Agenda Date: May 8, 2014

Item Number: B1

**Docket: TR-140424**

Company: BNSF Railway Co.

Staff: Bob Boston, Rail Safety Program Specialist

Kathy Hunter, Rail Safety Manager

**Recommendation**

Issue an order approving BNSF Railway Co.’s (BNSF) petition for an overhead clearance waiver at the re-spray facility proposed to be built on BNSF property at Pasco, WA.

**Background**

On March 17, 2014, Zachry Engineering Corporation (Zachry), on behalf of BNSF, filed with the Washington Utilities and Transportation Commission (commission) a petition requesting exemption from WAC 480-60-040, which requires railroad companies to maintain an overhead clearance of at least 22 feet 6 inches from the top of the rail to the nearest structure.

BNSF’s petition relates to the construction of a coal train re-spray facility located on a main line within the Pasco rail yard at milepost 142.36. The re-spray equipment will be housed in a facility with a roof and side walls. The purpose of this facility is to provide a spray coating of dust abatement solution to the top surface of coal which is transported on westbound trains. The re-spray facility contains the spray bars and spray bar lift equipment. When the spray bars begin to function they move from a stored position of 24 feet to an operational position of 16 feet 6 inches from top of rail and require a permanent exemption from the overhead clearance rules.

On April 1, 2014, Sierra Club, Dogwood Initiative, Climate Solutions and Washington Environmental Council (Sierra Club) filed comments in response to BNSF’s overhead clearance waiver petition. Sierra Club requests that the petition be considered at the April 24, 2014, open meeting to allow additional time for input. In addition, Sierra Club raises these questions:

* What chemicals might the surfactants contain;
* How will neighbors next to the tracks be impacted;
* How much water will the re-spray station utilize;
* What hours will it operate;
* Will the re-spray station cause significant noise or aesthetic issues given its height and location;
* Have similar re-spray stations ever been tested or utilized before;
* How might SEPA apply to this decision;
* What other permits will BNSF need to obtain in order to build this re-spray station
* Where is the coal sprayed by these trains going;
* If some of the coal is traveling to British Columbia for export, how effective will these surfactants be by the time they reach these B.C. communities?

**Discussion**

The commission considered the petition at its regularly scheduled open meeting on April 24, 2014. BNSF, Sierra Club and individual citizens in Washington and British Columbia provided oral comments. Additional questions were raised by the Sierra Club and citizens at the open meeting which include:

* Postpone action on the petition to enable further legal briefing on the Commission’s jurisdiction to address issues;
* Further investigation needed regarding the health and safety issues raised by the proposal.

BNSF responded that the issues raised by the Sierra Club are unrelated to the request for an exemption of the close clearance waiver and that federal agencies are the appropriate forum for addressing these concerns. In addition, BNSF stated that it was making every effort to minimize the impact of the spraying on the environment and people by enclosing the re-spray facility.

**Conclusion**

The Commissioners moved to issue an order approving the exemption from WAC 480-60-040, relating to overhead clearances. In addition, a revised order should be prepared to include a discussion of the commission’s jurisdiction, role in public safety and clarify that the commission makes no findings or conclusions concerning the environmental, health, and safety issues raised by the Sierra Club and other interested persons. The petition will be rescheduled to the May 8, 2014, open meeting for final consideration.