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FROM: THOM H. GRAAFSTRA
DATE: April 28, 1995
RE: TR-940309

STATE OF WASH.
UTIL. & TRANSP.
COMMISSION

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Enclosed for filing with your office is the following:

Original and 3 copies of the PETITION FOR
ADMINISTRATIVE REVIEW.

bj

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.

NO. TR-940309

PETITION FOR
ADMINISTRATIVE REVIEW

STATE OF WASH
UTIL & TRANSP
COMMISSION

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The City of Marysville hereby petitions for administrative review of the Findings of Fact, Conclusions of Law and initial Order Granting Petition on Condition in this matter by Administrative Law Judge Alice L. Haenle, and dated April 14, 1995. The balance of this petition will identify the nature of the challenge to the initial Order and the evidence relied upon to support the challenge. The remedy sought by the City of Marysville is as follows:

1. Denial of the Petition Modifying the Order Regulating Speed of Passenger and Freight Trains in Marysville, Washington;
or

2. Alternatively, an order granting the petition for increase in passenger train speeds, but denying an increase in freight train speeds.

The remainder of this petition for review will first discuss the City's challenges to the summary portion of the initial Order, then discuss the City's challenges to the Findings of Fact, and

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1 finally discuss the City's challenges to the initial Conclusions
2 of Law. The summary and the Findings of Fact are not supported by
3 substantial evidence, and the Conclusions of Law are erroneous.

4 **CHALLENGE TO SUMMARY**
5 **PORTION OF INITIAL ORDER**

6 1. In Her Summary (Memorandum), the Administrative Law
7 Judge Erroneously States at Page 4, "Railroad Signals Will Preempt
8 Traffic Signals, to Allow Traffic to Exit the Crossing When Gates
9 are Activated."

10 The Judge's statement is not supported by substantial
11 evidence. This defective statement in the summary then affects
12 the Findings of Fact because it is part of the Administrative Law
13 Judge's underpinnings for her factual finding number 3 that the
14 requested increases are commensurate with the hazards presented.

15 The undisputed evidence, in the form of the testimony of City
16 Engineer Ernie Berg, established the following actual and
17 projected daily auto crossing volumes at several public crossings
18 in Marysville:

19 Location	Crossings in 1989	Projected Crossings in 2010
20 4th Street	35,800	39,200
21 Grove Street	6,600	14,500
22 88th Street	4,500	47,500
23 116th Street	14,200	15,100

24 Transcript, pages 213-16; Exhibit 16.

25 Even as the testimony of Ernie Berg established these
26 incredible actual and projected volumes, in particular at 4th and
27 88th Streets, the testimony of Ken Ploeger went on to document,
28 without contradiction, the consequences of these volumes. The

1 practical effect at various locations is gridlock, and as a
2 result, the so-called preempt-traffic signals have no capacity to
3 allow traffic to exit the crossing when gates are activated. In
4 discussing, for example, the 116th Street crossing, Mr. Ploeger
5 testified:

6 This is looking east on 116th. There is, right behind
7 you, a block, block and a half, is I-5, and this is one
8 of the major corridors where you can get onto I-5. The
9 problem we have here, as you will see in a later
10 photograph, is storage. You get quite a bit of traffic
11 and with the Navy coming in, [at] 136th, the traffic is
going up there [at 116th] tremendously. The
intersection, you get one truck blocking an intersection
and all the clearance in the world isn't going to do you
any good because you get a gridlock there, and it takes
time to clear that out.

12 Transcript at 273. Mr. Ploeger testified further without
13 contraversion as to the development of a similar situation at 4th
14 Street.

15 This is 4th Street. This is out standing on the east
16 side of State Street. I took this picture heading
17 looking west, and the reason I backed up so far out of
18 this intersection was in the afternoon, the traffic
19 coming off the freeway towards the light, which you see
20 the headlights there, is back all the way up on the
21 freeway, the traffic heading west is backed up north and
22 south on State Street and also east as you come in. You
23 have a lot of people that if they're waiting to make a
24 left turn or right turn to get out, they pull out in the
25 middle of the intersection. You're not supposed to.
The police go down there and give them tickets. They do
it anyway. That intersection winds up in gridlock
probably three or four times an hour and in the morning
and in the afternoon. Green clearance [a reference to
preempt traffic signals] doesn't mean anything if you
can't move. I'm not saying it's the railroad's fault
that you can't move, but what I'm saying is you're going
to have vehicles sitting on the railroad and it is a
tremendous problem.

26 Transcript 281-82.

1 Thus, the Administrative Law Judge's reliance on the
2 preemptive traffic signals to allow the clearance of traffic is
3 erroneous and is a defect that affects her Findings of Fact. The
4 requested speed increases combined with local use and traffic
5 patterns will create a local hazard.

6 **2. In Her Summary (Memorandum), the Administrative Law**
7 **Judge Erroneously States at Page 10, "The City's Recommended**
8 **Alternatives--Requiring BN to Move Its Entire Track Away From the**
9 **City, or Building Overpasses to Replace All Crossings--are Not**
10 **Cost-Effective or Necessary to Address in the Context of a Speed**
11 **Limit Increase."**

12 This is not a correct description of the City's position, or
13 its recommended alternatives. The City's position is that the
14 speed increases for both passenger and freight trains should be
15 denied. Alternatively, if passenger train speeds must be
16 increased, the City's first recommended alternative is to deny an
17 increase in freight train speeds. With the tracks resting vacant
18 18 to 20 hours per day, there is simply no evidence in the record
19 to support a petition to increase freight train speeds.

20 Transcript, page 96.

21 It is indeed the City's position that if both passenger and
22 freight train speed increases are granted, then there is a
23 sufficient local hazard that alternatives such as relocation of
24 the entire track or providing grade separation through overpasses
25 be imposed as a condition of the speed increases.

1 Because the Administrative Law Judge has misunderstood the
2 position of the City, she has given no consideration to the fact
3 that the increase in freight train speeds is wholly independent
4 from the request to increase passenger train speeds. Her factual
5 findings are then affected in that she concludes the increases
6 "are commensurate with the hazards presented and the practical
7 operation of the trains," when indeed there is no connection or
8 necessity for a freight train speed increase.

9 **3. In Her Summary (Memorandum), the Administrative Law**
10 **Judge Erroneously States at Page 10, "The Credible and Persuasive**
11 **Expert Testimony of Witnesses for Petitioners and the Commission**
12 **Staff Establishes That the Proposed Speeds are Safe."**

13 This is another example of a statement made without the
14 support of substantial evidence. Again, the defective statement
15 affects the Findings of Fact because it is part of the
16 Administrative Law Judge's support for her Factual Finding No. 3
17 that the requested increases are commensurate with the hazards
18 presented.

19 Commission staff presented the testimony of two witnesses,
20 Alan Scott and Gary Harder. Mr. Scott testified to the statewide
21 rail safety program and Operation Lifesaver. His testimony did
22 not address in any fashion the question whether the proposed
23 speeds are safe. Transcript, pages 445-456.

24 As to Mr. Harder's testimony, he acknowledged in his
25 testimony that in inspection of the tracks through Marysville,
26 defects were found. Transcript, page 358. Over all, with

1 | repairs, he stated that the tracks met the standards set out by
2 | the Federal Railway Administration for Class 4 track. Transcript,
3 | page 411. Nonetheless, when asked if he agreed with Mr. Ploeger's
4 | opinion, *infra*, Mr. Harder stated that "I essentially do, yes."
5 | Transcript, page 415. At page 419, he went on to acknowledge a
6 | "safety problem."

7 | Thus Mr. Harder's testimony provides no support for the
8 | Administrative Law Judge's statement.

9 | But, some might say, what about his opinion at Transcript,
10 | page 421, that the trains "can be operated in [sic, "if"] the
11 | increased speed granted"?

12 | A witness can say anything; the questions are the foundation
13 | and the weight to be given to the witness's testimony. What are
14 | the grounds for this so-called "persuasive expert testimony"?
15 | According to Mr. Harder, the basis for his opinion is "the
16 | psychological effect of the fact that the trains are traveling
17 | faster has more effect on the driver." Transcript, page 421. Mr.
18 | Harder's opinion is rank speculation, not founded on experience or
19 | expertise. He is not a psychologist or psychiatrist, and he
20 | presented no statistics or studies to establish this so-called
21 | "psychological effect" to address the admitted "safety problem."

22 | The Petitioners' expert testimony similarly supplied no basis
23 | to establish that "the proposed speeds are safe." Petitioners'
24 | witnesses conceded that faster trains carry more energy that needs
25 | to be absorbed in a collision or a derailment. Transcript, page
26 | 64. At the same time, Petitioners' witnesses agreed that the best
27 |
28 |

1 correlation between accidents and trains is not the speed of the
2 trains but the number of automobiles crossing. Transcript, page
3 68. So how then does the Petitioners' expert testimony become
4 credible and persuasive to establish that the proposed speeds are
5 safe?

6 Guess what? Psycho-babble again!

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

9 A. Yes.

10 Q. Is that your basic premise?

11 A. Yes.

12 Transcript, page 65. Mr. Clark, the Petitioners' witness and
13 renderer of this opinion, is a "civil engineer." Transcript, page
14 51. There is no foundation for his opinion.

15 **4. In Her Summary (Memorandum), the Administrative Law**
16 **Judge Erroneously States at Page 10, "Increasing Train Speed**
17 **Limits as Requested Will Not Result in a Public Safety Hazard;**
18 **Increasing Train Speeds Will Allow Implementation of the High-**
19 **Speed Rail Plan."**

20 This statement essentially mirrors the Administrative Law
21 Judge's Finding of Fact 3. Even as it is unsupported by
22 substantial evidence, so is Finding of Fact 3 (and its statement
23 of the absence of a hazard) unsupported by substantial evidence.

24 The discussion in the previous section demonstrates the
25 admitted existence of a "safety problem," particularly as it
26 relates to the railroad crossings at 4th Street and 116th Street.

1 The combination of heavy traffic and projected even heavier
2 traffic establishes a good predictor of future accidents, and in
3 those accidents with trains moving faster, more force or energy
4 will need to be absorbed and dissipated. More accidents at
5 greater force, the granting of the present position will increase
6 the likelihood of the creation of a deadly hazard.

7 Throughout her summary, the Administrative Law Judge casually
8 lumps the petition to increase passenger train speeds together
9 with increasing freight train speeds. Though there is some vague
10 suggestion that increased passenger train speeds may be necessary,
11 there is absolutely no evidence that freight train speeds need to
12 be increased. As discussed earlier in this Petition, there are 18
13 to 20 hours a day when freight trains do not use the subject
14 tracks. No explanation was given--other than we didn't consider
15 it and we don't want to do it--to scheduling passenger and freight
16 trains in a fashion to obviate the need for freight train speed
17 increases.

18 **5. In Her Summary (Memorandum), the Administrative Law**
19 **Judge Erroneously States at Page 10, "The City of Marysville Has**
20 **Not Provided Any Basis for Its General Conclusion That Faster**
21 **Trains are More Dangerous. The Accident Statistics and Expert**
22 **Testimony Fail to Demonstrate Such a Correlation."**

23 The Commission staff's expert testimony was reviewed above.
24 Observed earlier as well was this basis premise from high school
25 physics: A faster train carries more force and energy.
26 Transcript, page 64. But because of the pseudo-psychological
27
28

1 conclusions of the Petitioners' and staff's expert witnesses, this
2 faster train carrying more energy is not more dangerous because
3 somehow drivers will appreciate the increased risk and avoid the
4 trains better. From this utterly preposterous position, without
5 any scientific support, the Administrative Law Judge then draws
6 the opposite conclusion that Marysville has not provided any basis
7 for its conclusion that faster trains are more dangerous.

8 Faster trains carry more energy. The evidence also shows
9 that the best predictor of accidents is traffic volume. Cannot
10 common sense put these two factors together and dictate the
11 conclusion that faster trains in urban areas are more dangerous?
12 Only the complete absence of the application of common sense
13 supports this most erroneous statement in the Administrative Law
14 Judge's summary.

15 The Petitioners have submitted one exhibit attempting to
16 correlate train speed with accident incidents. Exhibit 8. Using
17 the statistics for trains striking highway user, as the speed of
18 the train increases from the 20s to the 30s, and the 30s to the
19 40s, the number of accidents increase: At 20-29, 577; at 30-39,
20 585; at 40-49, 633. These statistics correlate perfectly with
21 basic physics and common sense. A faster train carries more
22 energy, requires a longer stopping distance, and because of that
23 cannot avoid objects in front of it as easily.

24 Thus, the accident statistics also demonstrate a correlation
25 between train speeds and a safety hazard, or as phrased by
26 Marysville, danger.

1 **CHALLENGE TO FINDING OF FACT 3**

2 The City of Marysville asks for review of the Administrative
3 Law Judge's Finding of Fact 3. This finding is not supported by
4 substantial evidence. The Administrative Law Judge's finding
5 reads as follows:

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

17 The City of Marysville recommends a finding of fact as
18 follows:

19 Though the requested passenger train speed increase may
20 be necessary to accommodate practical operation of
21 passenger trains, the requested increase is not
22 commensurate with the local hazard presented. There is
23 no evidence that a freight train speed increase is
24 necessary to accommodate the practical operation of the
25 trains. Any freight train speed increase would
26 constitute a local hazard. The hazards arise from the
27 increased force and energy of the train, and surrounding
28 conditions including present and future traffic volumes;
proximity to State Street intersections; unprotected
private crossings; the condition of the track; and
current and projected land uses in the vicinity of the
track.

To fully understand the evidence supporting Marysville's
Petition for Review of Finding of Fact 3, and Marysville's
proposed finding of fact, some review of the evidence already
discussed earlier in this Petition must occur.

The best predictor of accidents between trains and
automobiles is the number of automobiles in the vicinity of the

1 tracks. Transcript, page 69. The testimony of Ernie Berg
2 establishes the incredible present and projected traffic volumes
3 at various crossings in Marysville. Transcript, pages 213-216.
4 Exhibit 16 also documents those volumes. In addition, Exhibit 16
5 highlights the importance of those volumes to the hazard created
6 by a lack of storage for automobiles due to the proximity of State
7 Street.

8 Mr. Ploeger's testimony then shows how gridlock in the
9 vicinity of these tracks will create a deadly combination for
10 trains and automobiles. Transcript, page 273; pages 281-82. As
11 noted previously, even the Commission's staff's own witness, Gary
12 Harder, acknowledges agreement with the opinion of Mr. Ploeger,
13 and characterizes this combination as a "safety problem."

14 Thus the combination of present and future traffic volumes
15 and the proximity of State Street constitutes a local hazard.

16 Another local hazard is created by unprotected private
17 crossings. Mr. Ploeger testified on this subject as well, and his
18 testimony is essentially un rebutted.

19 You will notice that the track--and you will see this
20 all the way through, physically on the private crossings
21 your track is elevated, and you can have all kind of
22 sight distance up and down the tracks, but if you're on
23 the back side of the track you cannot see the traffic on
24 State Street. There's commercial businesses back there.
25 That's a commercial area. The truck pulls up, he comes
26 up over the top of the railroad tracks in order to see
27 north or south on State Street. If it's a 45-foot
28 truck, he better hope no train comes along, and as far
as the time goes, he can see down to 100th and with a
25-mile-an-hour train he has time to get out into
traffic. Even if traffic is heavy, he's got some time
there.

1 This is one of the areas where the railroad wants to go
2 79-mile-an-hour, and if they go to 79-mile-an-hour, I
3 haven't calculated how long it takes the train to go 20
4 blocks at 79-mile-an-hour, but if there's a truck there
he's going to be sitting on the tracks and he's going to
have to take his choice, get hit by traffic or get hit
by a train.

5 Transcript, pages 270-71. See also pages 272-73; 276; 278-79.

6 Mr. Harder's testimony was discussed above. Mr. Harder
7 acknowledged that in inspection of the tracks through Marysville,
8 defects were found. Transcript, page 358. Though apparently
9 fixed, this admission is symptomatic of an enduring problem in
10 Marysville. Let us take as a fair assumption that the condition
11 of train tracks normally doesn't cause automobile accidents. Even
12 here, however, the testimony of Joe Legare, Transportation
13 Supervisor for the School District, should not be forgotten.
14 School buses have stalled on the tracks from time to time.
15 Transcript, page 380. Should the condition of the track puncture
16 a school bus tire, obviously the condition of the track is a
17 factor.

18 The more telling point may be the history of derailments in
19 Marysville and its environs. Three catastrophic derailments have
20 occurred in the Marysville area since 1969. These events were
21 apparently not unique. Transcript, page 196. They show,
22 therefore, that the track in Marysville has some characteristic,
23 call it a local hazard, that has precipitated this pattern of
24 catastrophic derailments.

25 Marysville is a growing and changing city. At times its auto
26 traffic goes into gridlock. Are not its citizens at risk due to
27

1 | this local hazard? Are not the citizens of Marysville generally
2 | at risk based upon the historic evidence of catastrophic
3 | derailments?

4 | In the vicinity of the tracks in Marysville, one proceeds
5 | south to north from industrial areas through commercial areas
6 | through mixed residential areas, including multi-family
7 | residential areas, retail areas, and single-family areas. See
8 | Exhibits 18 and 19. Transcript, pages 300-11; 313-18.
9 | Significant new facilities and improvements are also planned in
10 | the Marysville area.

11 | These include a new Park and Ride facility likely to be
12 | located in the vicinity of either the 88th Street or 116th Street
13 | crossing. Transcript, pages 320-21. A casino facility is also
14 | planned for 116th Street, and a major industrial park is planned
15 | north of 88th Street. Transcript, page 322.

16 | This development compounds the existing local hazards
17 | consisting of gridlock at public crossings, a risk for local
18 | school children, hazards at all private crossings, and the
19 | potential for catastrophic consequences in light of the historic
20 | pattern of derailments in Marysville.

21 | There is no substantial evidence for the Administrative Law
22 | Judge's finding that the foregoing do not constitute local
23 | hazards. Finding of Fact 3 should be revised as recommended by
24 | the City of Marysville.

1 **CHALLENGE TO FINDING OF FACT 4**

2 The City of Marysville also asks for review of the
3 Administrative Law Judge's Finding of Fact 4. As with Finding of
4 Fact 3, this finding is not supported by substantial evidence.
5 The language of the proposed finding in the initial Order reads as
6 follows:

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

12 Since Marysville believes that its recommended Finding of
13 Fact 3 should be made, the corollary to that is that no Finding of
14 Fact 4 is necessary. The City recommends no Finding of Fact 4.

15 The City will not reiterate the factual evidence discussed
16 above concerning Finding of Fact 3. Let it suffice to say that
17 there has been a complete absence of any showing of any practical
18 need to raise freight train speeds. Increasing both freight and
19 passenger train speeds will cause increased local hazards in
20 Marysville. Therefore, granting the requested increases should
21 not occur.

22 **CHALLENGE TO CONCLUSIONS OF LAW**

23 The City of Marysville also petitions for review of proposed
24 Conclusions of Law 2 and 3. These Conclusions of Law are not
25 supported by the evidence, as should be incorporated into proper
26 findings of fact. The remaining portions of this section will
27 demonstrate the inappropriateness of these Conclusions of Law.
28

1 The City of Marysville recommends the following Conclusions of
2 Law:

3 2. The requested speed increases are not
4 commensurate with the hazards presented and the
5 practical operation of the trains, and accordingly the
6 petitions should be denied.

7 or, alternatively:

8 2. The following speed increase request is
9 commensurate with the hazards presented and the
10 practical operation of the trains:

11 For passenger trains, from Milepost 37.8
12 to Milepost 38.5, increase speeds to 30 mph;
13 from Milepost 38.5 to Milepost 41, increase
14 speeds to 50 mph; and from Milepost 41 to
15 Milepost 43.3, increase speeds to 79 mph.

16 The speed increase for freight trains is not
17 commensurate with the hazard presented and the practical
18 operations of the trains, and the request should be
19 denied.

20 It is the City's position that no Conclusion of Law 3 is
21 necessary.

22 The rulings of this Commission have clearly established its
23 authority to regulate and control passenger and freight train
24 speeds where local hazards are presented. What constitutes a
25 local hazard and what are the practical necessities of operating
26 trains are the questions.

27 As is documented by Marysville's challenge to the factual
28 findings above, there is no substantial evidence to support a
finding that freight train speeds need to be increased. The
Petitioners have given no explanation how it is that the proposed
passenger trains cannot be accommodated on the tracks when freight
trains use those tracks only three to six hours per day. Thus,

1 any increased hazard is not commensurate with the practical
2 operation of the trains as it relates to the freight trains.

3 The evidence also establishes that a local hazard, sometimes
4 called a "safety problem," exists in Marysville. The tracks in
5 question bisect the City of Marysville and east-west auto traffic,
6 school bus traffic, and pedestrian traffic must cross these
7 tracks. The tracks are penned in between I-5 and Marysville's
8 main north-south arterial, State Avenue, or as it is sometimes
9 called, State Street. The evidence thus establishes a local
10 hazard arising from present and future traffic volumes, the
11 proximity of State Street, unprotected private crossings creating
12 essentially special hazard due to their slope, grade and proximity
13 to State Street, and growing encroachments in and around the
14 tracks due to current and projected land uses. The totality of
15 these circumstances presents a local hazard.

16 Marysville recognizes that it will take a courageous decision
17 of this Commission to say no to the Petitioners. But this
18 Commission has said no before. ***In Re Centralia***, Tr. 2251 (1990).
19 This Commission's order in ***In Re Centralia*** is succinct as it
20 addresses the request to increase train speeds in Centralia
21 between Milepost 54.6 and 55.2:

22 We have reviewed the records in these proceedings and
23 accept the initial orders with one exception. The
24 memorandum portion of the order on the Centralia and
25 Chehalis speed increases recounts the testimony of Terry
26 Caulkins that over 100 school children each day trespass
27 onto the tracks at the overpass at MP 54.6. The
28 testimony is not challenged or rebutted. We find that
the testimony is true and we believe that hazards
presented there are too great to allow the requested

1 speed increase. Consequently, the petition should be
2 denied in the vicinity of the overpass.

3 In the present case, the unrebutted evidence is that a
4 special safety problem exists at the public crossings at 4th
5 Street and 116th Street. The private crossings at 131st Street,
6 128th Street, 124th Street also pose a special and local safety
7 hazard because of the proximity of the tracks to State Street.

8 Joe Legare also testified to a unique hazard involving school
9 children. Mr. Legare is the Transportation Supervisor for the
10 Marysville School District. He testified as follows:

11 I want to express a concern for the safety of the
12 students at Marysville School District. The ones that
13 ride the bus as well as the ones that walk across the
14 railroad tracks in Marysville. To this point we haven't
15 had any accidents involving buses and cars in
16 Marysville. We want to keep it that way. Presently we
17 have 45 big buses that cross daily across railroad
18 tracks, and we have 122 special education buses that
19 cross railroad tracks on just a typical school day.
20 With all the mechanical devices we have on the railroad
21 crossing, there's always a potential that they may fail.
22 The drivers watch for these at all times.

23 Transcript, page 377. Mr. Legare went on to explain that
24 evacuation times are two and a half to three minutes on a full-
25 size school bus, and it may take much longer than that on special
26 education school buses. Mr. Legare also testified to around
27 "1,000" student pedestrian crossings daily.

28 From 4th Street on the south at one end of the area subject
to the current request for speed increases, to 116th Street, well
toward the extreme north end of the City of Marysville, local
hazards exist. Further to the north, unprotected and deceptively
hazardous private crossings exist. Tens of school bus crossings

1 and a growing city's pedestrians must negotiate these local
2 hazards, and it is evident tragic and deadly results will occur.

3 The Administrative Law Judge's Conclusions of Law are not
4 supported by the evidence and by factual findings as should have
5 been made in this case.

6 Distinct local hazards exist in Marysville, and therefore the
7 Administrative Law Judge should not have concluded that the speed
8 increases are commensurate with the hazards presented and the
9 practical operation of the trains.

10 CONCLUSION

11 Marysville has blown the lonesome whistle in this case and
12 opposed train speed increases from 25 miles per hour to 79 miles
13 per hour for passenger trains, and from 25 miles per hour to 50
14 miles per hour for freight trains. The City asks that you hear
15 this plaintive tone and deny the petition.


16 Nowhere else in the urban areas of Puget Sound are the actual
17 or projected train speeds the high velocities sought here in
18 Marysville. The train speeds in Everett are 25 miles per hour.
19 Transcript, page 88. The current maximum speed in Mount Vernon is
20 20 miles per hour. Transcript, page 89. The maximum train speeds
21 in Bellingham range between 10 and 20 miles per hour, and there is
22 no petition to change those train speeds. *Id.* No speed increase
23 is being sought in Ferndale, and there the maximum limit for both
24 types of trains is 50 miles per hour. Transcript, page 92. In
25 Blaine the current train speed is 15 miles per hour.

1 It does not make sense that in these other urban areas
2 substantially lower train speeds should exist than in Marysville.
3 This is especially true in light of the local hazards established
4 by the evidence, and described throughout this petition.

5 The Commission should not adopt the initial Order proposed by
6 the Administrative Law Judge, but should revise the Summary, the
7 Findings of Fact, the Conclusions of Law, and accordingly the
8 Order consistent with this Petition for Administrative Review.

9 RESPECTFULLY SUBMITTED this 28th day of April, 1995.

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

11
12 By 
13 THOM H. GRAAFSTRA, WSBA #7099
14 Attorneys for City of Marysville
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3 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

4 In the Matter of the Petition
5 of the WASHINGTON STATE
6 DEPARTMENT OF TRANSPORTATION,
7 BURLINGTON NORTHERN RAILROAD
8 COMPANY, and the NATIONAL
9 RAILROAD PASSENGER CORPORATION
for modification of order
regulating the speed of
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Marysville, Washington.

NO. TR-940309
AFFIDAVIT OF MAILING

STATE OF WASH.
UTIL. & TRANSP.
COMMISSION

'95 MAY -1 8:14

RECEIVED

10 STATE OF WASHINGTON)
11 ss.
12 COUNTY OF SNOHOMISH)

13 BARBARA JOHNSON, being first duly sworn on oath, deposes and
14 says that, on April 28, 1995 she deposited in the United States
15 Mail, at Snohomish, Washington, postage prepaid, the original and
16 three copies of the PETITION FOR ADMINISTRATIVE REVIEW, addressed
17 as follows:

18 OFFICE OF THE SECRETARY
19 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
20 PO BOX 47250
21 OLYMPIA, WA 98504-7250

22 A copy of the PETITION FOR ADMINISTRATIVE REVIEW, addressed as
23 follows:

24 ANN E. RENDAHL
25 ASSISTANT ATTORNEY GENERAL
26 UTILITIES AND TRANSPORTATION
27 PO BOX 40128
28 OLYMPIA WA 98504-0128

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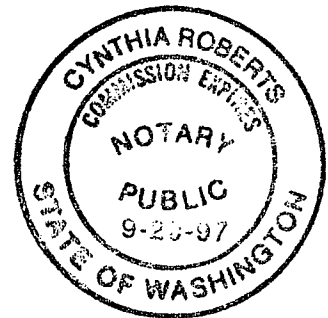
LAW OFFICES OF
KEITHLY, WEED AND GRAAFSTRA, INC., P.S.
21 AVENUE A
SNOHOMISH, WASHINGTON 98290-2962
(360) 568-3119; FAX (360) 568-4437

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Barbara Johnson
BARBARA JOHNSON

SUBSCRIBED AND SWORN to before me this 28th day of April,
1995.



Cynthia Roberts
Cynthia Roberts
[Legibly print name of notary]
NOTARY PUBLIC in and for the State
of Washington, residing at Snohomish
My commission expires 9-20-97