March 4, 1999

Robert Linkhart

Design Section/Utilities

Idaho Transportation Department

Statehouse Mail

Boise, ID 83720

RE: Railroad Clearance Rules

Dear Mr. Linkhart:

In the Department’s  letter of January 27, 1999, Mr. Ross requested that the Commission amend its Railroad Clearance Rule 201.02 to reduce the existing overhead clearance standard.  In particular, the ITD requested that the existing clearance requirement of 23 feet 6 inches found in Rule 201.02 (IDAPA 31.71.01.201.02), be amended to read “the vertical clearance required by the owner of the railroad tracks or 22 feet 6 inches whichever is higher.”  In addition to your request for rulemaking, the Department also requested that the Commission grant ITD a general exemption waiving the Overhead Clearance Rule 201.02 until such time as the rulemaking process can be completed.

As I explained during our conversation last Monday,  the Commission is unable to immediately initiate a rulemaking regarding your request to amend Clearance Rule 201.02 because the Commission cannot initiate any rulemaking proceedings during the “rules moratorium” imposed by Legislative Services.  The moratorium is in effect until the Legislature adjourns this year.

Turning next to your request for a general exemption, Railroad Clearance Rule 8 provides that the Commission may only grant exemptions to its Clearance Rules on a case-by-case basis.  IDAPA 31.71.01.008.  Accordingly, the Commission cannot grant the Department a general waiver. However, the Department may seek exemptions from the Commission’s Overhead Clearance Rules on a case-by-case basis.  I am forwarding for your review several of the Commission’s Procedural Rules (31.01.01.000 et seq.) pertaining to the filing of petitions for exemptions from the Commis­sion’s Railroad Clearance Rules.  Any Petition for an exemption should be forwarded to the Commission Secretary, Myrna J. Walters.  See attached Procedural Rule 14, IDAPA 31.01.01.014.  Her address is contained in Rule 12.

As set out in Procedural Rule 53, Petitions must: state the facts upon which they are based; refer to the particular provision of the rule, order or other controlling law in question; and state the specific relief desired.  In your particular case, you would be seeking an exemption (under Rule 8) from the Commission’s Railroad Clearance Rules found in IDAPA 31.71.01.000 et seq.  You need to submit an original and seven copies of your Petition.  Rule 61.  Finally, the Commission’s Procedural Rule 62 sets out the general format of the Petition.

If you have questions concerning the Commission’s Rules of Procedure (31.01.01.000) or Railroad Clearance Rules (31.71.01.000), you can call me at 334-0312.  The Commission’s Rules can be found on the PUC’s home page.  You may also want to touch base with ITD’s legal division for assistance in preparing any Petitions.

Sincerely yours,

Donald L.  Howell, II

Deputy Attorney General

DLH/vld

Enclosure

cc:Ron Law

Jack McMahon

itd.fh