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May 24, 1995

Mr. Steve McLellan, Secretary  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive SW  
PO Box 47250  
Olympia, WA 98504-7250

Re: Burlington Northern Railroad  
Docket No. TR-940309

Dear Mr. McLellan:

Enclosed please find the original and three copies of the Answer of Commission Staff to Petition for Administrative Review in the above-referenced matters. Please accept the same for filing.

Very truly yours,

Ann E. Rendahl  
Assistant Attorney General

dc

Enclosures

cc\enc: Parties of Record

STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

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 and Freight Trains )  
in Marysville, Washington. )  
\_\_\_\_\_ )

DOCKET NO. TR-940309

ANSWER OF COMMISSION  
STAFF TO PETITION FOR  
ADMINISTRATIVE REVIEW

I.  
SUMMARY

Pursuant to WAC 480-09-780(4), Staff of the Washington Utilities and Transportation Commission ("Commission") submits this answer to the petition filed by the City of Marysville ("the City") seeking administrative review of the Initial Order issued in this proceeding on April 14, 1995. Contrary to the City's assertions, the memorandum portion of the initial order, Findings of Fact, and Conclusions of Law are supported by substantial evidence in the record, and are not erroneous. Staff recommends that the Commission adopt the initial order as issued by Administrative Law Judge Alice L. Haenle.

The primary concern of the City appears to be the potential for an accident at the public crossings in Marysville. The City repeats this argument throughout its petition. However, each of the City's challenges to the Initial Order is addressed separately, and in sequence, below.

## II. ARGUMENT

### A. The City's Challenges to the Memorandum Portion of the Initial Order are Not Supported by the Evidence.

#### 1. Discussion in the Initial Order of Railroad Signal Preemption of Traffic Signals is Not Erroneous, But Based Upon Testimony in the Record.

The City asserts that the following statement in the Initial Order is not supported by substantial evidence: "Railroad signals will preempt traffic signals, to allow traffic to exit the crossing when gates are activated." Petition for Administrative Review ("Petition") at 2, citing Initial Order at 4. However, the record reflects that the crossings at 4th Street, 88th Street, and 116th Street are intertied with traffic signals at the closest intersection. Tr. 148, 151, 152, 296-298. Russell Frazier, a manager of signal maintenance for Burlington Northern Railroad Company ("Burlington Northern"), testified that an intertie of railroad signals with traffic signals will cause traffic signals to turn green, allowing traffic to move off a crossing when railroad signals are activated. Tr. 148.

Mr. Frazier also testified that the warning time provided by railroad signals to vehicles will not change with increased train speeds. Tr. 147. With upgraded circuits, railroad signals will give a minimum of 20 seconds warning before a train passes through a crossing, regardless of the speed of the train. Tr. 146. In fact, with the intertie, the 4th Street crossing allows at least 40 seconds of warning time. Tr. 164. The City's traffic signal technician, Mr. Ploeger, testified that such an intertie would allow traffic to move off the railroad tracks. Tr. 297.

However, the City's primary challenge to the statement concerning railroad preemption is their argument that gridlock will prevent traffic from moving off a crossing. The basis of this is

Mr. Ploeger's statement that where there is a traffic blockage or gridlock, and where a pedestrian has triggered a walk light at an intersection, he doesn't believe the inertia would allow traffic to move off the tracks. Tr. 297, 300-301. However, Mr. Ploeger was not aware of the amount of warning time provided by the railroad signals to vehicles and pedestrians at 4th Street. Tr. 302-303. In fact, the railroad signals provide at least 40 seconds of warning time. Tr. 302-303.

Despite Mr. Ploeger's testimony, it appears that vehicles have been able to safely clear the crossings in Marysville, even with the current level of traffic and vehicles stopping on the tracks while waiting at intersections. There have been no accidents in Marysville which indicate a public safety hazard. There have been only three grade crossing incidents in the last five years in Marysville. Only one of these involved a vehicle hit by a train at a public crossing. This accident occurred at 88th Street, which is signalized, but does not yet have gates. Tr. 86, 151. Another accident occurred at a private crossing when a pick-up truck failed to stop at a stop sign and was hit by a train. Tr. 442-443, 461. A third incident involved a vehicle with a trailer which broke off the crossing gate arm at the 4th Street crossing. Tr. 85-86. No injuries or fatalities were reported in any of these incidents.

Thus, contrary to the City's argument, there is substantial evidence in the record to support the statement in the Initial Order that "Railroad signals will preempt traffic signals, to allow traffic to exit the crossing when gates are activated." Initial Order at 4. Such a statement is not erroneous and clearly supports the findings of fact in the Initial Order.

2. The City's Position that Freight Train Speeds Not Be Increased is Not Supported by the Evidence.

The City asserts that the following statement in the Initial Order is not a correct

description of the City's position: "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." Petition at 4, citing Initial Order, at 10. The City is correct that this statement does not reflect the City's stated position. In its post hearing brief, the City made the following recommendation: "Let the railroad formulate a schedule, move its tracks or let it build overpasses and underpasses for the traffic . . ." Posthearing Brief of Marysville Opposing Petition to Modify, Docket No. TR-940309, at 13 (emphasis added).

The City opposes the increase of freight train speeds on the basis that there is no evidence to support an increase in freight train speeds. In fact, the City argues that "the increase in freight train speeds is wholly independent from the request to increase passenger trains speeds." Petition at 5.

However, the testimony of Thomas Rowley, Everett Terminal Manager for Burlington Northern, and Marvin Nelson, Senior Manager of Engineering for Burlington Northern, establishes that the increase freight train speed is necessary to avoid delay of the passenger train and its schedule. Tr. 77, 95, 130-131, 206. Mr. Rowley testified that freight train speed increases were necessary due to the issue of:

[H]ow . . . we accommodate a passenger train within the capacity of our existing track structure and in the light of improvements that are going to be made as part of this program. The passenger train itself when it's operating is operating on a single main track between Everett and the Canadian border. The only way that it can share that track with freight trains . . . --and to achieve its schedule--is to make sure that we can move the freight trains efficiently out of the passenger train's way to avoid the delay to the

passenger train.

Tr. 77. The City argues that no freight train speed increase is necessary as there is no freight train traffic for 18-20 hours each day. However, the following exchange between the City's attorney and Mr. Nelson shows the fallacy of this argument:

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

A. (Mr. Nelson) It's not a matter of how many hours are on the track. It's how they catch up to each other. When one train is moving slower the other train has to be away from it and it's a matter of catching up to that other train. They need to have a place that they can pass without one train slowing down the other.

Tr. 130-131.

The Initial Order should be modified to reflect that it is the City's alternative position that freight train speeds not be increased should passenger train speeds be increased. However, given the testimony of Mr. Rowley and Mr. Nelson, the final order should reflect that there is no merit to the City's position.

3. The Testimony and Evidence Support a Finding That The Proposed Speeds are Safe.

The City asserts that the following statement in the Initial Order is erroneous and not supported by substantial evidence: "The credible and persuasive expert testimony of witnesses for Petitioners and Commission Staff establishes that the proposed speeds are safe." Petition at 5, citing Initial Order at 10. However, the City fails to refer to the remainder of the paragraph which reads:

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. [Footnote omitted.] Accident/incident statistics for the City of Marysville are low.

Initial Order at 10. The challenged statement in the Initial Order is based upon these facts which are well established in the record.

Primarily, the City finds fault with the weight given to the testimony of Commission Staff witness Gary Harder, a rail carrier compliance specialist, and Petitioner's witness Alden Clark, who had been Amtrak's director of operations planning.

The City claims that Mr. Harder's testimony that the proposed speeds are safe is not credible because Mr. Harder testified that a defect was found in the tracks and that a "safety problem" is present at public crossings in Marysville.

Mr. Harder has had 22 years of experience with the Commission in railroad matters, including reviewing rail inspections, railroad crossings, and accident data. Tr. 352-353. Based on the Staff's investigation and his review of the crossings, accident data, and conditions in Marysville, Mr. Harder testified that both passenger and freight trains may safely travel through Marysville at the increased speeds and that the petition should be granted. Tr. 420-423. The "defect" in the track was found during the Commission Staff's investigation and was corrected prior to the hearing. Tr. 358. If the defect has been corrected, the defect does not now pose a safety problem, and Mr. Harder's testimony as to the safety of the track is credible and persuasive.

The "safety problem," referred to by the City concerns the storage space or distance

between the railroad crossings and State Street, not the safety of increased train speeds. Tr. 418-419. Mr. Harder agreed with the testimony of Mr. Ploeger that the lack of storage between the railroad tracks and State Street is not the best configuration to prevent cars from stopping on the tracks. Tr. 415. However, Mr. Harder testified that the type of intersection configuration at State Street and the crossings in Marysville is present at many other locations in the State of Washington and does not constitute a local safety hazard. Tr. 440.

The "safety problem" is created not by the lack of storage space for cars between the tracks and State Street, but by the action of motorists stopping on the railroad tracks while waiting at an intersection. If the City is concerned about vehicles stopping on the tracks, it should take certain actions to discourage cars from stopping on the tracks, such as public education, traffic fines, and placing "Do Not Stop On Tracks Signs" at intersections.

Mr. Harder's testimony is credible in that he identified potential safety problems in Marysville. His testimony is also persuasive given his years of experience and recognition that the potential safety problems do not constitute local safety hazards. In fact, Mr Harder recommended that the City or Burlington Northern place "Do Not Stop on Tracks" signs at the crossings to dissuade motorists from stopping on the tracks. Tr. 418-419.

The City attempts to discredit the testimony of Mr. Harder and Mr. Clark by alleging that certain testimony is "psycho-babble." Mr. Harder and Mr. Clark both testified that there is less likelihood of grade crossing accidents when trains travel at higher speeds, as motorists are more cautious when they know trains will be travelling at higher rates of speed. Tr. 62-63, 65, 421-422. Given that each witness has considerable experience with operation of trains and accident



data, such opinions are credible. In fact, Federal Railroad Administration (FRA) accident statistics indicated that a majority of railroad grade crossing accidents occur where trains are travelling at speeds less than 50 m.p.h. Ex. 8.

The City argues that Mr. Clark's testimony that faster trains are safer is not credible or persuasive, arguing that Mr. Clark agreed that "the best correlation between accidents and trains is not the speed of the trains but the number of automobiles crossing." Petition at 7. The City misrepresents Mr. Clark's testimony. He did not state that the number of automobiles crossings is the "best" indicator of accidents, but that the number of automobiles is a better indicator than train speed, because "if you have no automobiles you would have no accidents." Tr. 68. While the number of vehicles may be a better predictor of accidents, it is not the only predictor. The number of trains travelling on a track is also a logical predictor of accidents: The fewer trains there are, the fewer accidents there are likely to be. Such a statement does not invalidate Mr. Clark's testimony, or make it any less credible.

In short, the challenged statement in the Initial Order is based upon the specific facts set forth in the remainder of the paragraph, not upon the testimony of Mr. Harder and Mr. Clark concerning faster trains being safer. However, if it were, there is substantial evidence in the record to support such a statement.

4. There is No Local Safety Hazard Along the Railroad Tracks in Marysville.

The City asserts that the following statement in the Initial Order is erroneous and not supported by substantial evidence: "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.." Petition at 7, citing Initial Order at 10.

The City's challenge to this statement is essentially the same as its first three challenges: Heavy traffic and a lack of storage space at intersections near the crossings in Marysville create the potential for accidents should train speeds be increased, constituting a local safety hazard. In addition, the City argues that there is no justification for increasing freight train speeds. These arguments are addressed above in detail in Sections A.1., A.2., and A.3.

After reviewing the condition of the track, the local conditions, the grade crossings and the rail accident history in Marysville, Mr. Harder concluded that passenger and freight trains may safely travel at the increased speeds, and that there were no local safety hazards in Marysville. The Petitioners's witnesses testified as to the safe condition of the track, continuous inspection of the track, the planned improvements to the rail and crossing signals, and to the placement of failed equipment detectors which alert train crews of defects in rail cars in order to prevent derailments. Thus, the record substantially supports a statement that increasing train speeds will not result in a public safety hazard.

5. The Initial Order Is Not Erroneous in Stating that the City Failed to Provide Support for its Conclusion That Faster Trains Are More Dangerous.

The City asserts that the following statement in the Initial Order is erroneous and not supported by substantial evidence: "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." Petition at 8, citing Initial Order at 10.

The City bases its argument on two general premises: That faster trains carry more force and energy, and that the number of vehicles passing over a railroad crossing is a good predictor

of accidents. While no one can deny that these are clearly logical statements, they are not evidence that faster trains will be more dangerous in Marysville. As discussed above, the number of trains are also likely to be good predictors of accidents at a crossing.

The record reflects that the total number of grade crossing accidents decreases at train speeds over 50 miles per hour. Ex. 8. In addition, the testimony of Mr. Harder and Mr. Clark indicates that, in their expert opinion, motorists show greater respect for trains travelling at higher speeds, and that accidents decrease as train speeds are increased. Thus, the statement in the Initial Order is well supported in the record.

The City's challenge to Mr. Harder's and Mr. Clark's testimony is discussed above. The following safety factors are also discussed above: The crossings in Marysville are well protected by signals and gates. There will be no difference in warning time to vehicles at railroad crossings of trains traveling down the tracks if train speeds are increased. If the number of vehicles is a predictor of accidents, there are remarkably few accidents at crossings in the City of Marysville. Finally, faster trains will pass through town quicker, causing drivers to be less impatient with the time trains travel through Marysville, causing fewer traffic back-ups, and creating fewer opportunities for conflict with vehicle traffic.

**B. Finding of Fact No. 3 Is Supported by Substantial Evidence.**

The City challenges Finding of Fact No. 3 as unsupported by substantial evidence. This finding of fact states that the requested passenger and freight train speeds are commensurate with the hazards presented and practical operation of the trains, and that certain conditions in Marysville are not local safety hazards.

The finding of fact states that present and future traffic volumes, the proximity of State Street intersections to the tracks, and the condition of the track are not local safety conditions. The City's arguments on these issues and the Staff's responses are discussed in detail above, and are not repeated here.

The City raises the issue that three derailments have occurred in Marysville over the last 25 years, indicating a local safety hazard along the track in Marysville. However, it is clear from the record that of the three derailments, at least one--in 1991--occurred outside of the Marysville City limits. Tr. 194 . There is no evidence in the record indicating the location of the other two derailments. The fact that derailments have taken place over a course of 25 years does not establish a local safety condition. The City has not demonstrated that the number of derailments in the past is a predictor of what will likely happen in the future. Tr. 196. The number of derailments has decreased nationally since 1978. Ex. 9. Burlington Northern has recently taken preventative action by installing several failed equipment detectors in the area to detect faults in railroad cars. Tr. 135. Thus, the number of derailments in the Marysville area does not constitute a local safety hazard.

The finding of fact also states that unprotected private crossings and current and projected land uses are not local safety hazards. Each of the private crossings is marked as private, with stop signs on each side of the crossing. Tr. 413. Private crossings are maintained under a private contract between the landowner and the railroad. Thus, whether landowners in Marysville choose to enter into an agreement with Burlington Northern to put in more protection is an issue between the landowner and Burlington Northern. The lack of signals and gates at

private crossings is not an essentially local safety hazard, even if it is a condition that exists in the town of Marysville.

Mr. Ploeger asserts that the steep grade of the crossing hampers the ability of truck drivers to see oncoming trains. Tr. 270-272. However, Mr. Ploeger conceded that the sightline of a truck driver crossing the tracks would depend on the height of the truck cab, the height of the driver and other factors. Tr. 291-292.

The current and projected land uses in Marysville do not constitute a local safety hazard. The City does not seem to consider the presence of the railroad as a major transportation route in its planning efforts. Tr. 335-336. The City cannot ignore the presence of the railroad in its planning efforts, and then claim that future land uses will be a local safety hazard. In fact, the City did not plan for grade separation crossing the railroad tracks at 88th Street when it planned for the interchange of 88th Street with I-5, or consider the presence of the railroad in its decisions to increase density of and use along the railroad corridor. Tr. 310, 328-329, 252, 255.

In considering whether to grant or deny the petition to increase train speeds, the Commission must determine whether the train speeds are "commensurate with the hazards presented and the practical operation of the trains." RCW 81.48.040. This test involves a balancing of safety and practical operation of the trains. This balancing test does not require absolute safety, but a determination of whether the trains speeds are consistent or compatible with both safety and practical operation of the trains. The initial order has properly weighed all possible safety concerns, determined they are not local safety hazards, and determined that the proposed train speeds are commensurate with the hazards and practical operation of the trains.

Thus, Finding of Fact No. 3 is supported by substantial evidence and should not be modified.

C. Finding of Fact No. 4 Is Supported by Substantial Evidence.

The City challenges Finding of Fact No. 4, which recommends posting of "Do Not Stop On Track" signs at the public crossings in Marysville, as not supported by substantial evidence. The City argues that there is no need for such a finding if the train speeds are not increased.

Staff recommends that the petition to increase train speeds be granted. Mr. Harder recommended that regardless of whether the train speeds are increased, that "Do Not Stop On Track" signs should be placed in all four quadrants of each public crossings in Marysville. Tr. 419. However, Mr. Harder recommended that any train speed increase be conditioned upon the placement of such signs. Testimony and evidence at the hearing established that vehicles are stopping on the tracks while waiting at nearby intersections. The signs will reinforce to motorists that they should not stop on the tracks. Thus, Finding of Fact No. 4 is well supported by evidence in the record.

D. Conclusion of Law Nos. 2 and 3 Are Supported by Substantial Evidence.

The City repeats its argument against increasing the train speeds in challenging Conclusions of Law No. 2 and 3. Staff's responses to the City's arguments are set forth above, and need not be repeated. However, the City does raise the issue that the number of school children and school buses crossing the tracks in Marysville constitutes a local safety hazard, and argues that the Commission should deny the train speed increases as it did in Docket No. Tr. 2251 concerning the City of Centralia.

Mr. Joseph A. Lagare, the Transportation Supervisor for the Marysville School District,

testified that a number of buses and school children cross the tracks each day, and that he was concerned about the proposal to increase speeds. However, Mr. Lagare testified that the school district trains its bus drivers how to cross the tracks safely and with evacuation techniques. Tr. 379. The school district apparently has not educated its students concerning the dangers of crossing the railroad tracks. Tr. 379. In addition, there is no evidence in the record as to whether there are crossing guards to guide students across the tracks at the crossings. The public crossings are all protected by gates and signals. Finally, the Staff of the Commission testified that it would increase its education of the citizens of Marysville of the dangers of railroad crossings through the Washington state Operation Lifesaver program. Tr. 453. Such education will include the Marysville School District.

The situation in Centralia is very different from that in Marysville. The initial order addressing Centralia states that:

Terry Calkins testified that over 100 children a day trespass onto the tracks at the overpass at MP 54.7, locally referred to as the "Burlington Northern" overpass. There are two elementary schools relatively close to the tracks. Washington Elementary School is located adjacent to the tracks at MP 54.6 and Jefferson Lincoln Elementary School is located on Summa Street approximately two blocks east of the tracks.

In the Matter of National Railroad Passenger Corporation, Docket No. TR-2251, Findings of Fact, Conclusions of Law and Initial Decision Granting Petition, Upon Condition in Part, for the Cities of Centralia and Chehalis, at 8-9.

The record does not reflect whether school children are trespassing on the tracks in Marysville, or crossing at designated public and private crossings. In addition, the record does not reflect that there are any elementary or other schools located adjacent to the tracks. Thus, it is not clear

that the situation in Marysville is the same as that present in Centralia. The Commission decision concerning Centralia is not applicable to this case.

Given the City's precautions with school buses and educational efforts through the state Operation Lifesaver program, the school bus crossings and school children crossing the tracks in Marysville do not pose a local safety hazard. The proposed train speed increases should be granted.

### III. CONCLUSION

Contrary to its assertions, Marysville has not been singled out among other urban areas in the Puget Sound for an increase in train speeds. Petitions have been filed with the Commission to increase train speeds up to 79 miles per hour ("m.p.h.") in Blaine, Ferndale, Mount Vernon, and Burlington, and up to 60 m.p.h. in Edmonds. See Dockets No. TR-940168, TR-940249, TR-940250, TR-940288, and TR-940330. The petition to increase train speeds in Blaine is still under consideration by the Commission. However, the Commission has approved the requests to increase train speeds in the other cities, and has conditioned the increases on various improvements. Id. The Commission has reviewed the conditions present in each city in considering whether to increase train speeds.

The particular conditions present along the track and at the crossings in Marysville are discussed above. After reviewing these conditions, Staff requests that the Commission deny the City's Petition for Administrative Review and recommends that the Commission grant the requested train speed increases through the City of Marysville.



DATED This 24th day of May, 1995.

Respectfully submitted,

**CHRISTINE O. GREGOIRE**  
Attorney General

A handwritten signature in cursive script, appearing to read "Ann E. Rendahl".

**ANN E. RENDAHL**  
Assistant Attorney General

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 Answer of Commission Staff to Petition for Administrative Review in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

Dated this 24h day of May, 1995.

  
ANN E. RENDAHL

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