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February 2, 2005

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive, SW
P.O. Box 47250
Olympia, Washington 98504-7250

Walkway Rock Size Rulemaking (TR-041051)

Dear Ms. Washburn:

BNSF Railway Company and Union Pacific Railroad Company concur in Mr. Tom Retterath's request in a letter to you dated January 21, 2005 that the above rulemaking proceeding be terminated.

We wish to correct a couple of points in Mr. Retterath's letter, however. BNSF did not apply the wrong ballast at Everett in an attempt "to test how the UTU and WUTC would react to violation of rule requirements." We explained in our comments of December 20, 2004 and at the Workshop of January 18 that the material was mistakenly applied in an area at Delta Yard and that it did not meet BNSF's specifications. We do not know whether it met or did not meet WUTC standards, but promised to correct the problem and have nearly completed the job at Everett. We expect to complete it, and the work at Tacoma we discussed at the Workshop, in the very near future. We will advise Commission staff when the work is completed.

We also explained at the Workshop that there was a miscommunication at the Vancouver SACP meeting, with each side of that conversation having mistaken exactly what rock the other was talking about when the exchange took place. BNSF was not saying that it would apply the non-specification Delta Yard rock to walkways. BNSF will continue to apply appropriate material to walkways.

Ms. Carole J. Washburn – Page 2

We appreciate the cooperation of the staff and Mr. Retterath in working through this initially confusing matter at the Workshop and on the ground and concur with Mr. Retterath that this rulemaking should be terminated.

Very truly yours,

GIBSON KINERK, L.L.P.

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