

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

In the Matter of the Petition of)	DOCKET TR-090560
)	
PIERCE COUNTY PUBLIC WORKS AND UTILITIES)	ORDER 01
)	
Petitioner,)	
)	
Seeking Exemption from the Provisions of WAC 480-60-040 relating to overhead clearance rules)	ORDER GRANTING TEMPORARY EXEMPTION FROM RULE
)	

BACKGROUND

- 1 On April 15, 2009, Pierce County Public Works and Utilities (County) filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting a temporary exemption from WAC 480-60-040, which requires railroad companies to maintain an overhead clearance of at least twenty-two feet six inches from the top of the rail to the nearest structure.
- 2 The County’s petition relates to construction of a pedestrian-only overcrossing of the BNSF Railway (BNSF) double-track main line at Chambers Creek Properties in Pierce County. The Commission approved construction of the overcrossing on August 8, 2008, in Docket TR-081150. The County asks for this exemption because during construction, the County may use equipment that creates a vertical clearance of less than twenty-two feet six inches. The County asks for this exemption only until December 31, 2010, when construction will be complete.
- 3 Although the County states the vertical clearance may be closer than the twenty-two feet, six inches required by Commission rules, the clearance will not be closer than twenty-one feet, six inches. BNSF stated by electronic mail that this clearance meets its minimum vertical clearance standards for temporary structures during construction, which is twenty-one feet, six inches. BNSF does not need to change any of its operations to accommodate the lower clearance. BNSF does not object to the exemption.
- 4 Because the vertical clearance will meet BNSF minimum vertical clearance standards for temporary structures during construction (twenty-one feet, six inches) and because BNSF

does not need to change any of its operations to accommodate the lower clearance, Commission Staff recommends granting Pierce County's request for exemption.

FINDINGS AND CONCLUSIONS

- 5 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over railroad clearance requirements. *RCW 80.28.010 and WAC 480-60.*
- 6 (2) 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.*
- 7 (3) Commission Staff investigated the request and recommended that it be granted. The lower clearance the County proposes meets the railroad's vertical clearance standards for temporary structures during construction. The temporary exemption will allow the construction of a pedestrian overpass to be completed, which will improve public safety.
- 8 (4) This matter came before the Commission at its regularly scheduled meeting on July 16, 2009.
- 9 (5) After reviewing Pierce County's petition filed in Docket TR-090560 on April 15, 2009, and giving due consideration, the Commission finds that the exemption is reasonable and should be granted.

ORDER

THE COMMISSION ORDERS:

- 10 (1) After the effective date of this Order, Pierce County Public Works and Utilities is granted a temporary exemption from WAC 480-60-040, relating to overhead clearances.
- 11 (2) This temporary exemption will expire on December 31, 2010.

The Commissioners, having determined this Order to be consistent with the public interest, the purposes underlying regulation and applicable statutes, directed the Executive Director and Secretary to enter this Order.

DATED at Olympia, Washington, and effective July 16, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary