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August 11, 1999

Carole Washburn
Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: **WUTC Rulemaking Proceeding TR - 981101**
(Sanitation and Clearance Rules)

Dear Ms. Washburn:

This comment letter focusses on the changes proposed to the WUTC's clearance rules, namely the changes to the WUTC's asserted enforcement authority over unauthorized impairments, as reflected in current and proposed WAC 480-60-010 (1) and (2). For easy reference, the current and proposed version of those regulations are as follows:

CURRENT RULE:

WAC 480-60-010 Application of rules. (1) Subsequent to December 1, 1950, in all construction and reconstruction of tracks or structures adjacent thereto, on all railroads over which freight cars are transported or proposed to be transported, the following minimum clearances shall be allowed.

(2) A railroad company shall not operate freight cars, locomotives or other rolling equipment over tracks constructed subsequent to December 1, 1950, or tracks adjacent to buildings and structures constructed or reconstructed subsequent to that date, wherein the clearances are less than those prescribed in these rules.

PROPOSED RULE:

WAC 480-60-010 Application of rules. (1) The rules in this chapter apply to all common carrier railroad companies operating within the state of Washington, including any facilities or structures owned or operated by the railroad.

(2) A railroad company must not operate any equipment over tracks where the clearances are less than those required by these rules, unless a commission order has been entered granting an exemption or an exemption is contained in these rules.

The effect of these revisions is to delete any assertion of authority over third parties who might impair clearances and to focus all enforcement authority over the railroads by prohibiting them from operating over tracks where clearances are less than those prescribed, even if the impairments are created by a third party not under the railroad's control. We urge the Commission to reconsider this drastic and

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unwarranted relinquishment of authority. The WUTC should continue its past practice of requiring third parties to secure a variance before impairing standard clearances and not voluntarily forfeit enforcement authority over third parties.

A recent incident illustrates the need. The Washington Department of Transportation recently sought WUTC authority to reduce clearances to only 6.7 feet from track centerline in Seattle (as a part of a seismic retrofit of the Alaskan Way viaduct). Reducing the required minimums by almost two feet (standard minimum clearances are 8.5 feet from centerline) would have endangered railroad employees. If riding on the side of rail cars, as they normally do through this area, they would have been struck by the viaduct columns and knocked off the train. Union Pacific responded that WDOT should shift the tracks away from WDOT's columns. Ultimately, WDOT found a way (more expensive than its original plan) to strengthen its columns without substantially impairing the tracks. If the WUTC's only enforcement mechanism had been to prohibit UP and BNSF from operating over the trackage (as would be the case under the proposed rules), WDOT would have had no incentive to revise its construction plans. The railroads would have been placed in the position of abandoning rail service to many industries in Seattle or moving the tracks themselves to avoid a dangerous encroachment placed by a third party.

We are troubled that the WUTC staff would propose relinquishing jurisdiction over third parties who build too close to railroad tracks. We are unaware of anyone challenging the WUTC's jurisdiction in this area and see a clear basis for the WUTC to assert jurisdiction over third parties who might endanger railroad employees. Statutes that provide a basis for the WUTC to assert jurisdiction in this area are attached, with pertinent parts underlined. In view of the WUTC's charge to protect the safety of railroad employees, we urge the Commission not to voluntarily relinquish jurisdiction over third parties who endanger railroad employees by placing obstructions too close to the tracks. Instead, we urge the Commission to continue its historical assertion of jurisdiction over any persons who create risks of harm to railroad employees by impairing minimum clearances.

Very truly yours,

KILMER, VOORHEES & LAURICK, P.C.

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