

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

TESSENDERLO KERLEY, INC.,

Petitioner,

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

DOCKET TR-161091

ORDER 01

ORDER GRANTING
PERMANENT
EXEMPTIONS FROM RULE

BACKGROUND

- 1 On September 26, 2016, Tessengerlo Kerley, Inc. (Tessengerlo Kerley or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting exemptions from WAC 480-60-050(1), which requires railroad companies to maintain a side clearance of at least 8 feet 6 inches from the center of the tracks to the nearest structure, for two tracks in its facility in Finley, Washington.
- 2 In the Tessengerlo Kerley facility, the minimum existing side clearance for Track 1226 is 7 feet 1 inch to a steel beam column that supports the existing infrastructure. For Track 1222, the minimum existing side clearance is 7 feet 2 inches to a similar steel beam. The Company is not proposing any changes to the existing minimum side clearance for Track 1226, but proposes to increase the minimum side clearance for Track 1222 to 8 feet by realigning the track.¹ The general side clearance requirement of 8 feet 6 inches prescribed in WAC 480-60-050(1) applies to both tracks; therefore, permanent exemptions from that rule are required. BNSF Railway Co. (BNSF) is the rail operator within the Tessengerlo Kerley facility and supports the exemptions.
- 3 Commission Staff reviewed the request and recommended granting Tessengerlo Kerley's request for exemptions, subject to the following condition(s):
- (a) "No Clearance" signs must be posted on each end of Tracks 1222 and 1226 to warn rail crews of the restricted side clearances.

¹ The proposed track centers between the two tracks will be 13 feet, which meets the track clearance requirements of WAC 480-60-060.

- (b) A sign must be posted at the entrance of this facility that reads “No riding on side of railcars within this facility.”
- (c) Notice of the restricted clearance must be posted in BNSF’s Timetable and bulletins to train crews.
- (d) Upon completion of the facility improvements and installation of signage, Tessengerlo Kerley must notify Commission Staff within 60 days. Acceptance is subject to inspection by Commission Staff, verifying that signage and bulletins to train crews are in full compliance with applicable laws, regulations and the conditions specified herein.

FINDINGS AND CONCLUSIONS

- 4 (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.
- 5 (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.
- 6 (3) BNSF is subject to WAC 480-60-050(1), 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.
- 7 (4) Under WAC 480-62-140, the Commission may grant an exemption from the provisions of any rule in WAC 480-62, if consistent with the public interest, the purposes underlying regulation and applicable statutes. See also WAC 480-07-110.
- 8 (5) Commission Staff investigated the request and recommended that permanent exemptions be granted.
- 9 (6) This matter came before the Commission at its regularly scheduled meeting on October 27, 2016.

- 10 (7) After review of the petition filed in Docket TR-161091 by Tessengerlo Kerley on September 26, 2016, and giving due consideration, the Commission finds that the exemptions are in the public interest and are consistent with the purposes underlying the regulation and applicable statutes and should be granted.

ORDER

THE COMMISSION ORDERS:

- 11 (1) After the effective date of this Order, Tessengerlo Kerley, Inc., is granted exemptions from WAC 480-60-050(1), relating to side clearances.
- 12 (2) These exemptions are subject to the following conditions:
- (a) “No Clearance” signs must be posted on each end of Tracks 1222 and 1226 to warn rail crews of the restricted side clearances.
 - (b) A sign must be posted at the entrance of this facility that reads “No riding on side of railcars within this facility.”
 - (c) Notice of the restricted clearance must be posted in BNSF’s Timetable and bulletins to train crews.
- 13 (3) The Commission retains jurisdiction over the subject matter and BNSF Railway Co. to effectuate the provisions of this Order.
- 14 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 27, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING, Executive Director and Secretary