

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

PROLOGIS PARK KINGSPORT,

Petitioner,

Seeking Exemption from the Provisions
of WAC 480-60-050 Relating to Side
Clearance Rules

DOCKET TR-210321

ORDER 01

GRANTING PERMANENT
EXEMPTION FROM RULE

BACKGROUND

- 1 On May 3, 2021, Prologis Park Kingsport (Prologis or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition (Petition) requesting an exemption from WAC 480-60-050, which requires railroad companies to maintain a side clearance of at least 8 feet 6 inches from the center of the track to the nearest structure.
- 2 Commission staff (Staff) inspected the Prologis facility in Kent most recently on March 30, 2021. Wieser Industrial Center previously operated this facility and had been issued a clearance waiver under Commission Order RC-63 in 1969. Current physical conditions involving the close clearances have changed and the Company was advised a new Petition is required. Prologis has installed warning signs for rail crews entering the industrial park. These signs are clearly visible to approaching train crews and provide adequate warning of clearance impairments.
- 3 In its Petition, Prologis submits that it manages the large industrial complex located at 19613 81st Ave. S., in Kent, Washington. Within the complex, buildings 19635, 7832-8008, and 7821-8051 are currently receiving rail service and each requires an exemption from Commission rules, as follows:
 - (a) Building 19635 – A side clearance of 7 feet 11 inches from center of track to dock ladders attached to side of building is less than the required minimum of 8 feet 6 inches and requires a waiver of rule WAC 480-60-050(1).
 - (b) Building 7832-8008 – A side clearance of 6 feet 2 inches from center of track to cantilevered dock extensions on building is less than the required

minimum of 8 feet 6 inches and requires a waiver of rule WAC 480-60-050.

- (c) Building 7821-8051 – A side clearance of 6 feet 2 inches from center of track to cantilevered dock extensions on building requires a waiver of rule WAC 480-60-050.

4 On May 3, 2021, BNSF Railway (BNSF or Railroad) emailed Staff, indicating that the Railroad supports the Petition filed by Prologis at the Kent facility.

5 Staff reviewed the Petition and recommended granting the Petition filed by Prologis, subject to the following conditions:

- (a) Prologis must Maintain the “No Clearance” sign on the approach to Building 19635.
- (b) Prologis must paint the dock ladders on Building 19635 “safety yellow” to contrast with building color and clearly identify point of clearance impairment.
- (c) Prologis must maintain the “No Clearance” signs on the approach to Building 7832-8008 and maintain the “safety yellow” painted cantilevered dock platforms on that building.
- (d) Prologis must maintain the “No Clearance” sign on the approach to Building 7821-8051 and maintain the “safety yellow” cantilevered dock platforms on that building.
- (e) Prologis must maintain the overhead illumination at each area of impairment during operations conducted in the hours of darkness.
- (f) BNSF must notify its employees of the close clearances by posting a notice in its local operating instructions and add the close clearance to the timetable when reissued.

DISCUSSION

6 We grant the Prologis request for an exemption, subject to the conditions that Staff recommends. Pursuant to WAC 480-60-020(3), the Commission may grant an exemption from required clearances for railroad companies as set forth in WAC chapter 480-06.¹ As

¹ See also WAC 480-07-110(1)

relevant here, WAC 480-60-050 prescribes a general minimum side clearance of 8 feet 6 inches from the center line of the track to trackside structures. These general side clearance requirements apply to the Prologis facility in Kent and permanent exemption from this rule is required for any structures not meeting these requirements.

7 As Staff notes, although train crewmembers have no reason to ride a rail car at this location, any clearance exemption should be conditional upon a prohibition against riding on the side of a rail car and clearly signing the facilities as having reduced side clearances. Accordingly, Staff's proposed conditions provide appropriate safety measures.

8 We find that the Petition for clearance exemptions at the Prologis facility in Kent is consistent with the public interest, the purposes of WAC 480-60-050, and the applicable statutes.

FINDINGS AND CONCLUSIONS

- 9 (1) The Commission is an agency of the State of Washington having jurisdiction over public service companies, including railroad companies, within the state of Washington.
- 10 (2) BNSF is engaged in the business of providing railroad services within the state of Washington and is a public service company subject to Commission jurisdiction.
- 11 (3) BNSF is subject to WAC 480-60-050, which requires railroad companies maintain a side clearance of at least 8 feet 6 inches from the center of the track to the nearest structure.
- 12 (4) Under WAC 480-60-020(3), the Commission may grant an exemption from the provisions of any rule in WAC 480-60, if consistent with the public interest, the purposes underlying regulation and applicable statutes. *See* also WAC 480-07-110.
- 13 (5) A close clearance can exist, and safety can be maintained if Prologis maintains approved warning signs, painted dock platforms, paints the dock ladders safety yellow, and maintains illumination for operations conducted in the hours of darkness, and if BNSF issues notice of the close clearance in its local operating instructions.
- 14 (6) Staff investigated the request and recommends that a permanent exemption be granted.

- 15 (7) This matter came before the Commission at its regularly scheduled meeting on June 3, 2021.
- 16 (8) After reviewing the Petition filed by Prologis on May 3, 2021, and giving due consideration, the Commission finds that the exemption is in the public interest, is consistent with the purposes underlying the regulation and applicable statutes, and that it should be granted.

ORDER

THE COMMISSION ORDERS:

- 17 (1) Prologis Park Kingsport's Petition for an exemption from WAC 480-60-050 relating to side clearances is granted.
- 18 (2) This exemption is subject to the following conditions:
- (a) Prologis Park Kingsport must maintain the "No Clearance" sign on the approach to Building 19635.
 - (b) Prologis Park Kingsport must paint the dock ladders on Building 19635 "safety yellow" to contrast with building color and clearly identify point of clearance impairment.
 - (c) Prologis Park Kingsport must maintain the "No Clearance" signs on the approach to Building 7832-8008 and maintain the "safety yellow" painted cantilevered dock platforms on that building.
 - (d) Prologis Park Kingsport must maintain the "No Clearance" sign on the approach to Building 7821-8051 and maintain the "safety yellow" cantilevered dock platforms on that building.
 - (e) Prologis Park Kingsport must maintain the overhead illumination at each area of impairment during operations conducted in the hours of darkness.
 - (f) BNSF Railway must notify its employees of the close clearances by posting notice in its local operating instructions and add the close clearance to the timetable when reissued. BNSF Railway must also provide Staff a copy of the notice within 60 days of the date of this Order.

(3) The Commission retains jurisdiction over the subject matter and BNSF Railway to effectuate the provisions of this Order.

19 The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Lacey, Washington, and effective June 3, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary