

NOTE! An important notice to parties about administrative review appears at the end of this order.

APR 14 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
the WASHINGTON STATE DEPARTMENT	)	
OF TRANSPORTATION, BURLINGTON	)	DOCKET NO. TR-940309
NORTHERN RAILROAD COMPANY and	)	
THE NATIONAL RAILROAD PASSENGER	)	FINDINGS OF FACT,
CORPORATION for Modification of	)	CONCLUSIONS OF LAW, AND
Order Regulating the Speed of	)	INITIAL ORDER
Passenger Trains in Marysville,	)	GRANTING PETITION
Washington.	)	ON CONDITION
. . . . .	)	

Hearings were held in this matter in Marysville on January 19 and 20, 1995, before Administrative Law Judge Alice L. Haenle of the Office of Administrative Hearings. The parties filed briefs on February 17, 1995.

The parties appeared as follows:

PETITIONERS: BURLINGTON NORTHERN RAILROAD CO.  
 By Rexanne Gibson, attorney  
 110 - 110th Ave. NE, Suite 670  
 Bellevue, WA 98004

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
 By Jeanne A. Cushman and Mary E. Fairhurst  
 Assistant Attorneys General  
 P.O. Box 40113  
 Olympia, WA 98504-0113

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
 By Alden Clark, consultant  
 60 Massachusetts Ave. N.E.  
 Washington, D.C. 20002

RESPONDENT: CITY OF MARYSVILLE  
 By Grant K. Weed, City Attorney  
 Thom Graafstra, Assistant City Attorney  
 Bruce Keithly, Assistant City Attorney  
 Keithly, Weed and Graafstra Inc., P.S.  
 21 Avenue A  
 Snohomish, WA 98290-2962

COMMISSION: WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
 By Ann Rendahl, Assistant Attorney General  
 1400 S. Evergreen Park Dr. S.W.  
 P.O. Box 40128  
 Olympia, WA 98504-0128

MEMORANDUMI. PROCEEDINGS

This joint petition by the Burlington Northern Railroad (BN), the Washington State Department of Transportation (WSDOT) and the National Railroad Passenger Corporation (Amtrak) requests an increase in passenger and freight train speed limits through Marysville, Washington.

The petition seeks the following maximum train speeds in the City of Marysville:

passenger trains

- from milepost (MP) 37.8 to 38.5, increase speeds to 30 m.p.h.
- from MP 38.5 to MP 41.0, increase speeds to 50 m.p.h.
- from MP 41.0 to MP 43.3, increase speeds to 79 m.p.h.

freight trains

- from MP 38.5 to MP 43.3, increase speeds to 50 m.p.h.

The current maximum speed for both passenger and freight trains in the City of Marysville is 25 m.p.h.

The petition indicates the speed increases are "an integral part of a larger state program to improve rail passenger service for Washington residents and the Pacific Northwest."<sup>1</sup>

II. BACKGROUND

In 1992 the Federal Railway Administration designated a high-speed rail corridor between Eugene, Oregon, and Vancouver, British Columbia. In 1993 the Washington State Legislature enacted Chapter 47.79 RCW, which established a high-speed ground transportation program. The program's stated goals include the implementation of high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Vancouver, B.C. by the year 2025.<sup>2</sup>

This petition was filed to enable Amtrak to begin providing passenger train service between Seattle, Washington, and Vancouver, British Columbia. Amtrak has agreed to provide such service at the request of the State. Starting in the spring

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<sup>1</sup> Petition, page 1.

<sup>2</sup> RCW 47.79.020(2).

of 1995, Amtrak will operate one passenger train per day in each direction between Seattle and Vancouver. The trains will likely have three to five cars each and the WSDOT projects that 100,000 people will use the service during the first year. Amtrak has calculated that the train must make this trip in less than four hours in order to be competitive with automobile travel. The speed limit increases requested in this and other filings are necessary to achieve a running time of 3 hours 55 minutes.

Passenger service between Seattle and Vancouver was last offered in 1981. Amtrak discontinued that service because of high costs, low revenues, and poor reliability. Amtrak attributes this -- at least in part -- to its running time of four and one-half hours. Amtrak will not offer the service unless it can meet its goal of travel between Seattle and Vancouver in less than four hours. Washington State and British Columbia have negotiated an agreement to facilitate clearance through customs which will also help achieve the faster run time.

In order to accomplish the target run time, petitioners have requested increased maximum train speeds through a number of cities along the corridor.<sup>3</sup> To the date of the hearing, petitioners have received approval for the first class cities of Bellingham and Everett. According to Mr. Mallery at the hearing, approval was also pending in Seattle. Petitioners contend they will not achieve the target run time if any of the petitions is denied.<sup>4</sup> Mr. Clark for Amtrak testified Amtrak would probably not run the service if this petition were denied.<sup>5</sup>

This petition requests both an increase in the passenger train speed limit (to meet the goal of service within 3 hours 55 minutes), and an increase in the freight train speed limit (to prevent delay of a passenger train while a freight train is moved out of the way).

The three petitioners have entered into an agreement to spend \$27 million to improve the Seattle/Vancouver rail corridor in connection with the project. The improvements include adding

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<sup>3</sup> According to Mr. Mallery's testimony, speed increases have been requested in the cities of Seattle, Edmonds, Everett, Stanwood, Marysville, Mt. Vernon, Burlington, Bellingham and Ferndale. Requests have also been made for increases in unincorporated areas along the corridor. [TR 27]

<sup>4</sup> The Commission order covers 5.5 miles of track at Marysville. At the currently-authorized maximum speed of 25 m.p.h., it takes 13 minutes to pass through the Marysville city limits. At the requested maximum speeds, that same trip will take approximately six minutes. [TR 55]

<sup>5</sup> TR 56.

or upgrading signals and switches and the installation of a centralized traffic control system between Bellingham and the international border. These improvements will enhance the safety of the rail system. The signals include predictor circuits so that the gates and lights at the signalized crossings will be activated to give adequate warning time even with increased train speeds.

In the Marysville area, the tracks are located between Interstate Highway 5 on the West and State Street on the East. State Street is a major north/south arterial.

There are ten public grade crossings and seven private grade crossings in the City of Marysville. Nine of the public grade crossings are protected by gates, signals and activation equipment. BN plans to install gates and signals at the remaining public crossing, 88th Street. BN will also adjust the activation equipment for the public crossings to retain the minimum of 20 seconds of warning time currently in effect.<sup>6</sup> Activation equipment will be upgraded to state-of-the-art equipment. Railroad signals will pre-empt traffic signals, to allow traffic to exit the crossing when gates are activated. Six of the seven private crossings are protected by stop signs; the seventh is protected by lights or guards.

### III. JURISDICTION

#### A. Parties' Positions

The petitioners do not concede that the Commission has jurisdiction to resolve train speed limit issues. Petitioners argue on brief that federal law has preempted the field.

Petitioners' preemption argument is based on the Federal Rail Safety Act, 45 U.S.C. § 421, et seq. This legislation states that railroad safety regulation should be nationally uniform to the extent possible. States may continue to regulate areas pertaining to railroad safety until the federal government adopts a specific rule or standard concerning the same subject. Even then, a state may continue to regulate more stringently if necessary to reduce or eliminate an essentially local safety hazard. 45 U.S.C. § 434.

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<sup>6</sup> A minimum of 20 seconds elapses between the time the signals are first activated and the time the train reaches a subject crossing.

Petitioners contend that the maximum allowable speeds set forth by class of track in 49 C.F.R. §213.9 are such a rule or standard, and that the State therefore has no authority to set speeds different from those established by the federal government for each class of track. Through Marysville, on Class 4 track, the maximum allowable speed is 80 miles an hour for passenger trains.

Under RCW 81.48.030 the Commission has the exclusive right to set train speeds within the city limits of all cities and towns, except first class cities. RCW 81.48.040 requires the Commission to examine and balance the hazards presented by trains travelling at a proposed speed against the benefits of the proposed speed on the practical operation of the trains.

Commission Staff contends that the Commission has authority to establish speed limits pursuant to the Chapter 81.48 RCW. The Commission may set speeds at lower than the maximum allowed by Federal Railroad Administration regulations if necessary to reduce or eliminate an essentially local safety hazard.

#### B. Discussion

This initial order concludes, as has the Commission in prior decisions<sup>7</sup>, that the class of track establishes only a maximum allowable speed based on type and condition of track, not a required minimum speed. In addition, federal law clearly defers to the Commission's authority to regulate, if such regulation is necessary to reduce or eliminate an essentially local safety hazard. Thus, this order concludes that the regulation of train speeds, expressly conferred on the Commission by RCW 81.48.040, has not been preempted by federal regulation concerning maximum speeds by class of track.

#### IV. LOCAL CONDITIONS

Amtrak will provide the proposed service under contract with BN, which owns the rail line. The rail line over which the Amtrak trains will operate is maintained to Class 4 federal track standards, permitting maximum train speeds of 80 miles an hour for passenger trains and 60 miles an hour for freight trains.<sup>8</sup> Amtrak trains do not currently operate through Marysville.

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<sup>7</sup> See the Commission's order in consolidated Dockets TR-2311 and TR-2248, relating to train speed limits in Edmonds, dated July 23, 1990.

<sup>8</sup> See FRA Track Safety Standards (Ex. 4, page 10)

#### A. Petitioners' Position

Petitioners presented witnesses describing the legislative mandate for high-speed rail, their proposals for upgrade to the corridor, condition of the rail line and crossings, and accident statistics. Snohomish County Commissioners have supported resumed passenger service between Seattle and Vancouver B.C.<sup>9</sup> Statistics regarding train-car and train-pedestrian accidents, derailments and hazardous materials incidents do not indicate higher speeds result in more accidents or danger to the public. Stopping distances for trains at 50 m.p.h. are essentially the same as those for trains at 79 m.p.h.

Petitioners stress that increased speeds for both freight trains and passenger trains are essential in all requested areas, in order to implement the plan for high-speed rail transportation. Petitioners indicate freight trains cannot be scheduled without increased speeds, to ensure passenger trains are not delayed. Petitioners contend local conditions in Marysville are essentially the same as other locations nationally where Amtrak operates. Petitioners request the Commission find no local hazards.

#### B. City of Marysville Position

The City of Marysville presented four witnesses strongly opposing the increased train speeds. In addition, the Transportation Supervisor for the Marysville School District testified during the public portion of the hearing. The City characterizes the following as local hazards which prevent any increase in train speeds:

- present and future traffic volumes
- proximity of State Street intersections
- unprotected private crossings
- condition of track
- current and projected land use in vicinity of the track

The City summarizes its approach as "a faster train is a more dangerous train".<sup>10</sup> Other than referring to this as "basic physics", the City did not support this basic assumption with statistics.

The City also contends that petitioners have not demonstrated the need for the requested speed increase. The City criticizes petitioners' request as a "marketing decision", based

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<sup>9</sup> See testimony of Gilbert Mallery, TR 24-25.

<sup>10</sup> City brief at page 14.

on inadequate study. The City notes Gilbert Mallery's testimony that a marketing research firm met with focus groups in three locations (Seattle, Portland, and Vancouver B.C.) to get in-depth information about public requirements, with only ten participants at each location. Consultants also ran computer simulations of the corridor to obtain the three hour and 55 minute goal. The City contends that freight train traffic should be scheduled so it does not interfere with passenger train service, rather than increasing freight train speeds.

Ernest Berg, Marysville City Engineer presented traffic volume information for six intersections along State Avenue. Since 1989, the City has worked with a traffic consultant in preparing a transportation plan for the City in connection with its comprehensive plan. The study is still in draft stages. The draft projects traffic volumes for year 2010, using year 1989 as a benchmark. Traffic counts were made at intersections "in the vicinity of" some of the crossings. These intersections may be a block or two away from the actual crossing; they measure traffic at the intersection, not actual traffic over any crossing. Mr. Berg concluded that, since traffic volumes are projected to increase at the six intersections, more opportunities will be presented for car/train accidents.

Mr. Berg also testified that six private crossings have no signals or gates. One private crossing has lights or guards. Mr. Berg described poor surfacing and steep approach grades on the private crossings. Mr. Berg did not find problems with site distances at the private crossings he inspected, in the north portion of the city. He expressed concern that the private crossings in Marysville were not adequately protected.

Kenneth Ploeger, Traffic Signal Technician and Sign Technician for the City of Marysville, described his safety concerns about the public and private crossings. All of the public crossings are now protected by gates and lights except 88th Street, which will be upgraded by BN with signals and gates. The signals are intertied with traffic signals. Mr. Ploeger concluded that, from the standpoint of signals and devices, there is nothing more the City can do to make the public crossings safer. The best would be grade separations or having BN move the tracks to the west side of Interstate 5. Mr. Ploeger is concerned about lack of storage space on the tracks, so that cars cannot properly clear the tracks.

Gloria Hirashima, the City Planner, described Marysville's current development and projected future development. Ms. Hirashima described planned expansion of the Tulalip Reservation casino west of Marysville, which was considered in deciding to upgrade the 88th Street crossing. She expects continued development within the city limits and north of the city limits.

Joseph Legare, Transportation Supervisor for the Marysville School District, expressed concerns about students who ride buses and those who walk across the tracks. Mr. Legare guessed that 1,000 student pedestrians cross the tracks daily. He testified there are 45 large bus trips and 122 special education bus trips across the tracks every day. There have been no accidents involving buses.

The City recommends the following:

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

C. Commission Staff Position

The Commission Staff does not oppose the speed limits requested in this case. Gary Harder, Rail Carrier Compliance Specialist, analyzed accident data. Commission Staff reviewed the crossings and a certified track inspector did a walking inspection of the tracks. Mr. Harder agreed with petitioners that the track is within the standards for Class 4 track. Other than installation of gates at 88th Street as proposed, the Commission Staff recommended granting the petition. Mr. Harder also recommended installation of signs in all four quadrants of each crossing, with the legend "Do not stop on tracks". Mr. Harder testified the storage problems are handled to the extent possible by traffic signal interties.<sup>12</sup>

Alan Scott, Operations Manager for Rail, and Mr. Harder consider the accident record in Marysville to be low in comparison to other areas of the state.

Mr. Harder also reviewed the private crossings, which have stop signs on each side of the tracks.

D. Public Input

Eleven witnesses testified at the portions of the hearing set aside for public testimony.

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<sup>11</sup> City brief, page 13

<sup>12</sup> These should allow traffic to empty away from the crossing, while gates prevent new traffic from coming into the space.



Four witnesses favored increasing the speed limit; three of those four witnesses are not Marysville residents. Robert A. Miller and Forrest Briggs, retired locomotive engineers, attributed accidents to driver inattention rather than train speed. Both testified that more accidents happened at lower train speeds. Dallas K. Crow, Jr., noted that the proposed passenger trains must operate at speeds competitive with cars in order to attract passengers. Thomas D. Sullivan supported upgrading transportation along the I-5 corridor, although he recommended the 4th Street crossing be amended so that traffic did not back up onto the highway.

The other seven witnesses opposed increasing train speed limits. Mr. Lagare's testimony on behalf of the Marysville School District has been described above. Brad Young, contracts manager for NorthWest Composites, expressed concern about the company's 275 employees and suppliers. The company has a dedicated private crossing at 128th Street, which has stop signs on both sides and "no trespassing" signs. Northwest Composites expects a greater chance of accidents with higher train speeds. The company also expects more vibration in their building, which is within fifty feet of the track.

Several property owners opposed the speed limit increase because of increased vibration and noise, resulting in reduced property values. John C. Campbell recommended trying the passenger service at slower speeds with more stops initially, to see whether passengers would use the service, rather than increasing train speeds.

Margaret Natterstad, a property owner in Marysville, summarized the general theme of these witnesses. People in Marysville like the idea of high-speed rail, but do not want rail speeds increased in Marysville. Ms. Natterstad cited vibration from trains, children walking across tracks to school, and malfunctioning railroad signals. Ms. Natterstad is also concerned about the condition of the track. Ms Natterstad would prefer crossing separations.

Larry Mitsules spoke for the Marysville Chamber of Commerce. The Chamber of Commerce opposes the train speed increase as a safety hazard to citizens. Mr. Mitsules testified a chiropractor told the Chamber of Commerce there was a correlation between increased train speeds and increased accidents. Where businesses are close to the rail line, they are concerned about accidents and vibrations.

#### E. Discussion

The City has expressed concern about a number of features it characterizes as local safety hazards. These elements include present and future traffic volumes; the

proximity of State Street intersections to the tracks; "unprotected" private crossings; condition of track; and current and projected land use in the vicinity of the tracks. Based on these concerns, the City supports high-speed rail transportation in general, but without increased speeds in the City. The City's recommended alternatives -- requiring BN to move its entire track away from the City, or building overpasses to replace all crossings -- are not cost-effective or necessary to address in the context of a speed limit increase.

The credible and persuasive expert testimony of witnesses for petitioners and the Commission Staff establishes that the proposed speeds are safe. The track is in good condition, within federal standards, and will continue to be regularly inspected and maintained. Commission employees inspected the tracks and crossings. Public crossings will all be protected by state-of-the art signals, devices and gates.<sup>13</sup> Accident/incident statistics for the City of Marysville are low.

The requested speed limit increases are necessary to establishment of passenger service, consistent with the expressed legislative policy. Petitioners' studies and focus group have credibly measured the level at which such service will be economically viable and attractive to riders.

The undersigned stresses that this record has not revealed a conflict between public policy favoring high-speed rail service and public policy making safety a high priority for the Commission. Increasing train speed limits as requested will not result in a public safety hazard; increasing train speeds will allow implementation of the high-speed rail plan.

The grade crossings in the City of Marysville already exist; any "dangerous condition" created by the mere existence of grade crossings<sup>14</sup> will not be increased by increased train speeds. The City of Marysville has not provided any basis for its general conclusion that faster trains are more dangerous. The accident statistics and expert testimony fail to demonstrate such a correlation.

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<sup>13</sup> Petitioners have proposed the upgrade of signalization at 88th Street be completed before the speed limit increases become effective. All public crossings will then be protected.

<sup>14</sup> See Reines v. Chicago, Milwaukee, St. Paul and Pacific R.R. Co., 195 Wn. 148, 80 P.2d 406 (1938).

Public testimony about effects on property values and noise or vibration of trains at increased speeds must be considered in view of the legislative policy implementing high-speed rail transportation. These concerns must certainly have been considered by legislators in setting the policy. These concerns do not constitute local safety hazards which would justify denial of the request for increased speed limits.

Petitioners should pay close attention to public testimony about malfunctioning railroad signals. If signals operate properly, the public will have less reason to disregard signals when they can see no approaching train on the tracks. Greater public awareness of the dangers of stopping on tracks would be possible by use of signs at the crossings. Granting this petition should be made contingent on installation of such signs..

Based on the file and record in this matter, the undersigned administrative law judge makes the following proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate speed limits of the operation of railroad trains.

2. On March 3, 1994, the Burlington Northern Railroad, the Washington State Department of Transportation and the National Railroad Passenger Corporation (Amtrak) requested an increase in passenger and freight train speed limits through Marysville, Washington. The petition seeks the following maximum train speeds in the City of Marysville:

##### passenger trains

- from milepost (MP) 37.8 to 38.5, increase speeds to 30 m.p.h.
- from MP 38.5 to MP 41.0, increase speeds to 50 m.p.h.
- from MP 41.0 to MP 43.3, increase speeds to 79 m.p.h.

##### freight trains

- from MP 38.5 to MP 43.3, increase speeds to 50 m.p.h.

The current maximum speed for both passenger and freight trains in the City of Marysville is 25 m.p.h.

3. The requested passenger and freight train speed limit increases with regard to Marysville are commensurate with the hazards presented by the operation of passenger and freight trains and the practical operation of those trains. The following do not constitute local hazards in the area which would prevent the granting of the requested speed increase: present and future traffic volumes; proximity of State Street intersections to the tracks; unprotected private crossings; condition of track; and current and projected land use in the vicinity of the track.

4. Granting the requested train speed limit increases should be made contingent on construction of signals and gates at the 88th Street crossing and the placement of signs in all four quadrants of the public grade crossings, stating "Do Not Stop on Track".

#### CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this proceeding.

2. The following speed increase requests are commensurate with the hazards presented and the practical operation of the trains:

For passenger trains, from MP 37.8 to 38.5, increase speeds to 30 m.p.h.; from MP 38.5 to MP 41.0, increase speeds to 50 m.p.h.; and from MP 41.0 to MP 43.3, increase speeds to 79 m.p.h.

For freight trains, from MP 38.5 to MP 43.3, increase speeds to 50 m.p.h.

3. The requested speed limit increases should be granted. Granting the requested train speed limit increases should be made contingent on completed construction of signals and gates at the 88th Street crossing and the placement of signs in all four quadrants of the public grade crossings, stating "Do Not Stop on Track".

#### O R D E R

IT IS HEREBY ORDERED That the speed limits for passenger and freight trains are increased from 25 m.p.h., to the following:

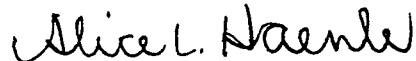
For passenger trains, from MP 37.8 to 38.5, increase speeds to 30 m.p.h.; from MP 38.5 to MP 41.0, increase speeds to 50 m.p.h.; and from MP 41.0 to MP 43.3, increase speeds to 79 m.p.h.

For freight trains, from MP 38.5 to MP 43.3, increase speeds to 50 m.p.h.; and

IT IS FURTHER ORDERED That granting the requested train speed limit increases is made contingent on completed construction of signals and gates at the 88th Street crossing and the placement of signs in all four quadrants of the public grade crossings, stating "Do Not Stop on Track".

DATED at Olympia, Washington, and effective this 14th day of April, 1995.

OFFICE OF ADMINISTRATIVE HEARINGS



ALICE L. HAENLE  
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(3). As provided in WAC 480-09-780(4), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to:

Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.