DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER SMITH

COMMISSIONER KJELLANDER

MYRNA WALTERS

TONYA CLARK

RON LAW

BOB HORTON

DAVID SCOTT

WORKING FILE

FROM:DON HOWELL

DATE:MARCH 31, 1999

RE:REQUEST FOR AN EXEMPTION FROM THE COMMISSION’S RAILROAD CLEARANCE RULES, CASE NO. BN-RR-99-1

In November 1998, the Commission received a request from Crown Pacific Lumber Company seeking a waiver or exemption from the Commission’s Railroad Clearance Rules, IDAPA 31.71.01.000 et seq.  Pacific Crown recently constructed netting platforms alongside and above an industrial spur track located at its Bonners Ferry sawmill.  As constructed, the platforms intrude into the required side and overhead clearances required by the Commission in its Clearance Rules 201 and 301.  On March 1, 1999, the Commission issued a Notice of Application and Notice of Modified Procedure seeking comments regarding Pacific Crown’s request for an exemption.  Order No. 27943.  The Commission did not receive any comments in response to its Notice of Modified Procedure.

THE APPLICATION

As set out in the Commission’s Order No. 27943, the platforms constructed by Pacific Crown are on both sides of the chip loading track and are 60 feet in length and approximately 3 feet in width.  The catwalk platforms are approxi­mately 11 feet from the top of the rails.  The netting platforms were constructed so that Pacific Crown workers could place cargo nets over loaded chip cars in a safe manner rather than “man handle” the nets up and over the sides of the chip cars.  The inside edge of the platform is 7 feet 6-5/16 inches from the horizontal center line of the tracks.  The Commission’s Side Clearance Rule 301 requires a setback from the center line of tracks of 8 feet 6 inches.

In addition to the side impairment, at each end of the platforms is a cable supporting arm extending across the track that is 23 feet 4 inches above the tops of the rails.  The Commission’s Overhead Clearance Rule 201 requires a clearance of 23 feet 6 inches from the center line of the track.  See attached diagrams.  The industrial track terminates on Crown Pacific’s property and no other rail user is affected by these impairments.

Although the Commission Staff did not file comments in this matter, it has subsequently learned that Crown Pacific had placed two warning signs on either side of the track leading to the chip loading facility.  These signs have a white background and the word “DANGER” in red letters and the words “NO CLEARANCE” in black letters.

LEGAL STANDARD

Clearance Rule 8 provides that the Commission may grant exemptions from its Clearance Rules “upon proper application or notice from the carriers, industries, or other interested persons.”  IDAPA 31.71.01.008.  The Commission is empowered to grant exemption but such exemptions “shall be limited to the particular case covered by the Application.”  Id.  The Application must be accompanied by a full statement of the conditions existing and the reasons why an exemption is requested.

As previously mentioned, no person submitted comments regarding the exemption request.  Traditionally, the Commission has granted exemptions for the construction of netting platforms conditioned upon the erection of “impaired clearance” signs.  In this case the side clearance is impaired by approximately 12 inches and the overhead clearance is impaired by 2 inches.

COMMISSION DECISION

Does the Commission desire to grant exemptions of its Side and Overhead Clearance Rules in this specific case?

Don Howell

vld/M:BN-RR-99-1.dh