

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

MCCAIN FOODS USA, INC.,

Petitioner,

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

DOCKET TR-190493

ORDER 01

GRANTING PERMANENT  
EXEMPTION FROM RULE

**BACKGROUND**

- 1 On June 11, 2019, McCain Foods USA, Inc., (McCain Foods or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting exemption 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 (Petition). This exemption request supersedes any and all previous exemptions granted by the Commission at this location.<sup>1</sup>
- 2 Columbia Basin Railroad Company, Inc., (Columbia Basin Railroad) provides rail service to the facility and supports the Petition.
- 3 The McCain Foods facility, located at 100 Lee Street in Othello, Washington, has two areas of restricted side clearance:
- Loading dock: platform (approximately 6 feet 11 inches), and wall (approximately 7 feet 8 inches); and,
  - Oil car receiving area: platform (approximately 6 feet 11 inches), and wall (approximately 7 feet 8 inches).

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<sup>1</sup> The Commission issued orders granting clearance exemptions to Chef Reddy Food Corporation at this location as follows: RC-005 - both ends of a loading/unloading platform (1966), RC-107 - a platform and weather canopy (1971), and RC-114 - a weather screen wall (1972). Since that time, there have been material changes to the structure and tracks, as well as a change in the ownership of the facility. Approval of TR-190493 Order 01 supersedes any all previous exemptions granting close clearances at this location.

4 Commission staff (Staff) discovered these existing close clearance conditions during an on-site audit of the previously-approved clearance exemptions at this location, which Staff confirmed no longer exist. As a result of the audit, Staff recommended that McCain Foods file a new petition for exemption.

5 Staff has reviewed the Petition and recommends granting McCain Food's request for exemption, subject to the following condition(s):

- (a) Signs indicating "No Clearance" must be posted on each end of the close clearance areas and in front of the pipes in the oil car receiving area.
- (b) Notice of the close clearance must be posted in Columbia Basin Railroad's general order. Columbia Basin Railroad must provide a copy of the updated general order to Staff within 60 days of the date of this order.

#### **DISCUSSION**

6 WAC 480-60-050(1) 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 McCain Foods facility and a permanent exemption from that rule is required.

7 We grant the Company's Petition subject to the conditions that Staff recommends. Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that the exemption requested here meets each of these criteria. A close clearance can exist and safety can be maintained if McCain foods installs signs on each end of the close clearance areas and Columbia Basin Railroad issues notice of the close clearances in its general orders.

8 Accordingly, the Commission finds that McCain Food's request for clearance exemptions at its facility are 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) Columbia Basin Railroad 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) Columbia Basin Railroad 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.
- 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 McCain foods installs signs on each end of the close clearance areas and Columbia Basin Railroad issues notice of the close clearances in its general orders.
- 14 (6) Staff investigated the request and recommended that a permanent exemption be granted.
- 15 (7) This matter came before the Commission at its regularly scheduled meeting on July 11, 2019.
- 16 (8) After review of the petition filed by McCain Foods on June 11, 2019, 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 should be granted.

**ORDER**

**THE COMMISSION ORDERS:**

- 17 (1) After the effective date of this Order, McCain Foods USA, Inc. is granted an exemption from WAC 480-60-050(1), relating to side clearances.
- 18 (2) This exemption is subject to the following conditions:
- (a) Signs indicating “No Clearance” must be posted on each end of the close clearance areas and in front of the pipes in the oil car receiving area.
  - (b) Notice of the close clearances must be posted in Columbia Basin Railroad Company, Inc.’s general order. Columbia Basin Railroad Company, Inc. must provide a copy of the updated general order to Staff within 60 days of the date of this order.
- 19 (3) The Commission retains jurisdiction over the subject matter and Columbia Basin Railroad Company, Inc. to effectuate the provisions of this Order.
- 20 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 July 15, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON, Executive Director and Secretary