

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET TR-050780
)	
Wilbur-Ellis,)	ORDER 01
)	
Petitioner,)	
)	
Seeking Exemption from the)	
Provisions of WAC 480-60-050)	ORDER GRANTING
Relating to side clearance rules)	EXEMPTION FROM RULE
.....)	

BACKGROUND

- 1 On May 16, 2005, Western Feed Supplements (a business unit of Wilbur-Ellis) filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting exemption from WAC 480-60-050, which requires railroad companies to maintain a side clearance of at least eight feet, six inches from the center of the tracks to the nearest structure.

- 2 The petition filed in 2005, proposed construction of a new loading facility. These plans were put on hold for several years. At that point staff recommended that the petition be withdrawn but Wilbur-Ellis did not support the recommendation. The plans for the new loading facility were later abandoned by Wilbur-Ellis. However, as part of staff's on-site analysis, staff discovered that an existing building next to the tracks did not meet the required clearance of eight feet, six inches from the center of the tracks. The side clearance currently measures six feet, four and one-half inches. The current building replaced a wooden loading structure in 2002, that also had a reduced side clearance of six feet, four and one-half inches. BNSF Railway Co. (BNSF) has provided service to this facility without interruption for many years.

- 3 On August 24, 2010, Wilbur-Ellis amended the original side clearance waiver application to apply to the current structure that remains unchanged since 2002. BNSF has advised staff that a close clearance is acceptable.

- 4 In support of their request for a waiver, Wilbur-Ellis states that their rail unloading facility incorporates an underground transport system to transfer product from the hopper-bottom rail cars to the on-site storage. Replacing this system and moving the spur track would place an economic burden upon the company. In addition, Wilbur-Ellis and

BNSF employees will continue to follow safe operating procedures as related to the close clearance that has existed for many years.

5 Commission Staff reviewed the request and recommended granting Wilbur-Ellis's request for exemption, subject to the following condition(s):

- (a) Two "No Clearance – Do Not Ride Car" signs must be maintained at appropriate approach locations to warn train crews that there is no clearance.
- (b) The railroad must not allow train crews to ride on the exterior of rail cars on Wilbur-Ellis property due to the limited side-clearance.
- (c) Wilbur-Ellis must not allow employees to ride on the exterior of rail cars on the Wilbur-Ellis property due to the limited side-clearance.
- (d) The railroad timetable must be updated to include there is no clearance at the building where rail cars are spotted.

FINDINGS AND CONCLUSIONS

- 6 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over public service companies, including railroad companies, within the state of Washington. [RCW 80.01.040](#), [RCW 81.01](#), [RCW 81.04](#), and [RCW 81.53](#).
- 7 (2) BNSF Railway Co. is engaged in the business of providing railroad services within the state of Washington and is a public service company subject to Commission jurisdiction.
- 8 (3) BNSF Railway Co. is subject to WAC 480-60-050, which requires railroad companies to maintain a side clearance of at least eight feet, six inches from the center of the track to the nearest structure.
- 9 (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](#).

- 10 (5) This matter came before the Commission at its regularly scheduled meeting on October 14, 2010.
- 11 (6) After review of the amended petition filed in Docket TR-050780 by Wilbur-Ellis on August 24, 2010, and giving due consideration, the Commission finds that the exemption is in the public interest and is consistent with the purposes underlying the regulation and applicable statutes and should be granted.

ORDER

THE COMMISSION ORDERS:

- 12 (1) After the effective date of this Order, Wilbur-Ellis is granted an exemption from WAC 480-60-050, requiring railroad companies to maintain a side clearance of at least eight feet, six inches from the center of the track to the nearest structure.
- 13 (2) This exemption is subject to the following condition(s):
- (1) Two “No Clearance – Do Not Ride Car” signs must be maintained at appropriate approach locations to warn train crews that there is no clearance.
 - (2) The railroad must not allow train crews to ride on the exterior of rail cars on Wilbur-Ellis property.
 - (3) Wilbur-Ellis must not allow employees to ride on the exterior of rail cars on Wilbur-Ellis property.
 - (4) The railroad timetable must be updated to include there is no clearance at the building where rail cars are spotted.
- 14 (3) The Commission retains jurisdiction over the subject matter and BNSF Railway Co. to effectuate the provisions of this Order.
- 15 The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective October 14, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary