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FROM: THOM H. GRAAFSTRA
DATE: February 15, 1995
RE: TR-940309

Enclosed for filing with your office is the following:

POST-HEARING BRIEF OF MARYSVILLE OPPOSING PETITION TO MODIFY.

bj

STATE OF WASH.
UTIL. & TRANSP.
COMMISSION

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STATE OF WASH.
UTIL. AND TRANSP.
NO. TR94030910

In the Matter of the Petition
of the WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,
BURLINGTON NORTHERN RAILROAD
COMPANY, and the NATIONAL
RAILROAD PASSENGER CORPORATION
for modification of order
regulating the speed of
passenger trains in
Marysville, Washington.

POST-HEARING BRIEF OF
MARYSVILLE OPPOSING
PETITION TO MODIFY

SUMMARY

The Commission is vested with the exclusive power to fix and regulate train speeds within the limits of code cities, pursuant to authority granted by RCW 81.48.030. RCW 81.48.040 requires the Commission to set train speeds which "shall be commensurate with the hazard presented and the practical operation of the trains."

In the present case, Burlington Northern has conceded that it has no need to raise freight train speeds except to accommodate Amtrak's proposed passenger trains. The speeds requested by Amtrak do not serve any practical need for the operation of the trains, but have been set as a marketing ploy to save allegedly 35 minutes on a run from Seattle to Vancouver.

To achieve these results, however, both Amtrak and Burlington Northern request substantial and dramatic increases in train speeds through Marysville, doubling the maximum speed for freight trains from 25 to 50 miles per hour, and doubling and tripling the

1 current maximum speed for passenger trains to a final speed within
2 the city of 79 miles per hour.

3 Considering the totality of the circumstances, these
4 requested speed increases pose a local hazard jeopardizing
5 pedestrian, regular automobile and school bus traffic, and posing
6 an inherent and increased risk to the major arterial of the city
7 of Marysville, State Avenue, which adjoins the railroad tracks for
8 the majority of their course through the city. These hazards
9 cannot be mitigated by improved signage, gates or lights, and
10 accordingly the petition should be denied.

11 **APPLICABLE STATUTES**

12 As amended by the Legislature in 1994, RCW 81.48.030 now
13 provides as follows:

14 The right to fix and regulate the speed of
15 railway trains within the limits of any city
16 or town other than a first-class city, and at
17 grade crossings as defined in RCW 81.53.010
where such grade crossings are outside the
limits of cities and towns, is vested
exclusively in the commission

18 RCW 81.48.040 was also amended by the 1994 Legislature, and now
19 reads as follows:

20 After due investigation, the commission shall
21 make and issue an order fixing and regulating
22 the speed of railway trains within the limits
23 of cities and towns other than first-class
24 cities. The speed limit to be fixed by the
25 commission shall be discretionary, and it may
26 fix different rates of speed for different
27 cities and towns, which rates of speed shall
28 be commensurate with the hazard presented and
the practical operation of the trains.

Marysville concedes that it is not a first-class city, and
accordingly jurisdiction to set railway train speeds is vested for

1 | the present petition in the Commission. Since the briefing of
2 | Commission staff will obviously establish that the power vested in
3 | the Commission is not preempted by federal law, Marysville will
4 | not address that issue.

5 | **EVIDENCE PRESENTED AT THE HEARING**

6 | Perhaps unwittingly, the joint petitioners in this case made
7 | numerous factual concessions at the hearing, which collectively
8 | prove fatal to their petition to increase the train speeds in
9 | Marysville. The rest of the evidence produced at the hearing
10 | confirms that there is no practical need to increase the speed
11 | limits in Marysville, and any increases in train speeds will pose
12 | an unacceptable local hazard to pedestrians, automobile traffic,
13 | school traffic and neighboring property owners.

14 | **1. Petitioner's Admissions Show the Absence of Need
15 | for a Speed Increase.**

16 | During the testimony of Marvin Nelson taken January 19, 1995,
17 | he conceded that independent of the request of Amtrak to raise
18 | passenger train speeds there is no need at all for freight trains
19 | to go faster through Marysville. Tr. 206. The petitioners'
20 | witnesses also stated that in making their request their strategy
21 | was to begin raising speeds throughout the corridor "where it can
22 | be done in a safe manner." Testimony of Gilbert Mallery, Tr. 16.
23 | Nonetheless, in formulating their petition, the petitioners looked
24 | solely to track conditions and did not consider other issues in
25 | establishing speeds. Tr. 27.

26 | The passenger train speed requests are based on a marketing
27 | decision to attempt to operate under four hours. The only

1 rationale given for this decision was the results of interviews of
2 a small number of citizens organized in focus groups. Tr. 32-34.
3 Even so, nothing mandated the speed selected, and it is a goal
4 only. Tr. 53. The petitioners also concede that faster trains
5 carry more force and momentum, Tr. 64, and that the best predictor
6 of accidents would be the number of automobiles in the vicinity of
7 the tracks. Tr. 69. Train speeds are currently set lower in
8 other high-population jurisdictions. Tr. 89.

9 The Petitioners also concede that no consideration was given
10 to scheduling changes to accommodate in the freight network the
11 proposed higher passenger train speeds. Freight trains only
12 occupy the track through Marysville between three and five hours
13 per day. Tr. 96.

14 It is unimaginable that freight and passenger train speeds
15 should be increased based upon this record created by the
16 petitioners' own concessions. They say they considered safety,
17 but in fact they didn't. They acknowledged that the number of
18 automobiles in the vicinity is the best predictor of an increased
19 safety hazard. They acknowledged that for freight trains
20 themselves there is no practical need or reason to increase train
21 speeds. At the same time, the desire to raise passenger train
22 speeds relates to a current nonexistent run and a marketing
23 decision based on no adequate factual foundation. Petitioners
24 gave no consideration to attempting to accommodate both freight
25 and passenger trains on a schedule that would allow all to operate
26 safely and efficiently.

1 **2. A Speed Increase Will Create a Local Hazard.**

2 The evidence presented by Marysville established significant
3 local hazards attendant to a speed increase. Marysville is a
4 growing city, currently bisected by the railroad tracks. The
5 railroad tracks separate Marysville from the main north-south
6 freeway, I-5. Ernie Berg, City Engineer, testified that in 1989
7 there were 35,800 crossings per day at Fourth Street. At Grove
8 street, there were 6,600 crossings per day, and at 80th Street
9 3,900 per day. The 1989 traffic volume at 88th Street was 4,500
10 per day; at 116th Street 14,200 per day; and at 136th Street 3,400
11 vehicles per day.

12 Mr. Berg also testified that a traffic study predicted future
13 traffic volumes at numerous locations in the city. By the year
14 2010, Mr. Berg testified that the volumes at Fourth Street would
15 reach 39,200 vehicles per day; at Grove Street 14,500 vehicles per
16 day; at 88th Street 47,500 vehicles per day; and at 116th Street
17 15,100 vehicles per day. Tr. 213-14. These traffic increases tie
18 in with certain notable improvements in the area, including
19 development on the Tulalip Reservation and the building and
20 completion of the Navy support facility west of the 88th Street
21 crossing.

22 Mr. Berg also testified that there were numerous private
23 crossings in the city that didn't have gates or signals, had
24 steeper approaches, poorer surfacing, and created a hazardous
25 situation for drivers to see and to cross quickly. Tr. 216.
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1 David Zabell, City Administrator, testified too that
2 Marysville is rapidly growing. The current population is 16,000,
3 and immediately outside the city are another 20,000 residents.
4 Tr. 241. The city has also had a historic connection with the
5 railroad. As part of this connection, however, trains have
6 historically observed a 25 mile-per-hour limit. Tr. 246. He
7 further testified that the City began planning a new interchange
8 at 88th Street years ago, and the interchange was designed based
9 upon the current observed train speed of 25 miles per hour.
10 According to Mr. Zabell, the railroad is jammed between two north-
11 south arterials, I-5 and State Avenue. The railroad bisects the
12 commercial center, leaves problems of noise and vibration, and
13 from time to time cuts off access by emergency vehicles.

14 Ken Ploeger, Traffic Signal and Sign Technician for the City
15 of Marysville, then testified and established that at many of the
16 public crossings in the city, no additional useful signage could
17 be installed and that at most of the public crossings there was
18 inadequate storage for automobiles. In other words, there was
19 inadequate distance between the railroad tracks and State Avenue
20 for cars to turn, stop and wait safely for an oncoming train to
21 pass. In some instances, there is no room for any cars, and at
22 other crossings there is room for one to three cars only. Mr.
23 Ploeger considers all of the public crossings a hazard because of
24 the lack of storage.

25 Mr. Ploeger examined the private crossings in the city. Most
26 of the private crossings have a steep grade and frequently are
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1 used by truck traffic. It was his testimony that on many
2 occasions a truck could not see the traffic on the opposite side
3 of the tracks to know if there was an escape route once an effort
4 to cross the tracks began. Tr. 270-73. Mr. Ploeger further
5 confirmed that at Fourth Street, a state highway, traffic
6 frequently backs up due to the freeway and volume, leaving
7 automobiles stranded in the area of the railroad crossings,
8 without any escape if a train should come. Tr. 282-82. Further,
9 at Cedar Street traffic paralleling the track has no exit because
10 the exit is cut off by the cantilevers and gates themselves. Tr.
11 282. In Mr. Ploeger's examination of the crossings and the
12 signage, he also observed that the road deck or surface provided
13 by the railroad across the tracks in many cases was showing
14 advanced evidence of decay with bolts, nuts and other tire hazards
15 being presented. Tr. 283-85.

16 The testimony of Gloria Hirashima documented the current and
17 projected land uses in the vicinity of the track. As noted
18 previously from the testimony of City Administrator David Zabell,
19 the railroad tracks bisect Marysville. Moving from south to
20 north, the track proceeds through an industrial zone, then a
21 commercial zone and mixed use. In the mixed use area are
22 substantial numbers of multi-family residential structures. Mixed
23 use continues north of Grove Street for further multi-family uses
24 and then reverts to commercial uses again. This is followed by an
25 area of single-family development with commercial uses returning
26 at 116th Street. North of 116th Street are commercial uses

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1 followed by industrial uses to the north end of town. Tr. 309-
2 317. On the horizon is a new shopping center at 116th Street,
3 development by the Tulalip Tribes of a new casino west of the
4 freeway and between 88th and 116th Streets, a trucking center
5 north of town in the area of Northwest Composites, and further
6 industrial growth in the north end of town. Tr. 318-23. The City
7 does not have the power to prevent development. It must provide
8 reasonable opportunities for owners to exercise their property
9 rights. Tr. 330.

10 Generally, except for retired railroad employees, the public
11 testimony demonstrated universal opposition to the requested train
12 speed increases. The public testimony also documented further the
13 significant adverse safety consequences of speed increases.

14 Patricia Everett testified that she owns property bordering
15 the existing railroad. Because of train movements, her house is
16 subject to violent vibrations. Her property has accordingly been
17 appraised below its construction cost. Tr. 115. Larry Mitsules,
18 speaking individually and as a representative of the Chamber of
19 Commerce, also established that the trains shake his business,
20 even though it is across State Avenue from the tracks. Mr.
21 Mitsules also testified that the railroad acknowledges a learning
22 curve will be necessary. The Chamber of Commerce prefers to call
23 this the fatality curve. Tr. 374; 372.

24 Joe Lagare, Transportation Supervisor for the Marysville
25 School District, testified he was authorized by the District to
26 speak on behalf of the District. He testified that presently
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1 | there are 45 large bus crossings over the tracks each school day.
2 | In addition, there are 122 special education bus crossings on a
3 | typical day. Tr. 377. Finally, there are probably 1,000
4 | student/pedestrian crossings per school day. Tr. 380.

5 | Mr. Lagare also testified that over the past ten years there
6 | had been several instances of buses stalling on the tracks. This
7 | has necessitated student evacuations. These evacuations take two
8 | to three minutes for a full-sized school bus and much longer for
9 | special education buses. Tr. 380; 377. In one case, a bus had to
10 | be towed, and in another a bus pushed off the tracks. 80th
11 | Street, coincidentally happens to be in the vicinity of the School
12 | District's bus garage. Tr. 381.

13 | Northwest Composites is a major employer in Marysville. Brad
14 | Young testified on behalf of Northwest Composites. It has a
15 | single access, a private crossing over the rail tracks. Northwest
16 | Composites has 275 employees, and all of its business traffic must
17 | cross the rail tracks as well. Northwest Composites operates a
18 | second and third shift, where employees are more prone to
19 | inattentiveness due to sleeplessness. Northwest Composites
20 | opposes the train speed increases due to consideration for safety
21 | of its employees and because of vibrations that are expected from
22 | the trains. Tr. 385; 390.

23 | Other public witnesses noted the numerous apartments in the
24 | vicinity of the tracks and the lack of adequate fencing. Tr. 405.
25 | Some public witnesses noted the poor condition of the track or of
26 | the signaling devices. Tr. 407.

1 All in all, the evidence established an array of local safety
2 hazards arising from automobile and pedestrian traffic, from the
3 proximity of the tracks to businesses, multi-family residences and
4 single-family residences from inadequate signage, unavailable
5 traffic storage, and from large numbers of daily crossings by
6 truck traffic and by school buses.

7 LEGAL DISCUSSION

8 In a series of earlier hearings, the Utilities and
9 Transportation Commission has identified factors to be considered
10 in granting, denying or conditioning petitions for increased train
11 speeds. For example, inadequate or absent gates and crossing
12 signals can be a condition to the granting of a petition for
13 increased speed. *In re Cashmere*, Tr. 2244 (1990). In *In re*
14 *Edmonds*, Tr. 2248 (1990) and Tr. 2311 (1990), the Commission gave
15 special consideration to the type of track (there, continuous
16 welded track), pedestrian crossings and auto traffic, as well as
17 adjoining urbanization, related public facilities, and the risk of
18 public compliance. Based on these factors in *In re Edmonds*, the
19 petition to increase speed was only granted in part.

20 In *In re Washougal*, Tr. 2249 (1990), increased speeds were
21 granted in part, but conditioned also on the installation of
22 appropriate gates and signaling devices. Interestingly, *In re*
23 *Washougal* only involved a requested increase of ten miles per
24 hour, and the Commission made specific note of limited sight
25 distance in the vicinity of the tracks.

1 In *In re Puyallup*, Tr. 2250 (1990), a situation somewhat
2 similar to Marysville's was present. In Puyallup the train tracks
3 also run through the center of town. Testimony established that
4 at some crossings as many as 12,000 vehicle crossings occurred per
5 day. The evidence also showed traffic backup and cars left
6 sitting on tracks without an avenue of escape. The requested
7 speed increases in Puyallup were granted subject to conditions,
8 including the installation of additional signage, and new traffic
9 signals with appropriate interties.

10 However, in *In re Centralia*, Tr. 2251 (1990), a petition to
11 increase speeds was denied. Significant to the Commission at that
12 time was the testimony of Terry Caulkins, who testified that over
13 100 school children each day trespass onto the tracks at Overpass
14 MP 54.6. The Commission accordingly concluded that "The petition
15 should be denied in the vicinity of the overpass."

16 Thus, it can be seen that numerous factors come into play to
17 determine if a local hazard exists. In the present case, all of
18 the local hazards observed in all of the 1990 decisions exist in
19 the city of Marysville.

20 Let us return to the evidence and compare it to the factors
21 in the 1990 decisions. As in Cashmere, Washougal and Puyallup,
22 there are numerous crossings in Marysville. Some have state of
23 the art equipment, others are planned to have state of the art
24 equipment, but the private crossings will remain generally
25 ungated, unprotected and unsafe. By distinction from Edmonds,
26 which apparently has continuous-weld rail, the evidence here shows

1 | only one area of new rail installed that is continuous and welded.
2 | Tr. 129. However, the evidence is clear that the track structure
3 | through Marysville historically has had problems. In Marysville
4 | or its immediate vicinity, there have been three major derailments
5 | over the past thirty years, 1969, 1981 and 1991. Tr. 196. But
6 | like Edmonds, there has been considerable urbanization,
7 | significant investment in public and/or private facilities,
8 | dramatic increase in pedestrian/auto traffic, and increase in the
9 | risk of trespassers. Also, like Edmonds, the speed request here
10 | is a goal, not a required speed over any particular route.

11 | If Puyallup was experiencing traffic problems with crossings
12 | having 12,000 vehicles per day, the problem in Marysville is
13 | magnified by the railroad being in between State Avenue and I-5.
14 | There is no storage for vehicles in either direction. As
15 | testified to by Ernie Berg, moreover, the trip crossings in
16 | Marysville are far higher than those shown in the record in the
17 | **Puyallup** case. At the present time there are more than 35,000
18 | crossings per day at Fourth Street. At Grove Street there are
19 | over 6,000 crossings per day, and at 116th Street more than 14,000
20 | per day. The future will bring greater numbers of crossings, and
21 | by 2010 studies show traffic of 39,200 crossings per day at Fourth
22 | Street, 14,500 at Grove Street, and over 47,000 per day at 88th
23 | Street.

24 | At the same time, the practical needs for speed increases are
25 | nonexistent in this case. As testified to and conceded by
26 | Burlington Northern, no speed increases are necessary for the
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1 freight trains to accommodate freight movements. The speed
2 increases requested are alleged to be necessary to accommodate
3 passenger trains; however, the requested passenger train speed
4 increases are to satisfy a marketing goal, not a mandate, and
5 there is no evidence of any effort by the freight railroad and
6 Amtrak to accommodate each other on the other 20 hours a day when
7 the tracks in Marysville and, for the most part, the rest of the
8 route are not used or occupied by freight trains.

9 Let the railroad formulate a schedule, move its tracks or let
10 it build overpasses and underpasses for the traffic, but do not
11 let it increase its train speed in light of the evidence of a
12 substantial local hazard.

13 CONCLUSION

14 Marysville recognizes that, except for public testimony, it
15 blew the sole whistle in opposition to the requested train speeds.
16 Burlington Northern and Amtrak wish to increase train speeds. The
17 State Department of Transportation supports the request. The
18 Commission staff supports the request. Marysville opposes this
19 request strongly and fears that the decision in this case will be
20 "a railroad job." The City of Marysville asks the Administrative
21 Law Judge to consider the evidence in its totality and
22 dispassionately, separated from the politics of who the
23 petitioners are and what the Department of Transportation and
24 Commission staff have said.

25 When the evidence is considered dispassionately, it is
26 manifest that Marysville presents a unique situation. Marysville
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1 is a city bisected by the railroad, and its major traffic must
2 cross the railroad where, unfortunately by historic growth, it is
3 penned between a freeway and a major arterial.

4 The school children of Marysville, the serviceman crossing at
5 88th Street, the truck driver going to work at Northwest
6 Composites are learning or have already learned basic physics: a
7 faster train is a more dangerous train. They have also learned
8 basic statistics: the number of crossings and events are the best
9 predictors of a hazard. Because of what Marysville is today and
10 the traffic that must go through the city of Marysville, the
11 increased train speed will correlate with an increased hazard of
12 more accidents and accidents having greater potential for serious
13 injuries and fatalities. This is a local hazard.

14 Because of the complete absence of any practical need for the
15 speed increase and the demonstrable risk and hazard created, the
16 petition for increased speeds should be denied.

17 RESPECTFULLY SUBMITTED this 7th day of February, 1995.

18 KEITHLY, WEED AND GRAAFSTRA, INC., P.S.

19
20 By 
THOM H. GRAAFSTRA, WSBA #7099
Attorney for City of Marysville

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