Christine O. Gregoire
ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
PO Box 40113 • Olympia WA 98504-0113 • (206) 753-6126

February 17, 1995

Steve McLellan, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: Docket No: TR-940309

Dear Mr. McLellan:

Enclosed are the original and three copies of the Petitioner's Closing Brief in the above referenced matter. Please accept the same for filing.

Very truly yours,

JEANNE A. CUSHMAN
Assistant Attorney General
Attorney for Washington State
Department of Transportation

JAC/cw
encls.

cc: Rexanne Gibson
Thom Graafstra
Bruce Keithly
Ann Rendahl
Alden Clark

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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.	**DOCKET NO. TR-940309** **PETITIONER'S CLOSING BRIEF**

I. INTRODUCTION

This matter came on for hearing before Administrative Law Judge Alice Haenle on January 19 and 20, 1995, in the City of Marysville. The Petitioners seek an order setting the following maximum speeds for passenger trains within the City of Marysville.

> Raise from 25 m.p.h to 30 m.p.h from south corporate limits (approximately MP 37.8) to MP 38.5;
> Raise from 25 m.p.h. to 50 m.p.h. from MP 38.5 to MP 41.0;
> Raise from 25 m.p.h. to 79 m.p.h. from MP 41.0 to north corporate limits (approximately MP 43.3).

The Petitioners also seek an order setting the following maximum speeds for freight trains:

> Raise from 25 m.p.h. to 50 m.p.h. from near south corporate limits (approximately MP 38.5) to north corporate limits (approximately MP 43.3).

("MP" stands for milepost).

II. STATEMENT OF FACTS

The petition to increase passenger and freight speeds within the City of Marysville is made pursuant to a State and Federal initiative to increase utilization of the rail mode to alleviate congestion on state highways.

The rail corridor from Eugene, Oregon to Vancouver, British

Columbia was selected as one of five high-speed rail corridors in the country pursuant to the Federal Intermodal Service Transportation Efficiency Act of 1991, 23 U.S.C. § 104(d) (Public Law 102-240, Dec. 18, 1991, § 1010). The Legislature in the State of Washington appropriated funds and directed the Department of Transportation in R.C.W. 47.79.020 to initiate an intercity rail passenger program within the State. The Petitioners, Burlington Northern, AMTRAK and the Washington State Department of Transportation are cooperating to make incremental upgrades in the corridor toward the eventual goal of reaching passenger train speeds as high as 125 miles per hour.

This cooperative effort includes upgrading the track to increase capacity and allow higher train speeds, together with petitions to the WUTC for speed increases and crossing closings to permit trains to run at higher speeds throughout the corridor in Washington State. The legislative policy of improving intercity rail passenger service in the State of Washington is based on a 40 percent projected increase in population together with a projected 50 percent increase in employment, and a 75 percent increase in intercity travel over the next 20 years. R.C.W 47.79.010. The Legislature has determined that growth of this magnitude cannot be accommodated without a balanced transportation system and accordingly had directed the Washington State Department of Transportation to take steps to incrementally increase passenger train capacity in the state and throughout the corridor. R.C.W. 47.79.

It is forecast that in the first year of reinitiated service between Seattle, Washington and Vancouver, British Columbia, ridership will be approximately 100,000 people. TR Volume I, page 25. When service was terminated between Seattle, Washington and Vancouver, B.C. in 1981 the ridership was actually 80,000 passengers and growing. TR Volume I, page 25.

Through the cooperative efforts of WSDOT, Burlington Northern, AMTRAK and an independent consultant retained by WSDOT, an analysis of the corridor between Seattle, Washington and Vancouver, B.C. has been done to identify where trains can operate in a safe and responsible manner at higher speeds consistent with Burlington Northern's internal engineering requirements as well as the requirements of the Federal Railroad Administration standards. TR Volume I, pages 26-27. The expert testimony offered by the WUTC staff track inspector, Gary Harder, concurred with the opinion of the Petitioners that train speeds for passenger and freight could safely be increased in Marysville, with the exception with a recommendation that "Do Not Stop On Tracks" signs be posted at the crossings. TR Volume I, pages 418-419. The railroad track through Marysville complies with Federal Railroad Administration Class IV standards which allow freight trains to run at 60 miles per hour and passenger trains to run at 80 miles per hour. TR Volume I, page 128; TR Volume II, page 412, Ex. 4.

Passenger service between Seattle, Washington and Vancouver B.C., was discontinued in 1981. At that time the run time was approximately 4 hours and 30 minutes and could be as much as 5

hours due to delays at the border for customs inspections. Through negotiation of a bilateral trade agreement, Canada and Washington State have agreed that customs inspections will be conducted on the train for northbound trains instead of requiring the train to stop at the border for inspections. Customs inspection will be performed for southbound passengers prior to boarding the train in Vancouver B.C., to avoid a stop for customs inspections at the border. TR Volume I, pages 20-23.

The Petitioners have set an initial goal of 3 hours and 55 minutes for the run time from Seattle, Washington to Vancouver, B.C., for reinitiated service. TR Volume I, pages 19-21, 54. The ultimate goal for service in the future is to achieve a run time of 3 hours of 30 minutes or less. TR Volume I, pages 20-21, 54.

It is critical to reinitiation of service that every requested speed increase be granted to achieve the desired run time of 3 hours and 55 minutes. Even though the effect of a speed increase in a specific town may be only a matter of a few minutes, the cumulative effect of all the requested speed increases throughout the corridor is significant to a reduced run time and therefore critical to the success of the project. TR Volume I, pages 26-28.

III. ARGUMENT

A. Federal Law Controls the Resolution of Train Speed Issues.

Federal law mandates a uniform set of national safety standards for the regulation of the railroad industry. Federal Rail Safety Act (FRSA), 45 U.S.C. § 421 et seq. In enacting this legislation, Congress was aware of the interstate character of the

railroad industry:

> The railroad industry has very few local characteristics. Rather, in terms of its operations, it has a truly interstate character, calling for a uniform body of regulation and enforcement....

H.REP. NO 91-1194, 91 CONG. 2nd Sess., Reprinted in U.S. Code Cong. Adm. News, 4104, 4110 (1970)[1]

In order to carry out this goal of uniformity, Congress included in the FRSA an express preemption provision:

> The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A state may adopt or continue to enforce any law, rule, regulation, order or standard relating to railroad safety until such time as the Secretary has adopted any rule, regulation, order, or standard covering the subject matter of such state requirement.

45 U.S.C. § 434.

To effectuate its total preemptive intent over railroad safety matters, Congress empowered the Secretary of Transportation to promulgate rules and regulations relating to railroad safety. 45 U.S.C. §431. The Secretary of Transportation, through the FRA, has set forth regulations relating to rail safety, including train speed. 47 C.F.R. §200 et seq.

1. Preemption - Train Speed

The maximum allowable operating speed is determined by the classification of track on which the train travels. 49 C.F.R.

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[1] State law requires that the Washington Utilities and Transportation Commission (WUTC) establish speeds which are commensurate with the hazards presented and in the practical operation of trains. RCW 81.48.040

213.9. That regulation sets the maximum allowable passenger operating speed at 80 miles per hour and 60 miles per hour for freight on Class 4 track. Ex. 4.

The track within the City of Marysville is Class 4 track. TR Volume I, page 128; TR Volume II, page 412. Therefore, given the preemptive effect of federal law, there is no authority for any state regulation conflicting with the limits set by the FRA.[2]

2. Recent Decisions Have Upheld the Federal Preemption of Train Speeds.

In CSX Transportation Inc, v. Easterwood, 113 S. Ct. 1732, 1993 the Court held that state law claims alleging excessive train speed are preempted by federal law. Easterwood, 113 S. Ct. at 1743. In response to the argument that conditions posed by grade crossings presented a "local safety hazard" exception to 45 U.S.C. §434, the Court responded:

> ...§ 213.9 (a) should be understood as covering the subject matter of train speed with respect to track conditions, including the conditions posed by grade crossings.... Respondents contrary view [of the "local safety hazard" exception to 45 U.S.C. §434] would completely deprive the Secretary of the power to preempt state common law, a power clearly conferred by §434.

Easterwood, 113 S. Ct. at 1743.

Following the Easterwood decision, various plaintiffs have attempted to demonstrate the existence of a "specific, individual hazard", generally without success. Armstrong v. ATSF Railway

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[2] See National Railroad Passenger Association v. City of Everett U.S. District Court, Western District of Washington, C-89-834R (Copy attached to Petitioner Brief).

Company, 844 F. Supp 1152 (WD Tex. 1994) holds a high vehicular traffic crossing is not a "specific, individual hazard". A similar result was reached with respect to a 20 ft. high embankment obstructing the view in Emery v. Southern Railway Company, 866 S.W. 2nd 557 (Tenn. App. 1993). High volume of vehicular traffic, shipment of hazardous materials, restricted sight distances and accident history were all held "not specific, individual hazards," in Bowman v. Norfolk Southern Corp., 832 F. Supp. 1014 (D.S.C. 1993).

The clear thrust of the law is that train speed limits are a matter of federal regulation, necessarily preempted from state regulation. Under these circumstances, there can be no state regulation of train speeds in a manner which conflicts with federal law and regulations.

B. THE WUTC DOES NOT REGULATE PRIVATE CROSSINGS

The WUTC has no statutory authority to regulate private crossings in the State of Washington. Private crossings over the Burlington Northern Railroad exist as a matter of contract between the railroad and the adjacent property owner. The reported decisions of the WUTC for railroad speed petitions do not rely on evidence relating to private crossings as criteria for determining whether to grant or deny petitions. For these reasons, evidence submitted at the hearing related to the number of private crossings and the usage of those crossings is not relevant to the determination of whether or not trains can safely operate at the speeds requested by Petitioners in this action.

C. TRAINS OPERATE SAFELY AT HIGHER SPEEDS

There are more crossing accidents when trains operate at slower speeds. The Federal Railroad Administration Report of accidents/incidents at highway/rail crossings by consist (train) speed, circumstance and visibility for 1993 was entered into the record as Exhibit 8, Table 16. This compilation of accidents/incidents nationwide records a higher/incident rate at crossings for trains operating at speeds below 70 miles per hour than for trains operating in excess of 70 miles per hour. In the "GRAND TOTAL" section of Exhibit 8, Table 16, the reported number of total accidents for trains operating between 70 and 79 miles per hour is 63 for the calendar year 1993. Reading up from the number 63 in the "TOTAL A/I" column, the reported number of accidents/incidents rises significantly for trains operating at slower speeds and for trains standing still. Reading down from the number 63 in the "TOTAL A/I" column, the reported number of incidents decreases significantly, with the report of three accidents at 80 to 89 miles per hour, two accidents at 90 miles per hour and over, and four reported accidents at unknown speeds. Exhibit 8, Table 16.

On the basis of the reported accident/incidents contained in FRA report Table 16, Exhibit 8, Mr. Alden Clark, an expert testifying on behalf of AMTRAK, stated that of the total 4,240 accidents shown, 1,069 or approximately 25 percent of those accidents, occurred where vehicles struck trains rather than where trains were involved in striking the vehicles. Mr. Clark concluded

therefore in that 25 percent of accidents the speed of the train was not a factor in the cause of the accident. Mr. Clark noted that when trains travel faster they occupy a crossing for less time and therefore less exposure exists for an accident. TR Volume 1, pages 61-62. Mr. Clark also noted that on the basis of the number of accidents/incidents reported in Table 16, Exhibit 8, it can be calculated that approximately 88 percent of the accidents reported involved trains operating at less than 50 miles per hour and that approximately 54 percent involved trains operating at less than 30 miles per hour. Conversely, less than 2 percent of the accidents involved trains operating at 70 miles per hour or faster. TR Volume I, page 62.

Mr. Clark went on to testify that these accident reports are consistent with his personal experience operating trains and working for AMTRAK for 23 years, in which time he has observed that when trains operate at slower speeds, people tend to be less willing to wait for a train to clear the crossing and take more chances by driving in front of slower moving trains. Mr. Clark testified that conversely, when trains move at faster speeds motorists tend to exercise more caution and obey crossing signs and signals. TR Volume I, pages 62-63.

Mr. Ed Quicksall also testified on behalf of the passenger train speed increase petition. Mr. Quicksall is a regional transportation manager for AMTRAK responsible for AMTRAK trains running in Washington State and has worked in the railroad industry as a freight and passenger engineer and as an AMTRAK administrator

since 1971. TR Volume I, page 172-174. Mr. Quicksall testified that in his experience there are more near misses and actual accidents at grade crossings when trains operate at slower speeds. TR Volume I page 175.

Mr. Quicksall testified that the stopping distance for a passenger train traveling at 79 miles per hour is approximately equal to the stopping distance for a train traveling at 50 miles per hour. In both situations, a passenger train takes approximately one half mile to stop. Mr. Quicksall testified that a passenger train traveling at 30 miles per hour can stop in approximately one quarter of a mile, but that the stop would be abrupt and would be dangerous for passengers on the train. TR Volume I, pages 180-181. From this evidence, the Commission can conclude that trains cannot stop quickly for a vehicle in a crossing at any speed, and that there is no greater risk as between 50 miles per hour and 79 miles per hour for passenger trains because the stopping distance for trains at those speeds is approximately equal at one half mile.

Robert Miller, a retired Burlington Northern Railroad engineer with 39 years of experience in train operation, testified on behalf of the petitions for speed increases for passenger and freight trains. Mr. Miller testified that in his experience, "the slower you go the more you hit." Mr. Miller testified that he had never had an accident when operating a train at 50 miles or at 79 miles per hour, but that he had had many accidents at 25 miles per hour or below. TR Volume I, pages 105-107.

Forrest Briggs also testified on behalf of the proposed speed increases for passenger and freight trains. Mr. Briggs is a retired railroad engineer who has worked for 43 years in the railroad industry, 40 years of which were served operating engines on the railroad. Mr. Briggs testified that in this experience, incidents happen at lower speeds.

Mr. Briggs also testified that in his opinion more responsibility for avoiding accidents had to be placed on automobile drivers. Mr. Briggs testified that roughly 94 percent of accidents occur within a 25 mile radius of the motorists' residence. He believed that the cause of this high accident rate within close proximity of a person's residence was the fact that people became too lax and fail to pay attention at locations where they cross the track often. TR Volume I, pages 109-111.

The City of Marysville offered extensive opinion testimony to the effect that the higher train speeds requested by Petitioners were unsafe. This testimony was offered by lay witnesses with no experience in railroad operation. This testimony had no foundation in actual reported accident records. The evidence offered by the City in opposition to higher train speeds was met and answered by the evidence of Petitioners which was offered by expert witnesses who based their testimony on actual operating experience and reported accident records for the railroad industry.

D. INCREASED FREIGHT SPEEDS ARE NECESSARY TO FACILITATE INCREASED PASSENGER SPEEDS

The passenger train between Seattle, Washington and Vancouver, B.C. will operate on a single main track between Everett,

Washington and the Canadian border. TR Volume I, page 77. The only way to move the passenger train at a run time of 3 hours, 55 minutes is to increase capacity in the line. TR Volume I, page 77. Increasing freight speed increases capacity. This situation is analagous to a freeway when cars slow down they back up and capacity is reduced. One slow car can block a lane of the freeway causing a backup, similar to the backup caused if trains on the railroad are slowed by a slow moving train ahead of them.

Detailed analysis based on computer modeling and experience operating railroads led the Petitioners to conclude that higher speeds for passenger and freight trains were necessary to reinitiation of passenger service at run time that was economically viable, reliable and attractive to riders. TR Volume I, pages 26-28, pages 53-55, page 125.

The evidence offered by Petitioners that freights can operate safely at higher speeds and that higher freight speeds are necessary to increase capacity and allow passenger trains to run on a 3 hour, 55 minute schedule between Seattle, Washington and Vancouver, B.C. is unchallenged with the exception that the City of Marysville attempted to suggest in cross-examination that trains could be more efficiently scheduled. The City of Marysville offered no direct evidence to contradict Petitioners.

E. CONDITIONS IN THE CITY OF MARYSVILLE DO NOT CONSTITUTE A LOCAL SAFETY HAZARD AND THEREFORE DO NOT JUSTIFY DENIAL OF THE PETITION TO INCREASE PASSENGER SPEEDS.

R.C.W. 81.48.040 is the statutory authority relied upon by the Commission to regulate the speed of trains. The statute states

that the speed limit to be fixes by the Commission shall be discretionary and that the rates of speed shall be commiserate with the hazard presented and the practical operations of the trains. Evidence was offered by the Petitioners and the WUTC staff from which the Commission may conclude that no local safety hazard exists in Marysville.

Mr. Alden Clark, an expert witness appearing on behalf of AMTRAK, testified that in his opinion there were no local safety hazards which would preclude the requested speed increases in Marysville. Mr. Clark testified that he was familiar with the public and private crossings in the Marysville area and that in his opinion they were not materially different from crossing that AMTRAK operates over throughout the country. Mr. Clark testified that AMTRAK operates over similar crossings and under similar conditions at 79 miles per hour and in some cases at 99 miles per hour throughout the country. He testified that some instances AMTRAK has operated at speeds of up to 100 miles per hour over crossings of a similar nature. TR Volume 1, pages 55-56.

Burlington Northern offered the testimony of Thomas Rowley, the terminal manager at Everett, Washington, responsible for supervision of trains crews between Everett and the Canadian border. Mr. Rowley has been employed in the railroad industry in excess of 12 years. It is Mr. Rowley's responsibility to monitor the operation of train crews to ensure compliance with Burlington Northern's internal standards as well as compliance with the standards of the Federal Railroad Administration. TR Volume I,

pages 72-74. Mr. Rowley testified that Burlington Northern trains generally operate on the Washington coast line between Everett and Seattle at a maximum train speed of 50 miles per hour. Mr. Rowely testified that there is no greater number of accidents for trains operating at 50 miles per hour than for trains operating at slower speeds. TR Volume I, page 83.

Mr. Rowley is familiar with the accident history for the City of Marysville and gave detailed testimony regarding the specifics of the accidents that have been reported. Mr. Rowley testified that on August 25, 1990, an accident occurred near 108th Street Northeast which resulted in a fatal injury to a person who was struck while sitting on the railroad tracks smoking cigarettes with alcoholic beverages next to him. That person did not respond to the whistles or the bell from the locomotive and the locomotive struck the individual. Mr. Rowley testified that according to the records of the Utilities and Transportation Commission, two grade crossing incidents occurred within the corporate limits of Marysville between 1988 and 1993. The first accident occurred on March 7, 1991 at MP 38.7, known as the Fourth Avenue crossing. This accident did not involve a locomotive, rather the accident involved a driver who struck a crossing arm and broke it off with his trailer. There were no fatalities or injuries involved in this accident. On March 27, 1993, an accident occurred at the 88th Street crossing known as MP 40.4. That accident involved a car which turned right off of State Street onto 88th and was struck by a train. The cause of the accident was determined to be error on

the part of the motor vehicle operator. TR Volume I, pages 83-86.

WUTC staff witness, Gary Harder, concurred with the testimony of Mr. Rowley regarding the reported accidents and their cause in the Marysville area. TR Volume II, page 417. Mr. Harder testified that in his experience working with the Transportation Commission staff, the number of reported accidents in the Marysville area constituted a relatively low number of accidents in comparison to other areas. Mr. Harder testified that the number of accidents that were reflected in testimony by Mr. Rowley in comparison to the number of accidents that happened within the state for 1993 was extremely low and that the history of accidents within the state has been dropping significantly. Mr. Harder reported that there were 84 accidents that occurred at all railroad grade crossings in the state and that this number reflected the national trend of a reduced number of accidents. TR Volume II, pages 417-418.

Mr. Harder testified on behalf of the WUTC staff that in his opinion there were no local safety hazards within the City of Marysville with the exception that he would recommend the posting of signs reading "Do Not Stop On Tracks" at the crossings in Marysville which are not already signed in this matter. TR Volume II, pages 418-419.

Mr. Harder went on to testify that in his opinion on behalf of the WUTC staff, passenger trains and freight trains could operate safely in the Marysville area at the increased speeds requested by Petitioners in this action. TR Volume II, page 420-422. Mr. Harder based his opinion on the facts that signals at crossings

would be improved to provide a standard 20 second warning time, that the track running through Marysville is sufficiently cordoned off by geography or fencing, that because trains would pass through the city more quickly at higher speeds the crossing would be blocked for a shorter amount of time and that the accident rate may be decreased for this reason, that the track in the Marysville meets FRA Class IV standards and will be regularly inspected by BN, the FRA and by the WUTC, and that in Mr. Harder's opinion when trains operated at faster speeds it has the psychological effect of reducing the risk that motor vehicle operators would try to beat the train through a crossing. TR Volume II, pages 420-423.

Petitioner Burlington Northern offered unrebutted testimony evidencing that the shipment of hazardous materials through the City of Marysville does not constitute a local safety hazard. Matt Henry, the Director of Safety and Hazardous Materials for Burlington Northern, testified that in 1993 Burlington Northern transported 170,337 shipments of hazardous material. That number represented 4.8 percent of the total number of shipments transported by Burlington Northern, which is a decrease of 2.95 percent from the amount of hazardous materials shipped in 1992. Mr. Henry testified that of the 170,337 shipments of hazardous material made in 1993, 17 shipments resulted in accident-caused releases nationwide. These 17 releases constituted approximately 1/100th of 1 percent of the total number of hazardous material shipments made in 1993. No fatalities resulted from these 17 releases. The last reported fatality related to a hazardous

material release occurred in 1986, and it did not involve a Burlington Northern shipment. TR Volume I, pages 185-186.

Mandatory reporting by railroads to the Federal Railroad Administration shows that the accident rate per million train miles between 1975 and 1993 had generally decreased since 1978. TR Volume I, pages 190-191, Exhibit 9, Figure 5. Accident reports made pursuant to federal regulations to the FRA also show that the number of accident-caused hazardous material releases and resulting evacuations between 1975 and 1993 have decreased generally since 1988. TR Volume I, page 191, Exhibit 10, Figure 9. Federal Railroad Administration reports also indicate that the State of Washington falls in the second lowest category for incidents nationally. TR Volume I, page 192, Exhibit 7, Figure 29.

In 1991, a derailment in which tank cars of butane were derailed and one of the tank cars was punctured with a resulting fire occurred in Marysville. No injuries or fatalities resulted from this derailment and release. The area surrounding the derailment was initially evacuated until the necessary expertise arrived to evaluate the situation. TR Volume I, pages 194-195.

Rail cars used to transport hazardous materials must meet specifications set by the Department of Transportation. Generally, cars transporting hazardous materials have extra protection. Tank cars used to transport flammable gas must have thermal resistance built in and shield protection. Thermal resistance can be provided either through the use of an insulating jacket or by a coat of thermal protection applied by spray application. Head shields on

tank cars consists of one half inch thick shields on each end of the tank. These cars must also have double shelf couplers with upper and lower restraints to prevent the couplers from disengaging and puncturing a tank head in a derailment. The added protection on hazardous material tank cars has contributed to the decline in releases since 1978. TR Volume I, pages 200-201.

On the basis of the Federal Railroad Administration Hazardous Material records obtained through mandatory reporting by railroads, together with the evidence of the 1991 derailment in Marysville and the evidence relating to increased protection of rail tank cars carrying hazardous materials, the Commission can conclude that there is no significant risk posed by the transport of hazardous materials through the City of Marysville and that the shipment of hazardous materials through Marysville does not constitute a local safety hazard.

As noted previously in this brief, Federal courts have set an extremely high threshold for a determination that a local safety hazard exists. In the Armstrong case, 844, F.Supp 1152 (1994), the court held that a high vehicular traffic crossing was not a "specific, individual hazard." Similarly, in the Bowman case, 832 F.Supp 1014 (1993), the court held that a high volume of vehicular traffic, shipment of hazardous material, restricted sight distances and accident history were all "not specific, individual hazards."

The City of Marysville cites the case of In Re Puyallup, TR. 2250 (1990), a WUTC case, in support for its argument that the petition in the City of Marysville should be denied. The

Petitioners would argue that this case instead actually supports the Petitioner's case to increase train speeds because the public crossings in the City of Marysville would be protected with state of the art equipment and the crossings at the high volume streets will also be coordinated with the traffic signals in the city. For these reasons the conditions which the WUTC required for the City of Puyallup will be present in the City of Marysville and will not constitute a basis for denial of the petition.

The City of Marysville cites the WUTC decision of In Re Centralia, TR. 2251 (1991) as authority for its argument that the petition should be denied. This case dealt with the safety hazard posed by the presence of school children trespassing on the tracks in Centralia. Petitioners would argue that this case is not relevant to the Marysville petition because there is no evidence in the record of trespassing by school children on tracks in Marysville. The record does contain evidence as to the number of school busses crossing railroad tracks each day. TR. Volume II, page 377. The record also contains evidence that based on a "guess" approximately 1,000 student-pedestrians cross the track each day. TR Volume II, page 380. There is no evidence in the record that these student-pedestrian crossings occur at any place at other than designated highway or street crossings. The record contains no evidence of trespassing on railroad right of way by student-pedestrians in the City of Marysville.

Under the standards set by Federal case law as well as the standards set by the recorded WUTC decisions, the conditions in the

City of Marysville do not consitutute a local safety hazard and therefore cannot form the basis for a denial of the petitions for speed increases.

F. THE GRANTING OF THE PETITIONERS FOR PASSENGER AND FREIGHT SPEED INCREASES SERVES THE PUBLIC INTEREST.

It is through the granting of speed increases that the goal of reinitiating service between Seattle, Washington and Vancouver, BC with 3 hour and 55 minute service can be achieved. It is critical that each local speed increase be granted so that the cumulative affect is a sufficient decrease in run time to make the service desirable and cost effective. When individual communities oppose local speed increase petitions with the attitude that their particular conditions are somehow unique, the cumulative affect of many small speed increases in many small local areas cannot be achieved. It is in recognition of this problem that the Federal Railroad Safety Act places a high burden on local communities to prove that a local safety hazard exists before exceptions to federal standards for train speeds can be granted. Federal Railroad Safety Act, 45 U.S.C. § 434.

Reinitiation of service between Seattle, Washington and Vancouver, BC is an extremely complex project. The project involves cooperation between two states and two countries, it requires multiple speed limit increases and crossing closures, it requires upgrading of the railroad infrastructure including addition of siding capacity, and it requires the cooperation of AMTRAK to provide service.

State and Federal policy makers have evaluated the safety

aspects and the public benefit of an improved rail system and have determined that it is in the public interest to increase passenger train speeds. This public policy statement is evidenced by the Intermodal Surface Transportation Efficiency Act (ISTEA), 23 U.S.C. §104(d), The High-Speed Ground Transportation Act, R.C.W 47.79, Resolution No. 445 of the Washington State Transportation Commission, Ex. 2, The Rail Passenger Service Act which mandates that AMTRAK operate at a 60 miles per hour average speed, TR Volume I, page 53, and The Swift Rail Development Act of 1994, Public Law 103-440.

IV. CONCLUSION

For the reasons stated, Petitioners respectfully request the petition to increase speeds be granted.

RESPECTFULLY SUBMITTED this 17 day of February, 1995.

JEANNE A. CUSHMAN
Assistant Attorney General
Representing WSDOT

REXANNE GIBSON
Kroschel & Gibson
Representing Burlington Northern

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the foregoing document upon the persons and entities listed on the Service List below by depositing a copy of said Closing Brief of Petitioners in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED this 17 day of February, 1995.

CHRISTINE WINKELMAN

SERVICE LIST

Alden Clark
National Railroad Passenger
Corporation (AMTRAK)
400 N. Capitol Street NW
Washington, D.C. 20001

Rexanne Gibson
Attorney for Burlington Northern
110-110th Ave. NE, Suite 607
Bellevue, WA 98004

Thom Graafstra and Bruce Keithly
Attorneys for the City of Marysville
21 Avenue A, Snohomish, WA 98290

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the foregoing document upon the persons and entities listed on the Service List below by personally delivering a copy of said Closing Brief of Petitioners to the individuals as shown on said Service List.

DATED this 17 day of February, 1995.

CHRISTINE WINKELMAN

SERVICE LIST

Mr. Steve McClellan, Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Ms. Ann E. Rendahl
Office of the Attorney
General
Attorney for UTC Staff
Chandler Building
1300 Evergreen Park Dr. So.
Olympia, WA 98504-0128