SERVICE DATE

JUN 2 9 1995

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 COMMISSION DECISION AND ORDER DENYING PETITION FOR ADMINISTRATIVE REVIEW; AFFIRMING INITIAL ORDER INCREASING TRAIN SPEED LIMITS

NATURE OF PROCEEDING: This is a petition requesting an increase in the maximum passenger and freight train speed limits through Marysville, Washington.

INITIAL ORDER: An initial order entered on April 14, 1995, by Administrative Law Judge Alice L. Haenle, would grant the petition. It would conclude that the proposed speeds are safe, and that the operation of passenger and freight trains will benefit from the speed limit increases.

ADMINISTRATIVE REVIEW: The City of Marysville seeks administrative review, arguing that the speed limit increases should be denied or, alternatively, that the increase in passenger train speeds should be granted, but that for freight trains should be denied. The Commission Staff, the railroad, and the department of transportation argue that both the passenger and freight train speed limits should be increased.

COMMISSION: The Commission will not grant review. It affirms the initial order.

APPEARANCES: Rexanne Gibson, attorney, Bellevue, represents the petitioner, Burlington Northern Railroad Company ("Burlington" or "the railroad"). Jeanne A. Cushman and Mary E. Fairhurst, assistant attorneys general, Olympia, represent the petitioner, Washington State Department of Transportation ("DOT"). Alden Clark, consultant, represents the National Railroad Passenger Corporation ("Amtrak"), Grant K. Weed, city attorney, and Thom Graafstra and Bruce Keithly, assistant city attorneys, Snohomish, represent the respondent, City of Marysville ("Marysville" or the "City"). Ann Rendahl, assistant attorney general, Olympia, represents the Washington Utilities and Transportation Commission ("Commission Staff").

MEMORANDUM

This is a joint petition by the Burlington, the DOT, and Amtrak requesting an increase in passenger and freight train speed limits through Marysville, Washington. The petition seeks the following maximum train speeds in the City:

Passenger Trains

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

Freight Trains

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

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

Amtrak will provide the proposed service under contract with Burlington, 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.[1] Amtrak trains do not currently operate through Marysville.

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."[2] The petitioners request both an increase in the passenger train speed limit (to meet their goal of service between Seattle, Washington and Vancouver, British Columbia 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 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 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.

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1 See FRA Track Safety Standards (Ex. 4, page 10).

2 Petition, page 1.

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. Nine of the public grade crossings are protected by gates, signals and activation equipment. Burlington plans to install gates and signals at the remaining public crossing, 88th Street. The railroad will also adjust the activation equipment for the public crossings to retain the minimum of 20 seconds of warning time currently in effect.[3] 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.

At hearing, the City opposed the speed limit increases. Some members of the public expressed concern about the higher speed limits, while others supported the idea of high-speed passenger train operations. The Commission Staff supported the requested speed limit increases.

An initial order would grant the joint petition, conditioned on certain improvements first being built. It would conclude that the proposed speeds are safe, and that the operation of passenger trains will benefit from the speed limit increases.

The City seeks administrative review, arguing that the speed limit increases should be denied or, alternatively, that the increase in passenger train speeds should be granted, but that for freight trains should be denied. The Commission Staff, the railroad and department of transportation, argue that both speed limits should be increased. The petitioners do not object to meeting the conditions imposed by the initial order.

Legislative Policy

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, entitled High-Speed Ground Transportation, 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 2025. RCW 47.79.020(2).

This petition was filed to enable Amtrak to begin providing passenger train service between Seattle and Vancouver, B. C. Amtrak has agreed to provide such service at the request of the State. Starting in the spring of 1995, Amtrak will operate one passenger

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[3] A minimum of 20 seconds elapses between the time the signals are first activated and the time the train reaches a subject crossing.

train per day in each direction between Seattle and Vancouver. The trains will likely have three to five cars each, and the DOT projects that 100,000 people will use the service during the first year. Amtrak has calculated that in order to be competitive with automobile travel, the train must make this trip in less than four hours. 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 from 1972 through 1981. Amtrak discontinued that service because of high costs and low revenues. This was due, at least in part, to a running time of four and a half hours. Amtrak will not offer the service unless it can meet its goal of less than four hours. Washington State and British Columbia have negotiated an agreement to speed clearance through customs which will also help achieve the faster run time.

In order to accomplish the project, the three petitioners have entered into an agreement to spend $27 million to improve the Seattle/Vancouver rail corridor. The improvements include adding 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 are on 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.

The Speed Limit Increases Should Be Granted

The issue before us is whether the increases sought in the maximum speed limit for passenger and freight trains are commensurate with the hazards presented, and the practical operations of the 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.

The Federal Rail Safety Act, 45 U.S.C. § 421, et seq., 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. Pursuant to the Chapter 81.48 RCW, the Commission may set speeds at lower than the maximum allowed by Federal Railroad Administration regulations. See, In re Petition of the City of Edmonds, In re Petition of the National Railroad Passenger Corporation, Docket Nos. TR-2311 and TR-2248 (July 1990).

The City's primary concern is the potential for an accident at the grade crossings in Marysville. The City challenges five portions of the memorandum portion of the initial order, two findings of fact, and two conclusions of law.

Marysville argues that certain statements and findings of fact are not supported by substantial evidence. It claims that railroad signals will not preempt traffic signals effectively, that freight train speed limit increases are not needed, that the proposed speeds are not safe, that the City has supported its argument that faster trains are more dangerous, and that the safety improvements required by the initial order are not necessary. In support of its challenges, the City cites the actual and projected volumes of automobiles through grade crossings in the City, and argues that gridlock at the intersections will interfere with the effect of the preempt-traffic signals. Their fear is that vehicles will stop on the tracks, then be unable to move out of the way of a train. The City argues that this is a local safety hazard.

The petitioners argue that the initial order correctly describes the two-fold function of traffic interties: (1) to prevent automobiles from going through the intersection and into the crossing area, and (2) to allow automobiles in the crossing area to clear out through the intersection. The petitioners note that posting "DO NOT STOP ON TRACKS" signs will further help remind motorists not to stop on the tracks.[4]

The petitioners argue that substantial evidence demonstrates that both freight and passenger trains can operate safely at the requested speeds. They cite evidence that the accident rate for Marysville is low, that it is difficult for trains to make an emergency stop for vehicles in a crossing at any speed, that when trains travel faster they occupy a crossing for less time, that nationwide statistics showed that the rate of accidents/incidents is significantly higher for trains operating at slower speeds, that the crossings in Marysville are not materially different from crossings that Amtrack trains operate over throughout the country at speeds ranging from 79 m.p.h. to 100 m.p.h., that the track in Marysville is in good condition and is inspected regularly, and that all of the public grade crossings in Marysville are (or will be before maximum speed limits are increased) protected with state-of-the-art gates, signals, and activation equipment. The petitioners argue that the freight train speed increases sought are necessary to increase capacity on the line to allow passenger trains to run between Seattle and Vancouver, B. C. in under three hours and fifty-five minutes. The petitioners conclude that no local safety hazard exists, and that they have met their burden to prove that passenger and freight trains can operate at the requested speeds commensurate with the hazards presented and the practical operation of trains as required by RCW 81.48.040.

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[4] The initial order requires the petitioners to place such signs. The petitioners do not object to this requirement.

The Commission Staff argues that the memorandum, findings of fact, and conclusions of law in the initial order are supported by substantial evidence, citing much of the same evidence the petitioners rely upon. The Commission Staff notes that the warning time provided by railroad signals to vehicles will not change with increased train speeds, and that sufficient warning time is given to allow vehicles to safely clear the tracks. The Commission staff argues that the testimony of Burlington's witnesses establishes that the increase in freight train speed is necessary to avoid delay of the passenger train and its schedule.

The Commission Staff notes that the initial order's statement that the proposed speeds are safe is supported by observations (1) that the track is in good condition and will be regularly inspected and maintained, (2) that Commission employees inspected the tracks and crossings, (3) that public crossings will all be protected by state-of-the-art signals, devices, and gates, and (4) that accident/incident statistics for Marysville are low. Commission Staff witness Gary Harder testified that both passenger and freight trains may safely travel through Marysville at increased speeds, that the petition should be granted, and that there are no local safety hazards in Marysville.

Conclusion

In a past proceeding considering cross petitions to raise and lower the maximum speed limit in the City of Edmonds, the Commission discussed the distinction between the universal hazard presented by railroads, and local safety hazards which are not generally found in other areas. See, In re Petition of the City of Edmonds, In re Petition of the National Railroad Passenger Corporation, Docket Nos. TR-2311 and TR-2248 (July 1990). The Commission concluded there that trespassers are a universal problem for railroads, yet denied an increase in train speed because the amount of trespassing in a one mile area was so great as to constitute a local safety hazard not generally found in other areas. Problems of vehicles stopping on tracks are also universal. The low number of accidents in Marysville indicates that there is not an abnormally high safety hazard. The improvements ordered should serve to improve safety. No local safety hazard warranting lower maximum speed limits than those sought by the petitioners have been shown to exist.

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 train speed are consistent with both safety and practical operation of the trains.

The Commission concludes that the maximum speed limit increases for passenger and freight trains sought by the petitioners should be granted. The initial order properly weighed the appropriate factors. The Commission agrees with the initial order's

conclusion that the increases sought in the maximum speed limit for passenger and freight trains are commensurate with the hazards presented, and the practical operations of the trains, and should be granted.

Based on the file and record in this matter, the Commission makes the following 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 train speed limits through Marysville, Washington.

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

Passenger Trains:

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

Freight Trains:

- from MP 38.5 to MP 43.3, increase speed limit 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 maximum speed limits are commensurate with the hazards presented and the practical operation of the trains:

Passenger Trains:

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

Freight Trains:

- from MP 38.5 to MP 43.3, 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

THE COMMISSION ORDERS That the maximum speed limits for passenger and freight trains in Marysville, Washington shall be:

Passenger Trains:

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

Freight Trains:

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

THE COMMISSION FURTHER ORDERS 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".

THE COMMISSION FURTHER ORDERS The railroad to inform the Commission by letter filed under Docket Number TR-940309 when construction of the ordered improvements is complete. The Commission will then confirm, by letter from the Commission Secretary, that the new maximum speed limits are unconditionally approved.

DATED at Olympia, Washington, and effective this 29th day of June 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).