

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. R-186
of Kaapa Ethanol Ravenna, LLC,)
Ravenna, seeking a waiver of)
Title 291, Ch. 4 minimum)
clearance requirements for an) ORDER GRANTING WAIVER
ethanol loadout structure at the)
ethanol plant in Ravenna,)
Nebraska.)
ENTERED: September 19, 2017

APPEARANCES:

For the Commission:

Jamie Reyes
Ellie Rohr
300 the Atrium
1200 N Street
Lincoln, Nebraska 68509

For Applicant:

Amy Lawrenson
David Levy
Baird Holm, LLP
1700 Farnam Street
Suite 1500
Omaha, Nebraska, 68102

BY THE COMMISSION:

B A C K G R O U N D

On June 19, 2017, Kaapa Ethanol Ravenna, LLC ("Kaapa" or "Applicant"), Ravenna, filed an application seeking a waiver of Title 291, Ch. 4, the minimum clearance requirements for an ethanol loadout structure at the ethanol plant in Ravenna, Nebraska. Notice of the application was published July 26, 2017, in The Daily Record of Omaha, Nebraska. Notice was provided to Burlington Northern Santa-Fe Railroad ("BNSF") on July 10, 2017. No objections or protests were received.

Hearing on this matter was held on August 29, 2017 in the Commission Hearing Room in Lincoln, Nebraska.

E V I D E N C E

Ms. Amy Lawrenson made a statement on behalf of Applicant. Ms. Lawrenson stated that Applicant is seeking a waiver of the minimum clearance requirements so that the company may build two new ethanol loadout structures along an existing rail loop at their ethanol plant in Ravenna, Nebraska. Applicant purchased the plant in September 2016.

Ms. Lawrenson stated that, due to the existing structures, constructing any new loadout structures to the Commission's rules would be cost-prohibitive and cause significant delay in Applicant's operations. Ms. Lawrenson stated that the two new loadout structures would match the existing clearances and gangways, which have not had any recorded or otherwise known clearance issues over the 10 years that the existing structures have been in place. The clearance of the current structures is 19 feet, while Commission rules require a clearance of 22 feet. Ms. Lawrenson specified that only a particular type of train will be coming into the facility using the rail loop in question, so the 22 foot clearance is never an issue.

Mr. Mike Tveit testified on behalf of Applicant. Mr. Tveit is the plant engineer for Kaapa. Mr. Tveit discussed Applicant's plans for the new structures as submitted to BNSF by Applicant's engineering firm, Bartlett & West. According to Mr. Tveit, the clearance waiver request is for the clearance height from the top of the rail to the bottom of the loadout arm for two new loadout structures, which are identical to the existing loadout structures put in place between 2005 and 2007. The additional loadout structures will enable Applicant to expand the plant and load the alcohol into the railcars faster. Mr. Tveit explained that the ethanol cars have a total height of 14 feet and locomotives have a total height of 16 feet. Mr. Tveit stated that there is an overhead canopy above each rail loading station, and to store existing stations outside of the existing

clearance would require full removal of the canopies and a completely new design.

In addition, Mr. Tveit stated that only Kaapa employees would work on the catwalk, and that BNSF employees would inspect the cars before the cars enter the structures. Mr. Tveit also explained that BNSF locomotives would bring the train cars in and out of the main rail line, and Kaapa has the ability to advance the rail cars as they are filled in the loadout structures. The Kaapa employees that work loadout have OSHA training as well as HAZMAT training through the Federal Railroad Administration.

Finally, Mr. Scott Elston testified for the Commission. Mr. Elston is the Motive Power and Equipment Inspector for the Commission, and was asked to address questions from Commissioners as to why the clearance requirement in the Commission rules was determined to be 22 feet. Mr. Elston stated that the clearance height of 22 feet would allow for consideration of different types and sizes of rail cars that will be used. Additionally, Mr. Elston stated that the required clearance distance would provide safety for both employees and rail equipment.

O P I N I O N A N D F I N D I N G S

Commission Rule 002.01B allows carriers, industries, and other interested persons to apply for an exemption from any of the clearance requirements detailed in the Commission's railroad rules and regulations. Each exemption application must have a full statement of the existing conditions and the reasons why the exemption is being sought.¹ Pursuant to this rule, Applicant is seeking a waiver of the following minimum clearance for railroad structures in Rule 002.03:

As used in this section, minimum clearance is described as follows: Starting at the center line of

¹ Title 291, Ch. 4, 002.01B (1997).

track at the top of rail and extending five feet six inches (5' 6") both sides horizontally and level

therewith, thence upward diagonally to a point four feet (4') above top of rail and eight feet (8') laterally from center line of track, thence vertically to a point sixteen feet (16') above top of rail, thence diagonally upward to a point twenty-two feet zero inches (22' 0") above top of rail and four feet (4') horizontally from center of track, thence horizontally to center of track.²

Applicant testified to the specifics of its plans, which showed that the clearance of the loadout arm from the top of the rail is 19 feet high. The new loadout structures would be the same clearance height as the existing loadout structures at the plant, which have not experienced any clearance issues with the ethanol rail cars. Exhibit 3, an email exchange between Commission staff and BNSF, showed that BNSF engineers had no issue with the loadout plans submitted by Applicant.

After due consideration of the evidence and being fully advised on the premises, the Commission is of the opinion and finds that the Application of Kaapa Ethanol Ravenna for a waiver of Commission Rule 002.03 should be granted. The exemption as granted is limited to the construction of the two new ethanol loadout structures detailed in its Application and is not to be applied to any other facility or additional construction.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. R-186 be, and it is hereby, granted; and the clearances for this ethanol loadout structure subject to this Application are waived and exempt pursuant to Rule 002.01B; and this Order applies only to this particular case and particular location and does not apply to any other facility or location.

² Title 291, Ch. 4, 002.03 (1997).

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 19th
day of September, 2017.


NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chairman

ATTEST:


Executive Director

//s//Frank E. Landis
//s//Tim Schram