understanding, but that's at a level
5 much higher than my position.

6 Q. So at what point would the train be at
7 approximately 50 miles per hour going north?

8 A. You can figure approximately an increase
9 from 25 to -- or from 30 to 50 you can figure
10 approximately two seconds per mile per hour, so you
11 can figure somewhere -- if I was trying to guess that
12 would be hard but somewhere it would be a 20-mile-per-
13 hour increase -- somewhere around a minute later it
14 would be up to 50. A little bit less than a minute.

15 Q. And a minute would take them to -- can you
16 give us a crossing approximately where that would be?

17 A. Probably in the area it looks like Eighth
18 Street, but I'm guessing.

19 Q. What about the transition from 50 to 79
20 miles per hour at milepost 41.0? Would the trains
21 actually be going 79 at 41.0?

22 A. No, they wouldn't. In the analogy that I
23 gave figuring two seconds per mile per hour it doesn't
24 hold going from 50 to 79 reason being the amperage on
25 the engine starts dropping back and it takes more time

1 as the speeds increase for the engine actually to get
2 up to speed. 50 to 79 would take somewhere around, I
3 would say -- that's a 29 mile per hour increase -- I
4 would say close to a minute and a half.

5 Q. Where would that geographically place the
6 train a minute and a half after milepost 41.0?

7 A. You know, I really wish I could answer that
8 question but I would say it would be someplace well
9 about halfway in this area, without actually doing it
10 (indicating).

11 Q. What area is that?

12 A. Around Kruse or so.

13 Q. Around Kruse Junction or Kruse?

14 A. Somewhere between Kruse and Kruse Junction,
15 I would say, but I'm not positive yet because I don't
16 know what kind of equipment could be carrying on
17 trains that big.

18 Q. And those would be factors that would have
19 to be considered?

20 A. Sure.

21 Q. There may be some other questions for
22 you so why don't you take your seat.

23 MS. GIBSON: I have no more questions for
24 you.

25

1 CROSS-EXAMINATION

2 BY MR. GRAAFSTRA:

3 Q. Let's continue with the same subject. On
4 the southbound train enters the city from the north
5 and is coming in at 79 and a half miles an hour?

6 A. You lost me. On the southbound train that
7 enters the city?

8 Q. That's coming in from the north at 79 and a
9 half miles an hour, how long is it going to carry that
10 speed?

11 A. 79 to the 50-mile-an-hour decrease?

12 Q. That's correct?

13 A. Is that what you're saying?

14 Q. Right.

15 A. It would carry that speed into the city
16 until approximately a quarter of a mile or so before
17 the decrease.

18 Q. And asking the same question, the train --

19 A. Now, you have to understand I'm answering
20 passenger train. Freight train braking is --

21 Q. When you're at 50 miles per hour you're
22 proceeding to the point where the speed will be 30
23 miles an hour, how long will it carry the 50 miles per
24 hour?

25 A. The braking would remain between a quarter

1 and an eighth mile to reduce from 50 to 30. That has
2 to do once again with equipment, the particular way
3 the engineer brakes. There's variables in all of
4 that.

5 MR. GRAAFSTRA: No further questions.

6 JUDGE HAENLE: Ms. Rendahl.

7 MS. RENDAHL: No questions.

8 JUDGE HAENLE: Any redirect?
9

10 REDIRECT EXAMINATION

11 BY MS. GIBSON:

12 Q. How long does it take a passenger train to
13 stop going 79 miles per hour?

14 A. In an emergency stop?

15 Q. Yes.

16 A. Half a mile.

17 Q. And what about at 50 miles an hour?

18 A. Closer to almost a half mile at 50 miles an
19 hour. What you're doing, you've got the decelostats
20 on that train which keeps the wheels from sliding, so
21 your maximum braking effort is basically going to be
22 pretty close to the same between 79 and 50.

23 Q. And what about at 30 miles an hour?

24 A. 30 miles an hour?

25 A. 30 miles an hour is going to be a much more

1 abrupt stop. Somewhere in the neighborhood of less
2 than a quarter of a mile. That's going to be a
3 dangerous stop as well for the passengers if we have
4 anybody standing on the train.

5 Q. You have freight train engineering
6 experience as well, don't you?

7 A. Yes, ma'am.

8 Q. Does it take a freight train longer or
9 shorter to stop than a passenger train?

10 A. Much longer.

11 MS. GIBSON: Nothing else.

12 JUDGE HAENLE: Anything else of the
13 witness?

14 Thank you, sir. You may step down. We are
15 coming up on the time I would usually take an
16 afternoon recess. Your later witnesses have been
17 going more quickly and I don't know if you want to try
18 one more, if this one will be a longer one.

19 MS. GIBSON: Mr. Henry will be a longer
20 one.

21 JUDGE HAENLE: Take 15 minutes at this
22 time. At that time we will take the last of
23 petitioners' witnesses; is that correct?

24 MS. GIBSON: I would expect Mr. Henry,
25 perhaps recall one of my other witnesses on the one

1 issue that has been raised here about the schedule
2 trains.

3 JUDGE HAENLE: Thank you. Let's go off the
4 record.

5 (Recess.)

6 JUDGE HAENLE: Let's be back on the record
7 after an afternoon recess. You have called your next
8 witness, Ms. Gibson.

9 Whereupon,

10 MATTHEW HENRY,
11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MS. GIBSON:

16 Q. Would you say your full name and spell your
17 last name for the record, please.

18 A. Matthew B. Henry. That's M A T T H E W.
19 Last name Henry, H E N R Y.

20 Q. Your business address?

21 A. 3017 Lou, L O U, Menk, M E N K Drive, Fort
22 Worth, Texas, 76131.

23 Q. And by whom are you employed?

24 A. I'm employed by the Burlington Northern
25 Railroad.

1 Q. What job do you have with Burlington
2 Northern?

3 A. I'm director of safety and hazardous
4 materials.

5 Q. What are your duties and responsibilities
6 in that position?

7 A. My primary responsibilities are hazardous
8 materials, transportation safety, regulatory
9 compliance, training, both internal and external and
10 emergency response.

11 Q. Have you held other positions at Burlington
12 Northern?

13 A. Yes. Started out in 1951 in trained
14 service. Been an industrial engineer, car service
15 supervisor, operations analyst, research analyst and
16 manager of safety and rules.

17 Q. As operations analyst, were you ever
18 involved in any scheduling sort of issues?

19 A. Yes, I was.

20 Q. And did that include scheduling of freight
21 trains?

22 A. Yes, it did.

23 Q. Were you present earlier when there was
24 some questioning about the ability of Burlington
25 Northern to schedule freight trains in order to avoid

1 meeting Amtrak trains here in Marysville?

2 A. Yes, I was.

3 Q. Do you have any comments about that?

4 A. When scheduling trains you have to consider
5 the entire territory over which the train travels, not
6 just one specific location, and you have to consider
7 the entire 24 hours and all the trains that move over
8 that 24-hour period.

9 Q. And so what sorts of considerations would
10 you be referring to specifically with reference to
11 Marysville?

12 A. Specifically Marysville it would be
13 determined by when the trains originated at the
14 respective terminus of that section of railroad and
15 when they would reach that particular location.

16 Q. Is the scheduling of freight trains
17 complicated or simplified in any way by the fact that
18 freight moving, let's say from Everett to Vancouver
19 B.C., is part of an international system?

20 A. Yes. It is part of an international system
21 and it is complicated by the fact that we have no
22 direct control over when a customer releases shipments
23 to us or when a connecting railroad delivers shipments
24 to us.

25 Q. So is it reasonably feasible to be able to

1 schedule freight trains and have them on a schedule?

2 A. It's extremely difficult to keep them on a
3 precise schedule comparable to a passenger train
4 schedule.

5 Q. As part of the job that you have now, do
6 you compile and maintain statistics of the numbers of
7 shipments of hazardous materials being transported in
8 different areas?

9 A. Yes, I do.

10 Q. Did you bring those statistics with you
11 today?

12 A. Yes.

13 Q. Could you look at those and tell the court
14 how many shipments of hazardous materials were carried
15 on the Burlington Northern the entire system in 1993?

16 A. 1993, the last year for which I have full
17 statistics, we transported 170,337 shipments of
18 hazardous material.

19 JUDGE HAENLE: I'm sorry. 300?

20 THE WITNESS: 337.

21 Q. Now, what portion of all Burlington
22 Northern shipments is that figure?

23 A. That's 4.08 percent.

24 Q. When you compare that 4.08 percent to the
25 statistics for the preceding year, which I guess would

1 be 1992, do you find that the 1993 hazardous material
2 transports was an increase or a decrease?

3 A. It was a decrease of 2.95 percent, almost 3
4 percent decrease.

5 Q. Of the 170,000-odd shipments of hazardous
6 materials in 1993, how many accident-caused releases
7 were there?

8 A. 17.

9 Q. And what percentage of the total number of
10 hazardous material shipments does that represent?

11 A. Approximately one one-hundredth of one
12 percent.

13 Q. Were there any engineers connected with
14 those 17 incidents?

15 A. No.

16 Q. Were there any fatalities?

17 A. No.

18 Q. Do you know when the last railroad industry
19 hazardous material related fatality was?

20 A. It was in 1986.

21 Q. And was that a Burlington Northern
22 incident?

23 A. No, it was not.

24 Q. Now, other than your own statistics, are
25 you also familiar with the statistics kept by the FRA

1 regarding hazardous materials?

2 A. Yes, I am.

3 Q. In what form are those published?

4 A. The form that I referred to, Accident/
5 Incident Bulletin No. 162 and the most recent one was
6 for calendar year 1993 and it was published in June of
7 1994.

8 Q. Were you present during Mr. Clark's
9 testimony?

10 A. Yes, I was.

11 Q. Are the statistics that you're referring to
12 now, are those from the same source that Mr. Clark
13 testified about?

14 A. Yes, they are.

15 Q. And showing you -- I think you already have
16 copies of what we have marked Exhibit 6 through 13 for
17 identification. I would ask you, are those correct
18 copies of the FRA statistics?

19 A. Yes, they are.

20 MS. GIBSON: And I would offer Exhibit 6
21 through 13 at this time, Your Honor.

22 JUDGE HAENLE: Exhibit 5 you will be
23 dealing with differently or did you mean to include
24 that as well?

25 MS. GIBSON: Thank you. I would offer 5

1 through 13.

2 JUDGE HAENLE: And your answer would be the
3 same with regard to Exhibit 5 for identification?

4 THE WITNESS: Yes.

5 JUDGE HAENLE: Any objection, Mr.
6 Graafstra?

7 MR. GRAAFSTRA: No objection to
8 authenticity. I object because they're hearsay and
9 there's lack of foundation.

10 JUDGE HAENLE: And again your foundation
11 issue was?

12 MR. GRAAFSTRA: He has no knowledge or
13 information as to how these statistics were collected,
14 analytical methods or anything like that that went
15 into producing the data. Accordingly, there's no
16 foundation.

17 JUDGE HAENLE: Ms. Rendahl, objection?

18 MS. RENDAHL: I have no objection to the
19 documents again. As was stated this morning, Your
20 Honor, I think these go to -- the issue is whether the
21 Commission -- how the Commission should interpret
22 these and I think it goes to the weight of the
23 documents as to how they interpret them.

24 JUDGE HAENLE: Any brief response, Ms.
25 Gibson?

1 MS. GIBSON: No. I would agree that the
2 objection goes to weight not to admissibility.

3 JUDGE HAENLE: I will overrule the
4 objection. I will enter Exhibits 5 through 13 into
5 the record. My comments would be the same as they
6 were this morning with regard to the entry of Exhibit
7 8. I believe that they admissible although the
8 Commission will consider what description if any there
9 is in the record about the manner in which they were
10 compiled. We'll consider that in deciding what weight
11 to give to the documents. Will also consider that
12 these are apparently published by a well known
13 governmental organization. So I will enter Exhibits 5
14 through 13 into the record.

15 (Admitted Exhibits 5, 6, 7, 9, 10, 11, 12
16 and 13.)

17 Q. Are you aware of how the FRA compiles these
18 statistics that are contained in these statistics?

19 A. These are compiled from the accident
20 reports submitted by the railroads and we are audited
21 frequently by the Federal Railroad Administration on
22 the accuracy and completeness of those reports.

23 Q. Do federal regulations require all
24 railroads to file such reports with the FRA?

25 A. Yes, they do.

1 Q. Now I would like to draw your attention to
2 figure 1 which has been marked Exhibit 6. What does
3 that figure represent?

4 A. This figure 1 is a graph illustrating the
5 train miles, employee hours, passenger train miles and
6 revenue ton miles during the years 1975 and 1993.

7 Q. And is it showing an increase or a decrease
8 in train miles?

9 A. It's showing that train miles have
10 increased since 1991 and revenue ton miles have
11 increased since 1986.

12 Q. Now, does this particular Exhibit No. 6
13 have anything to do with hazardous materials in
14 particular?

15 A. As the overall traffic increases, the
16 hazardous materials traffic has increased also.

17 Q. Now, would you turn to Exhibit 9 which is
18 Figure 5 Derailments at the top, and tell us what
19 this exhibit represents.

20 A. Figure 5 is a graph that shows the number
21 of accidents and the accident rate. That is, the
22 accidents per million train miles between 1975 and
23 1993.

24 Q. What does that rate show?

25 A. It shows that both have generally decreased

1 since 1978.

2 Q. Now, is this material for all the railroads
3 in the country?

4 A. Yes, it is.

5 Q. Would you now look at Exhibit 10 which is
6 titled at the top Figure 9 Train Accidents Involving
7 HAZMAT, and HAZMAT, is that shorthand for something
8 else?

9 A. Hazardous materials, yes.

10 Q. What does Exhibit 10 depict?

11 A. Figure 9 shows the number of
12 accident-caused materials releases and resulting
13 evacuations between 1975 and 1993.

14 Q. And what does that pattern show in recent
15 years, say from 1991?

16 A. From 1991 they have both generally
17 decreased.

18 Q. And historically going back to, say, 1979,
19 what's the pattern?

20 A. Generally they have decreased since 1978.

21 JUDGE HAENLE: Please be sure that counsel
22 has finished her question before you start to answer
23 it so that the reporter can get the entire question
24 and answer recorded.

25 THE WITNESS: Thank you.

1 Q. Ask you to look now at Exhibit 7 which is
2 titled Figure 29. And what does this exhibit signify?

3 A. Figure 29 is a map that indicates various
4 ranges of hazardous materials releases by state in
5 1993.

6 Q. And in terms of the state of Washington,
7 what category does it fall in?

8 A. The state of Washington falls in the second
9 lowest rate incident range of one to 20.

10 Q. Then would you look at Exhibit 5, which is
11 marked Table 25. What does this depict?

12 A. This table 25 lists the number of accidents
13 in 1993 in which hazardous material shipments were
14 present, the number of hazardous material shipments
15 and the number of releases.

16 Q. And is there any information on that which
17 you find particularly significant?

18 A. In comparing the number of releases with
19 the number of shipments, 1.2 percent of the cars
20 involved in incidents experienced a release.

21 Q. Now, would you look at Exhibit 13 which is
22 entitled Table 26. And what does this depict?

23 A. Table 26 lists by year between 1988 and
24 1993 the number of accidents where hazardous material
25 shipments were present, the number of shipments

1 derailed or damaged and the number of releases and
2 resulting evacuations.

3 Q. And of what significance is this document,
4 in your opinion?

5 A. The years 1992 and 1993 were the lowest
6 years indicating decreases in the incidents.

7 JUDGE HAENLE: What does the word consists,
8 C O N S I S T S, in the heading of the table mean?

9 THE WITNESS: Generally that's referring to
10 the train and the cars and locomotive that make up
11 that train.

12 Q. If you turn now to Exhibit 12 which is
13 entitled Table 27 at the top. And would you explain
14 what this table illustrates?

15 A. Table 27 lists by accident cause the
16 accidents in 1993 where hazardous material shipments
17 were present.

18 Q. And of what significance do you find on
19 this document?

20 A. Generally the same significance that was
21 brought out by a previous list. This just illustrates
22 it by cause whether the accident was caused by track,
23 road bed problems, mechanical or electrical problems,
24 human factors or miscellaneous factors.

25 Q. And looking at Exhibit 11, table 28, it is

1 entitled -- what does this table show?

2 A. This table lists all of the states and the
3 number of incidents and the various elements of those
4 incidents and comparing one state to another, and this
5 is the basis for the previous exhibit that was a map.

6 Q. The one that put Washington in the second
7 to lowest category?

8 A. That's correct.

9 Q. And what is the total number shown there
10 for the state of Washington?

11 A. There were 19 incidents involving consists
12 that included hazardous materials.

13 Q. And that's for 1993?

14 A. That's correct.

15 Q. Now, were you involved in the handling of
16 any derailment that occurred north of the Marysville
17 city limits in 1991?

18 A. Yes, I was.

19 Q. What happened in that incident?

20 A. There was a derailment in which tank cars
21 of butane were derailed and one of the tank cars was
22 punctured and there was a resulting fire from the
23 punctured car.

24 Q. Was anyone injured?

25 A. No.

1 Q. Any fatalities?

2 A. No.

3 Q. What precautionary steps were taken in
4 handling the derailment and the fire?

5 A. In handling the derailment and fire there
6 was none. There was an initial evacuation and they
7 remained a distance from the burning car until all the
8 necessary expertise was available at the scene to go
9 in and do a walk-around evaluation.

10 Q. Did you hear reference earlier today to
11 derailments in earlier years, one I believe in 1981
12 and one in 1969?

13 A. Yes, I did.

14 Q. And do you know anything about those
15 incidents?

16 A. No, I don't.

17 MS. GIBSON: I have nothing else.

18 JUDGE HAENLE: Questions, Mr. Graafstra?

19

20 CROSS-EXAMINATION

21 BY MR. GRAAFSTRA:

22 Q. Assuming that there were derailments in
23 1969, 1981 and 1991 in the Marysville area, would
24 you consider that experience unique, unexpected?

25 A. I'm sorry, I don't understand the question.

1 Q. Well, you were giving some statistics
2 earlier about the low number of derailments and the
3 low number of derailments involving hazardous material
4 releases, as I understand; is that correct?

5 A. I gave information concerning the exhibit,
6 yes.

7 Q. And, for example, with regard to the state
8 of Washington, apparently in 1993 the number of
9 hazardous materials releases fell in the category of
10 one to 20 on Exhibit No. 7?

11 A. I think that was the number of incidents
12 where hazardous material shipments were present.

13 Q. Do you know the number of derailments in
14 the state of Washington in 1993?

15 A. No, I don't.

16 Q. Let me go back to my question and try it
17 one more time. Do you think Marysville's experience
18 of three major derailments in 1969, 1981, 1991 is
19 unique, unexpected?

20 A. I cannot identify any unique thing about
21 it, no.

22 Q. So Marysville probably ought to expect that
23 that pattern ought to continue about every 10 years
24 there would be a major derailment?

25 A. I couldn't say that.

1 Q. Based upon your experience you find that
2 some areas are more prone to major train accidents and
3 derailments than others?

4 A. There have been particular areas where they
5 have occurred more frequently, yes.

6 Q. And those areas that were more prone to
7 those kinds of incidents, what was their experience?
8 In other words, how many incidents over what period of
9 time?

10 A. I can't answer that.

11 Q. Would it be more than three over 30 years?

12 A. I can't answer that.

13 Q. Could it have been less than three over 30
14 years?

15 A. I can't answer that.

16 Q. Does the speed of the train, freight train,
17 have an impact upon a derailment first occurring?

18 A. Not necessarily, no.

19 Q. Not necessarily but can it have?

20 A. It can.

21 Q. And that's because a faster train,
22 presumably among other things, its wheels run hotter?

23 A. No.

24 Q. Brakes run hotter?

25 A. No.

1 Q. How come a faster train will have a greater
2 propensity for derailment?

3 JUDGE HAENLE: I don't know that that was
4 -- you said the speed might impact. I don't know that
5 the witness has agreed that a faster train will be
6 more likely derail.

7 MR. GRAAFSTRA: Would you like me to
8 withdraw?

9 JUDGE HAENLE: You may ask that question
10 first but I would like to hear the witness say that
11 first before you go on.

12 Q. Would the speed of the train be a
13 contributing factor to a derailment?

14 A. It can.

15 Q. How can it?

16 JUDGE HAENLE: Is a faster speed more
17 likely to result in a derailment than a lower speed or
18 vice versa?

19 THE WITNESS: Probably not.

20 JUDGE HAENLE: I don't know that we got an
21 answer then. How does the speed of a train impact the
22 likelihood of a derailment?

23 THE WITNESS: If the train is being
24 operated at a speed above the permissible speed it can
25 cause a derailment. Operating at lower speeds such as

1 between 12 and 20 miles an hour, harmonic rock can
2 cause a derailment.

3 JUDGE HAENLE: So you're saying that the
4 factors involved are most likely to take place if it
5 is operating above the allowed speed or below what
6 level?

7 THE WITNESS: Generally between 12 and 20
8 miles an hour is a critical speed range on some track.

9 JUDGE HAENLE: Thank you.

10 Q. Sir, could you please explain to me how the
11 legal limit plays into the physics of a derailment?

12 A. The speed limit that they've placed on a
13 train is calculated on curves and various track
14 structures, that anything above that with a certain
15 margin of safety built in is an unsafe speed to
16 operate. So we place maximum speed limits to operate
17 a train over a particular set of tracks.

18 Q. So would the historic speed limit be some
19 suggestion as to what the safe speed ought to be?

20 A. Generally the speeds are engineered.
21 They're not historic.

22 Q. Well, then why was the historic speed for
23 Marysville 25 miles since early in this century?

24 A. I can't answer that. I don't know.

25 Q. Do you think it might have been engineered?

1 A. I can't answer that specifically. I don't
2 know.

3 Q. And if it was engineered -- just assuming
4 with me it was engineered -- would that have been for
5 a safety reason?

6 A. Safety is always a consideration in
7 planning our operations.

8 MR. GRAAFSTRA: I don't have any further
9 questions.

10 JUDGE HAENLE: Ms. Rendahl.

11 CROSS-EXAMINATION

12 BY MS. RENDAHL:

13 Q. Mr. Henry, are cars containing hazardous or
14 carrying hazardous materials constructed differently
15 than other train cars?

16 A. The cars used to transport hazardous
17 materials have to meet the specifications of the
18 Department of Transportation.

19 Q. I guess I'm thinking of certain train cars
20 like propane tanks, are they constructed differently
21 than other cars to withstand damage?

22 A. Generally cars transporting hazardous
23 materials have extra protection. For example, in any
24 tank car used to transport a flammabale gas, a
25 liquefied petroleum gas, for instance, must have a

1 thermal resistance built onto it, either insulation
2 held in place by a jacket or sprayed on thermal
3 protection. It must have head shield protection.

4 Q. And what is head shield protection?

5 A. That's one-half-inch head shields on each
6 end of the tank. They must also have what we refer to
7 as double shelf couplers. These are couplers with
8 upper and lower restraints to prevent the couplers
9 from disengaging and puncturing a tank head in a
10 derailment.

11 Q. So, will this kind of protection protect a
12 car at not just low speeds but higher speeds?

13 A. Yes. And this is one of the reasons that
14 we've seen a decline in releases since 1978 when it
15 peaked out because this is when they started requiring
16 the thermal protection, the head shields and the
17 double shelf couplers.

18 MS. RENDAHL: No further questions.

19 JUDGE HAENLE: Redirect.

20

21 REDIRECT EXAMINATION

22 BY MS. GIBSON:

23 Q. You spoke of derailment sometimes being
24 caused by exceeding legal limits, and when you made
25 reference to that term, were you referring to

1 exceeding FRA track standard limits? Is that what you
2 were referring to?

3 A. No. I was referring to exceeding the speed
4 limits that we have established in our time tables.

5 Q. Are those based on at least with reference
6 to the FRA limits? Is that how the limits actually
7 get into the time tables as well?

8 A. Some of the limits would be based on FRA
9 track standards. Some of them would be based on the
10 engineered capability of the track structure.

11 MS. GIBSON: I have no other questions.

12 JUDGE HAENLE: Anything further of the
13 witness?

14 MR. GRAAFSTRA: Nothing further.

15 MS. RENDAHL: No, Your Honor.

16 JUDGE HAENLE: Thank you, sir. You may
17 step down. Did petitioners have additional witnesses?

18 MS. CUSHMAN: Your Honor, we would like to
19 recall Marvin Nelson briefly.

20 JUDGE HAENLE: I would remind you, sir,
21 that you remain under oath from a previous portion of
22 the hearing.

23

24

25

1 DIRECT EXAMINATION

2 BY MS. CUSHMAN:

3 Q. Mr. Nelson, were you present during the
4 testimony of Mr. Henry?

5 A. Yes.

6 Q. On cross-examination by Mr. Graafstra, Mr.
7 Henry was asked about the historic significance of
8 train speeds?

9 A. Yes.

10 Q. Do the train speed increases being
11 requested in Marysville have anything to do with
12 historic speeds or are they contingent upon
13 improvements?

14 A. There's a lot of factors designed that a
15 lot of the new technology, way to maintain a track,
16 maintain higher quality, maintain them higher
17 standards, these will allow you to run higher speeds
18 safer.

19 Q. Could you give us some idea of what
20 improvements are being made in this area to facilitate
21 the requested speed increases?

22 A. Well, first off, we did a better job of
23 surface scratch. We've done a computerized tampers
24 that make a track absolutely smooth out here so the
25 train will ride smoother and that will result in a

1 safer operations and the curve rail --

2 JUDGE HAENLE: For the benefit of the court
3 reporter you need to speak just a little slower.
4 Continue, please.

5 A. And the rail on the curve 41 within the
6 city was relaid with new welded rail, heavier weight
7 rail.

8 Q. So we've had improvements to the surface of
9 the rail, new rail that's been welded and heavier
10 gauge, and are there crossing improvements also?

11 A. Yes. Mr. Frazier went into all the details
12 of the crossing improvements.

13 MS. CUSHMAN: Thank you. No further
14 questions.

15 JUDGE HAENLE: Any cross, Mr. Graafstra?

16

17 CROSS-EXAMINATION

18 BY MR. GRAAFSTRA:

19 Q. The rail smoothing, please explain to me
20 what was done.

21 A. We went through with the tamping equipment,
22 and the new tamping equipment is computerized controls
23 that tamps the track absolutely perfectly straight so
24 that allows the train to ride smoother and a smoother
25 riding train makes it safer.

1 Q. Would you as a part of that then have made
2 sure that all the bolts holding the track to the --

3 A. The track is always inspected a couple of
4 times a week with a track inspector and that's one of
5 their jobs is to look for any loose bolts, so those
6 activities are going on continuously.

7 Q. There hasn't been any change in your
8 practices since this rail smoothing this past year?

9 A. The track structure here would have been
10 good for 50 miles an hour in the past. These
11 improvements were made to further improve the quality
12 of the track. They met class 4 track standards prior
13 to this work.

14 Q. And let's go to the other subject, the
15 amount of new track that was laid. What length or
16 distance of area was that?

17 A. That's on the curve 41 and it appears to be
18 approximately a quarter mile long.

19 Q. So you're telling me that a quarter mile of
20 new track and some track smoothing justifies the speed
21 increase to 79 miles per hour?

22 A. The track was good for the higher speeds
23 prior to it, prior to any of this work being done.
24 The replacement on the rail on the curves is done as a
25 normal maintenance event because rail on curves were

1 faster and this is replaced periodically as certain
2 wear limits are observed. This is done on a
3 continuous inspection a couple of times a year
4 whenever the it's determined that rails can be wore to
5 a certain level is replaced.

6 Q. If you know, why as to freight trains
7 wasn't a request for a higher speed made at some
8 earlier time?

9 A. Because of the higher Amtrak speed blended
10 in with the freight train speeds there would be
11 greater impacts on the passenger operations with the
12 slow freight train speeds.

13 Q. Well, whatever that answer means.

14 MR. GRAAFSTRA: No further questions.

15 JUDGE HAENLE: Your response was you didn't
16 need to interface with passenger trains and it wasn't
17 worth it for the freight trains alone?

18 THE WITNESS: That's correct.

19 JUDGE HAENLE: Ms. Rendahl, questions?

20 MS. RENDAHL: No, Your Honor.

21 JUDGE HAENLE: Any redirect?

22 MS. GIBSON: No.

23 JUDGE HAENLE: You may step down. Is that
24 all of petitioners' witnesses?

25 MS. CUSHMAN: Yes, Your Honor. We rest.

1 JUDGE HAENLE: Let's go off the record to
2 determine in what order we'll take the city's
3 witnesses.

4 (Recess.)

5 (Marked Exhibits 15 and 16.)

6 JUDGE HAENLE: Let's be back on the record.
7 The city has called its first witness.
8 Whereupon,

9 ERNIE BERG,
10 having been first duly sworn, was called as a witness
11 herein and was examined and testified as follows:

12 JUDGE HAENLE: Also during the time we were
13 off the record Mr. Graafstra distributed two documents
14 which I marked for identification as follows. Marked
15 as Exhibit 15 for identification is a map. The map
16 has square, circle, triangle and a six-sided figure
17 each of which has a different color filled in. This
18 map will be 15 for identification and a one-page
19 document entitled -- well, it's regarding comments
20 regarding proposed increase train speeds through
21 Marysville on letterhead of city of Marysville. This
22 will be Exhibit 16 for identification. Your witness
23 has been sworn, Mr. Graafstra.

24

25

1 DIRECT EXAMINATION

2 BY MR. GRAAFSTRA:

3 Q. Mr. Berg, could you supply your full name
4 and spell both your first and last name for the court
5 reporter.

6 JUDGE HAENLE: I don't think we're going to
7 be able to hear you unless you move the microphone and
8 speak into it.

9 A. My name is Ernie Berg, E R N I E. Last
10 name B E R G.

11 Q. Who is your employer?

12 A. City of Marysville.

13 Q. And what is your job with the city of
14 Marysville?

15 A. I'm a city engineer.

16 Q. Can you tell me a little bit about what
17 your education background is.

18 A. I got a bachelor's degree in civil
19 engineering from the University of Washington in 1969.

20 Q. Do you maintain any professional licenses
21 in the state of Washington?

22 A. I'm licensed in the state of Washington as
23 a professional engineer.

24 Q. Can you tell me a little bit what your job
25 duties are as city engineer for the city of

1 Marysville?

2 A. My duties in the city are to review
3 development applications for new developments,
4 commercial, residential, review traffic studies,
5 train studies, in charge of the city's six-year
6 capital improvement program for roads, deal with
7 different jurisdictions, DOT -- that's Department of
8 Transportation -- state agencies, deal with Burlington
9 Northern where we interface with them and other
10 jurisdictions, county, other cities.

11 Q. Now, you're not -- you were not intended to
12 be the first witness but presumably you will know the
13 answer to this question. What is the city's position
14 with regard to the petition for increased train speeds
15 through the city of Marysville?

16 A. I think the city is concerned about the
17 safety of increasing the train speeds through the
18 city.

19 Q. So generally the city opposes the petition
20 --

21 A. That's my understanding. The city opposes
22 the petition.

23 Q. Now, as city engineer you indicated that
24 one of your responsibilities was dealing with
25 automobile traffic in the city; is that correct?

1 A. That's correct.

2 Q. And has the city conducted studies
3 concerning actual and projected traffic across certain
4 crossings in the city of Marysville?

5 A. The city since 1989 has been working with a
6 traffic consultant, the Transpo Group of Bellevue, to
7 do a transportation plan for the city in conjunction
8 with a comprehensive plan. That study is nearing
9 completion and we reviewed a couple of preliminary
10 drafts, and in that draft is the results of a traffic
11 model that was conducted by Transpo which projects the
12 traffic to the year 2010 and compares it to a
13 benchmark of 1989 as existing traffic.

14 Q. And the statistics for 1989 are based upon
15 what? What kind of measuring?

16 A. The statistics for 1989 are based on actual
17 traffic counts at selected intersections through the
18 city.

19 Q. Based on the placement of a monitor?

20 A. Correct, tubes or manual counts at key
21 places in the city, and the purpose for that is to
22 calibrate the traffic model to match existing
23 conditions so that they have a good benchmark value to
24 go by.

25 Q. And are you familiar with the methodology

1 involving the modeling for the projection of future
2 vehicle trips?

3 A. Basically I am familiar with it. There's a
4 lot of mathematics involved. We, as part of the
5 contract with the consultant, we will get a copy of
6 the model which to complete training on for us to
7 operate it ourselves, but I'm familiar with the basics
8 of the model.

9 Q. Based upon your experience and training as
10 an engineer, do you believe that model is an accurate
11 predictor of future traffic?

12 A. I think it's the best state-of-the-art
13 that's available. I personally did go to a four-day
14 class on that particular model and was pretty
15 impressed with the ability of that to project traffic.

16 Q. Now, in conjunction with your testimony
17 today, did you review basically a map of the city of
18 Marysville?

19 A. Yes, I did.

20 Q. That's Exhibit 15 and has been presented to
21 you and is in front of you?

22 A. Yes.

23 Q. What did you do with Exhibit 15? What were
24 you identifying there?

25 A. In the engineering section I have a

1 draftsman that works for me, and I took the raw data
2 from a traffic signal technician that went out and
3 mapped the existing crossings in the city, and I took
4 those figures and put it in a more easily
5 understandable format and that's what this map is.
6 Just represents different types of crossings within
7 the city.

8 Q. So Exhibit 15 is meant to depict where the
9 crossings are in the city and what type of crossings
10 facilities are at each location; is that correct?

11 A. That's correct.

12 MR. GRAAFSTRA: I would offer Exhibit 15
13 for illustrative purposes and to explain his testimony
14 as to what facilities are at each location.

15 JUDGE HAENLE: Any objection?

16 MS. GIBSON: No objection to 15.

17 MS. RENDAHL: No objection, Your Honor.

18 JUDGE HAENLE: I will enter Exhibit 15 into
19 the record.

20 (Admitted Exhibit 15.)

21 Q. Now, can you tell me what the results were
22 of the monitoring that occurred in 1989 as to various
23 street crossings in the city of Marysville?

24 A. Well, a general comment would be that --
25 and I don't think that's an unexpected result -- is

1 that in the year 2010 most of the intersections in the
2 city will increase significantly, some quite
3 significantly.

4 Q. Well, my question was as to 1989. If we
5 could just establish the baseline.

6 A. Would you repeat the question?

7 Q. So, using, for example, let's take
8 Fourth Street. What was the number of per-day
9 crossings at Fourth Street?

10 A. The number of vehicles per day in the
11 vicinity of the Fourth Street crossing is about
12 35,800.

13 Q. What do you mean by in the vicinity of?

14 A. Well, the map that I took this from, the
15 Transpo study, will not have a traffic value exactly
16 at every crossing. It may have it a block over, two
17 blocks over, so it's my closest interpolation of what
18 that would be.

19 Q. The results of that similar monitoring in
20 1989 for Grove Street were what?

21 A. For Grove Street would be 6600 vehicles per
22 day.

23 Q. And 80th Street?

24 A. 3900 vehicles per day.

25 Q. 88th Street?

1 A. 4500 vehicles.

2 Q. 116th Street?

3 A. 14,200 vehicles per day.

4 Q. And 136th Street?

5 A. 3400 vehicles per day.

6 Q. Now, based upon the modeling that was done
7 did you arrive at projected figures for vehicles per
8 day of those same locations?

9 A. Yes, I did.

10 Q. And starting again at Fourth Street, what
11 is the projected number of per-day vehicle trips at
12 the Fourth Street?

13 A. It would be 39,200.

14 Q. Grove Street?

15 A. 14,500.

16 Q. 80th Street?

17 A. 3200.

18 Q. 88th Street?

19 A. 47,500.

20 Q. 116th Street?

21 A. 15,100.

22 Q. And 136th Street?

23 A. 8400.

24 Q. Now, on those projections all of them seem
25 to have sort of a normal range of increase or decrease

1 except 88th Street. What's happening to 88th Street?

2 A. At 88th Street within the next year a new
3 four diamond interchange will be built at 88th and I-5
4 and that's why you see the large difference.

5 Q. Is there some reason for building that
6 large interchange at 88th Street?

7 A. Well, there are several. There's
8 development contemplated on the west side of the
9 freeway in the Tulalip reservation.

10 Q. And that's on the other side of?

11 A. I-5.

12 Q. And it's also on the other side of these
13 railroad tracks?

14 A. Correct.

15 Q. Go ahead.

16 A. In fact the Tulalip tribes were
17 instrumental in obtaining federal approval to secure
18 that interchange.

19 Q. Does the 88th Street interchange tie in at
20 all to the Navy support facility?

21 A. The 88th interchange will be used to convey
22 traffic to and from the support facility, correct.

23 JUDGE HAENLE: I'm sorry. I heard you ask
24 about 88th. I thought I heard him answer about 80th.
25 Did I mishear?

1 THE WITNESS: No. 88th.

2 Q. Do you know how many people are using or
3 projected to use that naval support facility on a
4 daily basis?

5 A. I couldn't give you a good answer on that
6 now. I don't know.

7 Q. In your review of these various crossings,
8 I notice that you make -- that you observed the
9 private crossings that were out there?

10 A. That's correct.

11 Q. How do the private crossings compare from
12 an engineering standpoint to a public crossing? Give
13 me a descriptive difference between them.

14 A. Well, in general your private crossings
15 don't have gates or signals. In general, although I
16 have seen exceptions, a private crossing will probably
17 have a steeper approach grade. In general the
18 material of the private crossing on the approach area
19 may not be up to the quality of a public crossing.

20 Q. Does both of those things, the steepness of
21 the grade and the road surface, from a traffic
22 engineering standpoint, have an impact upon a vehicle
23 driver's ability to see a train, an ability to cross
24 and be off the tracks quickly?

25 A. I would say in the crossings that I

1 observed this morning more so than the ability to
2 cross safely. A few of the locations that I did look
3 at this morning did seem to have a decent amount of
4 sight distance for a driver approaching to look left
5 or right. However, the approach grade was steeper and
6 it would be more difficult, I think, to negotiate that
7 than a flat crossing.

8 Q. Now, what's the main north-south arterial
9 in Marysville?

10 A. State Avenue or Smokey Point Boulevard as
11 it's commonly called.

12 Q. As it moves further north?

13 A. Further north, yeah.

14 Q. What's the physical relationship between
15 State Avenue and the railroad tracks?

16 A. State Avenue is approximately, at its
17 closest point, perhaps 60 feet from the center line of
18 the tracks of the Burlington Northern Railroad. And
19 it does vary as you go farther north.

20 Q. Perhaps you could stand up and on this
21 larger map identify where State Avenue is in
22 relationship to the railroad tracks.

23 A. Well, State Avenue will be just to the
24 west. The railroad tracks are right parallel and next
25 to it. Proceeding from the south limits of the city

1 to a point about 140th Street, Burlington Northern
2 Railroad tracks are very close, approximately 60 feet,
3 70 feet from State Avenue.

4 Q. Is that the whole course of the city?

5 A. Yes, it is.

6 Q. Go ahead and return to your seat.

7 MR. GRAAFSTRA: I would offer Exhibit 16 at
8 this time to illustrate his testimony.

9 JUDGE HAENLE: Any objection to the entry
10 of the document?

11 MS. GIBSON: Well, Your Honor, I think
12 there's an authenticity issue since I believe the
13 witness has indicated that he merely interpolated
14 Exhibit 15 and he's not certain that the figures are
15 exactly what they're shown to be. The exhibit also
16 contains a number of comments that are essentially the
17 witness's testimony, so it's basically hearsay. It's
18 redundant.

19 JUDGE HAENLE: Any objection to the
20 document, Ms. Rendahl?

21 MS. RENDAHL: Except for two particular
22 sentences that make that basically stated opinions or
23 conclusions, I have no objection, but again, I believe
24 this really goes to the weight. Reference to hearsay,
25 hearsay rules in these hearings are somewhat more

1 relaxed than at other proceedings, but in reference to
2 the last sentence on increased rail trips and the
3 second sentence on increased traffic I think with
4 reference to those two sentences with the proviso that
5 that's a statement of opinion not necessarily the
6 truth, I would have no objections to the document.

7 JUDGE HAENLE: Any brief response, Mr.
8 Graafstra?

9 MR. GRAAFSTRA: One of the railroad's
10 witnesses this morning already testified that the best
11 predictor of whether there would be an accident in the
12 crossing would be the number of vehicles and the
13 number of trains in the vicinity of each other, I
14 believe. So I would suggest that the last sentence to
15 which there has been an objection in the paragraph
16 entitled Increased Rail Trips is appropriate, but if
17 the court has a concern about that I will ask Mr. Berg
18 if that is indeed his opinion based upon his
19 experience.

20 JUDGE HAENLE: I might have asked him from
21 this. I'm assuming that counsel will be able to
22 cross-examine the witness regarding the basis for any
23 of his opinions since he is here so I don't think
24 there is a hearsay problem from that point of view.
25 Go ahead and ask, yes.

1 Q. Mr. Berg, are you of the opinion that
2 increasing the number of freight trains per day would
3 increase the likelihood of an accident?

4 A. Yes.

5 Q. And that's based upon your professional
6 credentials and background?

7 A. Yes. That's also based on my evaluation of
8 traffic, which is a similar type of situation. If you
9 have increased amount of traffic through an area there
10 could bring into question whether it would be more
11 likely that there would be an accident.

12 Q. From a traffic standpoint when you put more
13 automobiles together you have a greater chance of an
14 accident?

15 A. Correct.

16 Q. And so if you have more automobiles and
17 more freight trains together you have an increased
18 chance of an accident?

19 A. That's my opinion.

20 Q. That's your opinion?

21 A. Yes.

22 MR. GRAAFSTRA: I don't have any further
23 questions.

24 JUDGE HAENLE: I'm going to overrule the
25 objection and enter the entire document into the

1 record. As I indicated earlier, if counsel want to
2 ask the witness the bases for a couple of places where
3 he does give opinion, they will have the opportunity
4 to do that. Although the witness didn't conduct the
5 study he appears to be familiar with the study. So I
6 believe having the witness on the stand means that
7 there should be no problem with determining the basis
8 for his comments and his figures, and I think this may
9 be a handy place to have a number of his figures and
10 comments all in one place. At worst it gets perhaps
11 repetitive of a portion of his testimony but I am
12 going to enter the entire document.

13 Do you have additional questions?

14 (Admitted Exhibit 16.)

15 MR. GRAAFSTRA: No further questions, Your
16 Honor.

17 JUDGE HAENLE: Do you have questions?

18

19 CROSS-EXAMINATION

20 BY MS. GIBSON:

21 Q. Mr. Berg, do you have any particular
22 expertise in the area of railroad highway grade
23 crossing design?

24 A. I have worked for the Department of
25 Transportation for 12 years and for the county 12

1 years and for the city for about a year, so in the
2 course of review of development or highway design
3 where we would be working with a crossing, that's the
4 degree of experience I have.

5 Q. Have you designed a railroad highway grade
6 crossing?

7 A. We're working with a consultant right now
8 for the city, so we have a consultant that's doing the
9 design with the railroad. I believe the Burlington
10 Northern designs their own crossings.

11 Q. And you have never been involved in any of
12 that?

13 A. Not the actual Burlington Northern portion,
14 but the road that would be leading up to the crossing.

15 Q. You have testified that the city is
16 opposing the speed increases. On what authority do
17 you present that testimony? Let me rephrase. You
18 seem to be a little puzzled. Has the city, to your
19 knowledge, voted on the question?

20 A. I'm not sure. There was talk of resolution
21 and I do not know if that was ever passed or not.

22 Q. When was this traffic study performed?

23 A. The transportation study was begun in 1989
24 and it's concluding this year, but there's been
25 several drafts over the years for review. It is

1 currently before the planning commission and soon to
2 be before the city council.

3 Q. Were you authorized by anyone from the city
4 to speak on behalf of the city's opinion?

5 A. The fact that I'm up here, yes.

6 Q. Did the mayor or any member of the city
7 council authorize you to speak as to the city's
8 position?

9 A. They've asked me to testify.

10 Q. Now, the projections that are shown on
11 Exhibit 16, those for the year 2010, are those the --
12 the larger numbers that are shown there, particularly
13 88th Street, that's tied into I-5 traffic, isn't it?

14 A. That would be the major contributor to the
15 traffic, correct. That's both directions. That's
16 total per day, so it's inbound/outbound through that
17 area.

18 Q. And when does the city contemplate making
19 that interchange there at 88th Street to I-5?

20 A. It will be under construction in about one
21 or two months and then it will be built by the
22 Department of Transportation and the county.

23 Q. When is it projected to be completed?

24 A. Should be completed in about two years
25 totally from I-5 to State Avenue.

1 Q. Has the city made any effort to construct
2 an overpass or an underpass at that location based on
3 its projections of traffic volume?

4 A. An overpass over the railroad or --

5 Q. Over the railroad.

6 A. Not to my knowledge.

7 Q. Is that something that didn't occur to you
8 or what?

9 A. Well, I've only been here a year, so in the
10 preliminary discussions I wasn't a party to that.

11 Q. So you don't know why that was not done?

12 A. I do not know.

13 Q. Since you are familiar with this traffic
14 study, what assumptions were made about the increased
15 traffic on I-5 and the link between the city and I-5?

16 A. Well, the traffic study is based on the
17 current comprehensive plan which would tell you the
18 density of development proposed. One reason that the
19 study took so long was because the comprehensive plan,
20 for various reasons, but one of them being the Growth
21 Management Act that recently was enacted kind of
22 delayed the ultimate production of the plan. The
23 study uses what they call a draft model and it's
24 basically to areas with the most dense development
25 would attract or generate the greatest amount of

1 traffic, and then through a mathematical process on a
2 computer it distributed -- it distributes it
3 over-the-road network of the city or the area you're
4 studying, so if you could clarify what you mean by
5 what assumptions on 88th Street, I will try to answer
6 your question.

7 Q. Well, are you familiar with the Commuter
8 Trip Reduction Act?

9 A. A little bit, right.

10 Q. Does your model take that act into
11 consideration?

12 A. I don't think for sure. I think it may
13 not, but then in the course of whatever ordinance we
14 implement in the city to impose this mitigation fees
15 we would probably take that into account for each
16 development to lessen their impact by allowing them to
17 use that. In other words, if the trips were 100 trips
18 or something like that or a thousand per day, one of
19 their mitigation options could be to have a trip
20 reduction through carpools, whatever, which would cut
21 down the amount of money they would have to pay.

22 Q. And you don't think that that act has been
23 factored into counts then that are shown on Exhibit
24 16 for the year 2010?

25 A. I can't say for sure. I don't know, but I

1 would think that it wouldn't be because you would want
2 to get the raw figures and then you can adjust those
3 with whatever tools are permitted under the commuting
4 trip reduction.

5 Q. Would you agree that the effect of that act
6 would be to reduce the number of vehicles per day
7 shown on the year 2010 on Exhibit 16?

8 A. I would agree that it could do that, yes.

9 Q. You indicated that you interpolated from
10 Exhibit 16, I believe, to come up with the figure that
11 you plotted into Exhibit 16. Is that what you said?

12 A. What I did is we have a copy of the traffic
13 study. They don't show counts for every intersection
14 in the city, but a couple of the intersections they do
15 right exactly near the railroad. Others may be a few
16 blocks away and I did include that statement in my
17 report that's been submitted.

18 Q. So for which of the figures that are shown
19 on Exhibit 16 there, which of those are figures that
20 were actually given in the traffic study and which are
21 those that you had to interpolate from an adjacent
22 area?

23 A. The closest figures, 136 is right on.
24 116th is right on. Fourth Street is right on. Grove
25 Street is a few blocks west. 80th Street is right on.

1 88th Street is essentially right on.

2 Q. When you say a few blocks west, how many
3 blocks do you mean?

4 A. Did I say west? A few blocks east for
5 Grove Street. The nearest figure for Grove Street,
6 for example, would be some numbers I see around 51st.

7 Q. How far away is that?

8 A. That's about half mile to the east.

9 Q. And for 88th Street you say essentially
10 that is the number. What do you mean by that? Is it
11 the number at the grade crossing?

12 A. On 88th the numbers are shown right next to
13 the railroad. It's the link that is touching the
14 railroad and that's where the numbers are dimensioned.

15 Q. When you say the link, do you mean the link
16 of 88th Street that goes right over the crossing?

17 A. Correct.

18 Q. How long have you been an engineer?

19 A. I've been a graduate engineer since 1969.
20 I've been licensed since 1976.

21 Q. Now, isn't it true that the private
22 crossings here in Marysville provide the driver of the
23 vehicle on the highway a very good perspective of an
24 oncoming train. Wouldn't you agree with that?

25 A. I can't verify every one. I did look this

1 morning. I took a quick trip up State just to take a
2 look at that and the ones that were in the northern
3 part of the city looked pretty decent.

4 Q. It's basically straight track, correct?

5 A. The portion I looked at, right.

6 Q. There's little or no vegetation on the
7 right-of-way; isn't that right?

8 A. That's correct.

9 Q. And all of the private crossings in
10 Marysville are protected with at least stop signs;
11 isn't that right?

12 A. I couldn't verify if all of them are. I
13 did see stop signs on a couple that I did look at but
14 it's possible that they could all have stop signs.

15 Q. And you can't verify the others because you
16 didn't look at them; is that correct?

17 A. I didn't look at them this morning.

18 Q. And you just don't know whether they have
19 stop signs or not?

20 A. I don't, no, but the ones that I did look
21 up at the northern part did.

22 Q. And it's true that one of the private
23 crossings has signals and gates, correct?

24 A. I believe so. I I believe it's that
25 Conmara. Well, let's see. I know one of them has

1 lights and I'm not sure if it has crossings. We show
2 one here at about 122nd Street is shown as lights
3 and guards. That's probably the one you're talking
4 about.

5 Q. Now, as a traffic engineer, are you
6 concerned about areas of traffic congestion and
7 remedying those sorts of problems?

8 A. That's part of the job, correct.

9 Q. Would you agree that I-5 is becoming
10 increasingly congested?

11 A. I do.

12 Q. Would you agree that something needs to be
13 done about moving people off of Interstate 5?

14 A. I know that anything that could relieve
15 that could be helpful, correct.

16 MS. GIBSON: Nothing else. Thanks.

17 JUDGE HAENLE: Do you have questions, Ms.
18 Rendahl?

19 MS. RENDAHL: Yes, I do.

20

21 CROSS-EXAMINATION

22 BY MS. RENDAHL:

23 Q. Mr. Berg, in terms of the 88th Street
24 interchange, what is the budget for that project? Are
25 you familiar with that?

1 A. It's a state project. I don't know the
2 total cost. I could guess.

3 Q. And in terms of the private crossings, do
4 you know what the daily amount of traffic is on these
5 private crossings?

6 A. I couldn't give you a real good indication
7 of that, no.

8 Q. So has the city done any sort of a study on
9 these private crossings in terms of what the traffic
10 count is?

11 A. Not to my knowledge.

12 Q. Does the city have any jurisdiction over
13 these private crossings in terms of the configuration
14 or signalization?

15 A. I don't think we do, although we are
16 involved with one of them at least on 92nd Street
17 because we're putting a light in on State Avenue and
18 we do have to take into account what's coming from the
19 east -- excuse me -- from the west.

20 Q. In the map on Exhibit 15 you've marked some
21 of the private crossings in green, green triangles,
22 "private with no markings." What did you mean by
23 markings?

24 A. I took this from another drawing by our
25 signal technician but I think what he means is that

1 there's no lights. There's no cross arms.

2 Q. In determining whether to put signals such
3 as a light on 92nd street, what sort of factors go
4 into your consideration of that, of placing a signal
5 at an intersection?

6 A. Well, I think it's how -- I think in that
7 case it's probably the east leg of that intersection
8 it's difficult to make a left turn going south.
9 Signals are to help movements for minor traffic
10 direction so they can get where they want to go.

11 Q. Do traffic counts have any impact or is
12 that a factor you consider in placing the signals at
13 an intersection?

14 A. Traffic counts are a factor. They're
15 considered as to the -- there's certain warrants that
16 have to be met that's put out by the DOT on the MUTCD,
17 Manual of Uniform Traffic Control Devices, and there's
18 just guidelines in the policy on when signals are
19 required, and traffic counts do enter into that.

20 Q. Assuming that you had jurisdiction or have
21 jurisdiction over the private crossings, then traffic
22 would be one factor that you would consider in placing
23 signals at those crossings or recommending that
24 signals and arms be placed on those crossings?

25 A. Possibly. Probably more safety than

1 traffic in those cases.

2 MS. RENDAHL: I have no further questions.

3 JUDGE HAENLE: I don't know how much of
4 this witness's response about what the city's position
5 is has to do with him not supposed to have been the
6 first witness. What a clumsy question. I assume that
7 you will have other more policy-oriented witnesses
8 that will indicate what action a city council may have
9 taken, things like that. Is that correct?

10 MR. GRAAFSTRA: Yes, Your Honor. It was
11 intended that the city's first witness would be the
12 city manager who would testify as to those subjects.
13 But to clear the record, indicate the city's position,
14 that's why I asked Mr. Berg the question I did.

15

16

EXAMINATION

17 BY JUDGE HAENLE:

18 Q. When you wrote down the traffic counts, the
19 1989 traffic counts that appear on Exhibit 16, in the
20 instances where you testified that they were actual
21 counts, was that east-west traffic going across the
22 railroad tracks on those roads?

23 A. For example, on Fourth and State probably
24 the count was taken at Fourth and State. It probably
25 wasn't taken right at the crossing.

1 Q. So what the count is may be what the
2 traffic is going down State rather than going across
3 the crossing?

4 A. Well, that's correct, but in some cases the
5 distance between the crossing and State Avenue are
6 pretty small.

7 Q. Well, I'm trying to determine whether these
8 actually show how many cars went back and forth across
9 these crossings at the times -- at the time when it
10 was taken.

11 A. I think when I put the exhibit together
12 what my intent was to show that traffic increases
13 significantly in the year 2010. Whether it's actually
14 at the crossing or not, I think if I compare the
15 before and after in the same location it shows that
16 trend.

17 Q. So in each of these cases then was the
18 count actually on State of traffic going north and
19 south rather than traffic at the crossing going east
20 and west, actually going across the tracks?

21 A. I'm not sure I completely understand your
22 question. I can say that --

23 Q. Let me redo the question. You said you did
24 it either by the tubes or by someone counting
25 manually. Were the tubes spread across the north and

1 south street or were the tubes stretched across the
2 street east and west?

3 A. For the Transpo study they would do both.
4 They would do an entire intersection to get counts
5 because they're modeling the entire flow of traffic in
6 the city.

7 Q. So the numbers that you have listed on
8 Exhibit 16, are they the -- what are they?

9 A. The numbers that I've listed on the Exhibit
10 are just east-west.

11 Q. And the numbers on Exhibit 16 were done by
12 counting the numbers of cars going east and west
13 actually across the intersection then?

14 A. No. The existing numbers were used to
15 calibrate the model for 1989 at key intersections.
16 The numbers for 2010 are mathematically calculated.

17 Q. Oh, I understand that the others are a
18 projection. I'm still trying to establish what the
19 1989 figures measure. And I'm still not sure that
20 I've got it.

21 A. I don't have the actual traffic count in
22 front of me. That's at the Transpo office, but to do
23 a model of the city you have to take existing counts
24 at several intersections throughout the city so that
25 you know your model will be correct, so if you would

1 compare the figures that I've shown hear, say, for
2 Fourth Street as far as the number of vehicles per day
3 east-west you would probably be very close to what the
4 actual counts were for the State, but I don't have
5 that with me.

6 Q. Counts of Fourth and State, though, still
7 don't tell me that that was actually traffic that went
8 across, bump, bump, bump across the railroad tracks.

9 A. Okay.

10 Q. Is that what you measured?

11 A. As far as I know there was no traffic
12 measured at the railroad tracks. They would measure
13 at the nearest major intersection and that was Fourth
14 and State.

15 Q. And when you measure at the nearest major
16 intersection were you measuring north and south
17 traffic as well as east and west traffic?

18 A. Correct, both.

19 Q. So the numbers that are listed on Exhibit
20 16 were not actually necessarily cars that went across
21 railroad tracks themselves but just went through in
22 some direction through the intersection?

23 A. At Fourth and State, and since it's very
24 close to the railroad tracks, it's probably very close
25 approximation of what went across the railroad tracks.

1 JUDGE HAENLE: Thank you. Any redirect?

2 MR. GRAAFSTRA: Your Honor, may I ask a
3 follow-up question?

4 With regard to the intersection there
5 that is indicated as Fourth Street and the number of
6 actual trips, assuming that was a measure of Fourth
7 and State Street, the number that you see there,
8 35,800, is that the number of cars moving east and
9 west on Fourth Street at that intersection?

10 THE WITNESS: Yes. Yes.

11 MR. GRAAFSTRA: I think that's the question
12 the judge was asking. That's not a total of all cars
13 moving in all directions on Fourth Street.

14 A. No, that's just east-west. I'm sorry I
15 didn't get that clear.

16 JUDGE HAENLE: That was my only other
17 question, so have you redirect?

18 MR. GRAAFSTRA: No.

19 JUDGE HAENLE: Anything more of the
20 witness?

21 MS. GIBSON: I do.

22

23 CROSS-EXAMINATION

24 BY MS. GIBSON:

25 Q. If you look at your map, Exhibit 15, and

1 first it asks you to look at the area west of the
2 railroad tracks and east of Interstate 5, south of
3 80th Street. Are you with me?

4 A. Yes.

5 Q. Isn't it true that that area is already
6 essentially fully developed, that little triangle in
7 there between I-5 and the tracks?

8 A. I think there's other witnesses that could
9 more clarify it but as compared to other parts of the
10 city it is more densely developed. It's one of the
11 older portions of town. We still review applications
12 in that area.

13 Q. And yet you're predicting 120 percent
14 increase in traffic over the Grove Street crossing by
15 the year 2010?

16 A. Well, but the traffic that would go across
17 Grove Street wouldn't really all generate from that
18 area. It could be traffic that went up from Fourth
19 Street up Cedar and then over Grove or down State.
20 There's just all sorts of other centers of gravity I
21 guess that would project traffic that would go through
22 Grove Street.

23 Q. You mentioned a new development going in at
24 west of 88th -- or west of the tracks?

25 A. West of I-5. The Tulalip tribes are

1 undergoing extensive development on their property.

2 Q. Don't you have a lot of wetlands in this
3 area from 88th Street north to the city limits? Isn't
4 that area either developed or wetland?

5 A. Well, there may be some wetland there. I
6 couldn't say the degree of those. It was my
7 impression that that area is fairly undeveloped. At
8 least in driving on the freeway and looking over that
9 direction, I see a lot of trees.

10 Q. Is that all you know about that area just
11 what you see from the freeway?

12 A. That's all I know.

13 MS. GIBSON: I don't have any other
14 questions.

15 JUDGE HAENLE: Anything more of the
16 witness?

17 Thank you, sir. You may step down. Let's
18 go off the record to change witnesses.

19 (Recess.)

20 JUDGE HAENLE: Let's be back on the record.
21 During the time we were off the record Mr. Graafstra
22 called his next witness.

23 Whereupon,

24 DAVID ZABELL,

25 having been first duly sworn, was called as a witness

1 herein and was examined and testified as follows:

2

3

DIRECT EXAMINATION

4 BY MR. GRAAFSTRA:

5 Q. Would you state your full name, spell your
6 first and last name for the court reporter.

7 A. David Zabell, Z A B E I L.

8 Q. What is your position with the city of
9 Marysville?

10 A. City administrator.

11 Q. Can you tell me what your duties are as
12 city administrator?

13 A. Primarily would be oversight of all city
14 departments. We have an extensive public works
15 department, planning and development, police, fire and
16 parks and recreation, including municipal golf course,
17 liaison between council and mayor and staff. And
18 certain interface with state legislators,
19 congressional delegations and the citizens and various
20 state and federal agencies.

21 Q. Now, as city administrator, does that make
22 you oftentimes the city spokesman or spokesperson?

23 A. That's correct.

24 Q. Now, we're here today because of a petition
25 by Amtrak and Burlington Northern to raise train

1 speeds inside the city of Marysville. Do you
2 understand that to be the case?

3 A. I understand that.

4 Q. Do you know what the official position of
5 the city is as it reflects the points of action taken
6 by the city council?

7 A. The official position of the city is that
8 they're opposed to the speed increases as proposed.

9 Q. Was there a written resolution passed by
10 the city council?

11 A. There was a written resolution referring to
12 RTA. There was not one as far as the train speeds,
13 but we had a consensus from the council, and the city
14 staff's presentation here is on the direction of the
15 mayor and the city council, the city of Marysville.

16 Q. And the direction from the city council was
17 to oppose this petition; is that correct?

18 A. That's correct.

19 Q. You mentioned RTA. What is RTA?

20 A. Regional Transit Authority.

21 Q. Is the city of Marysville a continuing
22 participant in the RTA?

23 A. City of Marysville opted out of that
24 program in large part because could not be proved that
25 there was any kind of benefit to the city with regard

1 to the amount of taxes it would be paying out for the
2 service provided.

3 Q. Now, if you could, very briefly, could you
4 describe for us generally what the city of Marysville
5 is, how large it is in square mileage, how many people
6 live inside of the city. That sort of thing.

7 A. I can answer your question, but city of
8 Marysville is rapidly expanding, so if I answer today
9 by the time the transcription is done I may be wrong.
10 So with that in mind, today our present population is
11 approximately 16,000 with an area of about 6.3 square
12 miles. Immediately outside of the city is another
13 20,000 or so residents living in an unincorporated
14 county and then immediately west of the I-5 is the
15 Tulalip Indian Reservation. I think that probably has
16 a population of around 10 to 12,000 also.

17 Q. Now, you're familiar with something called
18 the Growth Management Act for the state of Washington?

19 A. Yes.

20 Q. And what is the projected urban growth
21 management area for the city of Marysville?

22 A. Well, we're in the process at this point in
23 time of working with the county council. They have
24 not made the final decision as to the city's UGA.
25 There's a number of proposals on the table. The

1 city's proposal, however, would be a boundary of I --
2 excuse me. State Route 9 on the east, Sober Hill Road
3 on the south, which is 28th Street, I-5 on the west
4 and up to 152nd Street and in some places 172nd Street
5 to the north. There's another urban area which is
6 called Smokey Point that the county is considering
7 also. A majority of it is already urbanized and
8 that's around 172nd Street. That will be part of the
9 UGA, and of course Arlington is just to the north. So
10 it's a pretty expansive UGA just north of the
11 Snohomish River system.

12 Q. Now, as city administrator do you have
13 occasion to get around the city quite a bit?

14 A. Yes. Well, I've been city administrator
15 since 1992. Prior to that I was public works director
16 for six years and prior to that public works engineer
17 and worked quite a bit with traffic in the city,
18 worked on numerous projects with DOT on railroad
19 crossings and so forth so I'm very familiar with the
20 transportation system of the city.

21 Q. As a result of that background, have you
22 sort of learned the city of Marysville's unique
23 connection with the railroad? There's a tie
24 historically between Marysville and the railroad?

25 A. Yes. Actually, the city, because its

1 logging heritage at one point in time had some half
2 dozen railroads operating within its boundaries, 100,
3 120 years ago. Over time those have diminished down
4 to now the one northwest route that we're discussing
5 today.

6 Q. Now, have you taken an opportunity to
7 review the ordinances of the city of Marysville from
8 the inception of the city?

9 A. On occasion. I haven't reviewed -- I can't
10 say I reviewed all of them. We have somewhere close
11 to 2,000 of them.

12 Q. Well, as they specifically pertain to
13 railroads, has Marysville attempted to regulate
14 railroads within its jurisdiction?

15 A. Yes.

16 Q. That goes back to the incorporation of the
17 city?

18 A. Yes. City was incorporated in, I believe,
19 in 1889 and one of our first -- within the first 100
20 or so ordinances we had ordinances relating to
21 railroad regulation and so forth.

22 Q. What types of regulations has the city of
23 Marysville from time to time adopted?

24 A. Primarily speeds and blocking of
25 intersections are probably the two most common

1 features in the city's ordinances and regulations
2 pertaining to railroads.

3 Q. With regard to speed, what type of
4 regulations has the city adopted from time to time?

5 MS. GIBSON: Well, Your Honor, I question
6 the relevancy of this. Clearly it's not within the
7 city's jurisdiction.

8 JUDGE HAENLE: Counsel?

9 MR. GRAAFSTRA: Well, it's certainly true
10 that as to some areas it may not be in the city's
11 jurisdiction. There are certain spur lines but by
12 contract the city with the railroad operator was in
13 fact given jurisdiction to regulate speeds. The
14 point of all this is to set the historic background as
15 to what the city has done and what the speed limits
16 have been observed in the city, whether the city had
17 the power to impose these speed limits or not. They
18 were in fact out there and there has been historic
19 compliance with them. That's the direction in which
20 I'm going, Your Honor.

21 JUDGE HAENLE: What would you intend to
22 demonstrate to the Commission by that line of
23 questioning?

24 MR. GRAAFSTRA: Ultimately that there
25 are speed limits that have been out there that have

1 been acquiesced and have been long established and
2 have been established for good reasons and I'm
3 suggesting -- I think the historic background plays
4 into what the speed limit ought to be and what is a
5 safe speed limit. That's the relevance.

6 JUDGE HAENLE: Ms. Gibson.

7 MS. GIBSON: Well, the standard here of
8 course is practical operation of trains versus safety
9 hazards posed and I fail to see how this line of
10 questioning is going to tell us what the current today
11 actual safety hazards, if any, there are in the town
12 of Marysville. I think it's totally irrelevant. The
13 responsibility and authority for setting the train
14 speeds, under state law at least, lies with the WUTC
15 and under federal law of course there is a preemption
16 argument here. Under either legal view of it there's
17 the -- the questioning is irrelevant.

18 JUDGE HAENLE: I'm afraid I'm inclined to
19 agree, Mr. Graafstra. I don't see how any
20 law Marysville may have historically put on its books
21 or whatever you were referring to really has to do
22 with the issue we're here today about.

23 MR. GRAAFSTRA: You don't really care what
24 the historic speed is in the city of Marysville.
25 That's not what we're getting to.

1 JUDGE HAENLE: It's not a matter of not
2 hearing what the historical speed of the city has
3 been. I don't see that it adds anything to the issue
4 that we have to decide which is what the proper speed
5 according to the current statutes are.

6 MR. GRAAFSTRA: I will withdraw the
7 question.

8 Q. Do you know what speeds have been observed
9 by trains in the city of Marysville?

10 A. Yes. 25 miles an hour.

11 Q. Is that both as to freight trains?

12 A. That pertains to freight trains and then
13 prior to the 1981 the Amtrak line ran through
14 Marysville.

15 Q. Do you know for what period of time the
16 speeds were observed in that fashion?

17 A. I can't tell you when those started being
18 observed. They were before my time with the city
19 which starts around 1980 or so.

20 Q. You said you were a public works director
21 before?

22 A. That is correct.

23 Q. Have you ever had occasion to examine the
24 railroad tracks inside the city of Marysville?

25 A. On numerous occasions, yes.

1 Q. You don't happen to -- you didn't happen to
2 observe looking at those tracks if there were any name
3 plates or legends that indicated when the track was
4 laid?

5 A. No, I did not observe that.

6 Q. I want to talk about 88th Street for just a
7 second. There's a new energy plant there; is that
8 correct?

9 A. That's correct.

10 Q. When did the planning for that interchange
11 occur?

12 A. Well, the first document I ever saw the
13 interchange brought up was a 1968 Puget Sound Council
14 of Governments Transportation Plan. It's been in
15 numerous documents since then. We actually started on
16 the planning and engineering probably about 1986. The
17 Tulalip tribes have taken the lead and they're the
18 ones that spearheaded the efforts as far as permitting
19 and funding.

20 Q. Now, during that period of time the
21 observed train speed was 25 miles per hour; is that
22 correct?

23 A. That's correct.

24 Q. And was that a factor in the design of the
25 88th Street improvements?

1 A. I would imagine so, yes. I didn't design
2 it myself, but -- and it's currently under design.
3 However, I think if we knew at the time that
4 Burlington Northern was talking about tripling the
5 speed limit through the city of Marysville that's
6 something that we would certainly have tackled at that
7 time.

8 JUDGE HAENLE: I'm not sure I understood
9 one portion of your answer. Did you say it was
10 currently under development or currently under-
11 developed?

12 THE WITNESS: Well, actually, under design
13 is probably a better -- under development as far as
14 the plans.

15 JUDGE HAENLE: So it's in the process of
16 being designed and being built, is that what you're
17 saying?

18 THE WITNESS: Yes. Right-of-way has been
19 procured, the design I believe is complete, and so I
20 think, as the city engineer testified, will be under
21 construction various parts of it within the next month
22 or more.

23 Q. What's the main north-south arterial?

24 A. That's kind of a twofold question as
25 Marysville has grown I-5 has become more important to

1 Marysville. Highway 99, old 99, State Avenue, got a
2 lot of different names, is our primary north-south
3 arterial in the city limits.

4 Q. I suppose it's self-evident but what's
5 the relationship of the railroad to State Avenue and
6 I-5?

7 A. It's jammed right in between the two of
8 them.

9 Q. How does the railroad affect the
10 downtown commercial center?

11 A. Well, it affects it in numerous ways. You
12 have the noise, the vibration testimony that we heard
13 earlier today, and then of course the traffic.
14 Various times during the day the train comes through
15 and will create pretty much total chaos throughout the
16 downtown area while we're waiting for it to get
17 through. We've also had occasion where most recently
18 where last spring we had a Burlington Northern sit
19 across a railroad track at 88th and block off a
20 neighborhood of almost 600 residents for an hour.
21 They had no access to any kind of emergency vehicles
22 if that were needed. Fire, police protection,
23 nothing. They were totally stranded out there. So it
24 does have an impact and that impact would be very
25 great.

1 MR. GRAAFSTRA: I don't have any further
2 questions for Mr. Zabell.

3 JUDGE HAENLE: Questions, Ms. Gibson.
4

5 CROSS-EXAMINATION

6 BY MS. GIBSON:

7 Q. Mr. Zabell, that incident that you just
8 referred to, the one that occurred with the train
9 blocking 88th Street, that was a highly unusual
10 incident, was it not?

11 A. Well, the crew got out and took a cab back
12 to the terminal so I would hope that would be highly
13 unusual.

14 Q. That has never happened again, has it?

15 A. We've had it frequently they would stop at
16 --

17 Q. You haven't answered my question. That has
18 not happened since that one time, has it?

19 A. A blockage at 88th or blockages at all?

20 Q. A blockage of any length at all at 88th.

21 A. A blockage at 88th. We've had occasions
22 over the past few years where we will have a train
23 crew stop at the Burger King and get their lunch while
24 they're activating the gates.

25 Q. Now, you would agree that these types of

1 incidents are matters of discipline for Burlington
2 Northern to handle, would you not, with its own train
3 crews?

4 A. I suppose that would play a big part in it.
5 How you can prevent it? I don't know if discipline is
6 the entire answer. You're always going to have the
7 human factor in there.

8 Q. Well, the city is not going to
9 realistically prevent it by taking a position against
10 increased train speeds. That has nothing to do with
11 crossing blockages.

12 A. It could, I suppose. As far as
13 operationally I don't know. But that's our position.

14 Q. Wouldn't you agree from common sense level,
15 Mr. Zabell, that if a train is moving at 40 or 45
16 miles an hour it's going to get through the town
17 faster than if it's stopped?

18 A. I've tried to explain that to many police
19 officers in my day when I was younger that if I move
20 faster through an intersection I pose less of a
21 hazard. However, I can't buy -- they didn't buy that
22 kind of logic then and city council I don't believe
23 buys that kind of logic with a train through a high
24 volume intersection.

25 Q. The question, really, Mr. Zabell, was not

1 would you agree that a higher speed train poses more
2 or less safety hazards in your opinion, that wasn't
3 the question. That was what you answered but that
4 wasn't the question. The question really was isn't it
5 true that the speed has nothing to do with the kind of
6 incident that you're describing where the train sits
7 blocking an intersection? Wouldn't you agree with
8 that?

9 A. I guess I would have to agree with that.

10 MS. GIBSON: Nothing else.

11 JUDGE HAENLE: Ms. Rendahl, questions.

12 CROSS-EXAMINATION

13 BY MS. RENDAHL:

14 Q. I'm not sure -- Mr. Berg didn't know the
15 answer to this but maybe you will. Do you know the
16 cost of the interchange that's being constructed at
17 88th Street and I-5?

18 A. I think it's in the neighborhood of 5
19 million totally, and that would include the intertie
20 on the Tulalip reservation side over to 27th Avenue
21 and from I-5 to State Avenue along 88th Street.

22 Q. Just to clarify, if when planning for this
23 interchange began you were aware of a plan to try to
24 increase train speeds through the town and through
25 that intersection, would that have been a factor in

1 deciding whether or not to plan for overpass or
2 underpass on 88th Street?

3 A. There's many difficulties to putting that
4 overpass in. One, you're already coming out of a
5 vertical dip going through Quilseda Creek, and I think
6 there was some question earlier about wetlands area,
7 and the reason is we have a major creek just to the
8 west of the tracks and so we have to come out of that
9 as it is. To run an overpass over State Avenue and
10 over the train the cost would be phenomenal not to
11 mention there's a cemetery just the other side of
12 State Avenue that we would have to contend with at an
13 elevation of 20 feet in the area so there's a lot of
14 physical constraints to putting any kind of overpass.
15 There's probably less physical constraints to putting
16 a rail overpass over 88th then there would be a road
17 overpass.

18 MS. RENDAHL: Thank you. No further
19 questions.

20 JUDGE HAENLE: I'm not sure I understood
21 your testimony.

22

23

EXAMINATION

24 BY JUDGE HAENLE:

25 Q. You said you were not sure whether the 25-

1 mile-an-hour train speed was a factor considered in
2 the design because you were not involved in the
3 design. Did I understand correctly?

4 A. I was involved in the planning of it but I
5 wasn't actually a designer of it, no.

6 Q. And I thought Ms. Rendahl asked you whether
7 the planning might have been different had the train
8 speed been higher. Did you answer that or did I
9 misunderstand the question?

10 A. I think she asked if we would have
11 considered an alternative to the present design.

12 Q. And my question would be more generally,
13 then, would your planning have been different if the
14 train speed had been higher at the time?

15 A. I can't answer that because I wasn't the
16 sole decision maker on that project, but I would say
17 that we would certainly have been able to get to the
18 Burlington Northern Railroad and DOT sooner on this
19 project had we known at the time we were planning the
20 88th Street project rather than five years after
21 design started.

22 Q. I don't understand your answer at all. I
23 got the "I don't know" part but what was the rest of
24 it?

25 (Record read.)

1 A. And I guess by saying that we could have
2 coordinated with DOT and Burlington Northern on this
3 speed increase and perhaps found a better solution
4 than what is being proposed today. Not necessarily
5 physically but maybe from a speed standpoint.

6 JUDGE HAENLE: Any redirect?

7 MR. GRAAFSTRA: No.

8 JUDGE HAENLE: Anything else?

9

10 CROSS-EXAMINATION

11 BY MS. GIBSON:

12 Q. When did you say you took over this
13 position that you hold now?

14 A. January of 1992.

15 Q. I would like to show you a document and ask
16 you if you've ever seen that before.

17 A. I can't say that I've seen this exact
18 document but I've seen these numbers before.

19 Q. Do you see on that document where it says
20 "faxed to city manager"?

21 A. Yes.

22 Q. December -- is it December 8, 1993?

23 A. That's correct.

24 Q. And are you sometimes called manager? I
25 know you called yourself administrator initially. Do

1 people also call you manager?

2 A. It has to do with the form of government.
3 We have a mayor/council form of government. There
4 are cities that have city manager/council form of
5 government. It's kind of used by -- a lot of
6 folks don't distinguish between the administrator/
7 manager so folks do call me manager from time to time.

8 Q. So do you say that you do recall seeing
9 that document before?

10 A. I see a lot of documents. I can't say that
11 I've seen this exact one. I've seen this information
12 before.

13 Q. On the second page of that document,
14 doesn't it indicate that the train speeds will be
15 requested to be increased for freight trains up to 50
16 miles per hour the same as what the petition is in
17 this matter?

18 A. It does say that, yes.

19 Q. And does that refresh your recollection as
20 to whether you had notice of the increase in train
21 speeds as early as December 8, 1993?

22 A. Yeah. I don't say that the city never had
23 notice of the train speeds prior to the petition and
24 the notice of this hearing. If that was my testimony
25 or if I was unclear about that I will make it clear.

1 We knew before that. The city council has held
2 workshops on this very issue where representatives
3 from Burlington Northern were there and that's where
4 we got the direction to oppose the increased speed
5 limit.

6 Q. And you have not changed your plans for the
7 88th Street interchange then since learning of the
8 increased train speeds?

9 A. No. They have not been changed because the
10 speeds were not a factor. They still are not a factor
11 until they're approved. Burlington Northern and DOT
12 have not to my knowledge talked to any of our
13 designers about it either.

14 Q. Well, you just testified that the city was
15 put on notice of the request of train speeds as early
16 as December 8, 1993?

17 A. Four years into the project.

18 Q. And since that date in late 1993, the city
19 has not changed its plans on the 88th Street
20 interexchange?

21 A. That's correct.

22 MS. GIBSON: Nothing else.

23 JUDGE HAENLE: Anything more of the
24 witness?

25 MR. GRAAFSTRA: Nothing further.

1 JUDGE HAENLE: Thank you, sir. You may
2 step down. Let's go off the record for a minute. We
3 need to discuss what time we're going to start in the
4 morning.

5 (Discussion off the record.)

6 JUDGE HAENLE: Let's go back on the record.
7 We'll recess at this time. We will reconvene at
8 9 a.m. in this room. Thank you.

9 (Hearing adjourned at 4:45 p.m.)

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As Court Reporter, I hereby certify that
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Cheryl Macdonald

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