Exhibit A

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to amend Title 291, Chapter 4, Railroad Rules and Regulations in its entirety.	)	Rule and Regulation No. 209 ORDER OPENING DOCKET, RELEASING PROPOSED RULES, AND SEEKING COMMENT Entered: November 8, 2022

BY THE COMMISSION:

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

The Nebraska Public Service Commission ("Commission"), on its own motion, hereby opens the above-captioned docket to amend Title 291, Chapter 4, Railroad rules and regulations, to amend the chapter in its entirety. Since its last issuance, there have been changes to state and federal law and policy which preempted state regulation or jurisdiction previously regulated by the Commission shifted to other Nebraska state agencies. Additionally, clearance rules were reviewed and required updates.

The Commission therefore opens this rulemaking and releases the first set of proposed rules set forth in Appendix A for public comment. Appendix A details amendments to Chapter 4, which removes certain rules, updates language, and renumbers sections. The Commission will determine next steps after reviewing any comments received.

Interested parties may file written comments with the Commission on or before **3:00 p.m.** on **Friday, December 9 2022.** Parties filing comments should file one (1) original and five (5) paper copies and one (1) electronic copy in Word format emailed to brittany.roos@nebraska.gov and psc.motorfilings@nebraska.gov.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned rulemaking amending Title 291, Chapter 4, Railroad rules and regulations be, and is hereby, opened and the first set of proposed rules are released for public comment.

IT IS FURTHER ORDERED that public comment on the proposed amendments should be filed by interested parties on or before **3:00 p.m.** on **Friday, December 9, 2022** as set forth herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8th day of November, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson

Mary Rudin

Tim Schram

Dan Watermeier
Chair

ATTEST:

Thomas W. Golden
Executive Director

1 GENERAL.

1.1 REQUIRED EQUIPMENT.

001.01(A) REFLEX LENSES ON SWITCH STANDS. railroads operating within the state of Nebraska are authorized to substitute reflex lenses for lighted lamps on switch stands, except where conditions exist preventing the proper reflection of the reflex lenses from the headlight because of track curvature, or where a substantial amount of switching is regularly or frequently performed at night.

1.2 WIRE CROSSING RAILROAD TRACKS AT PUBLIC HIGHWAY CROSSINGS.

001.02(A) NATIONAL ELECTRICAL SAFETY CODES. The National Electrical Safety Code, as published by the National Bureau of Standards, United States Department of Commerce, and all revisions and amendments thereto, is hereby adopted as prescribing the minimum requirements for clearances, materials, construction, and maintenance to be followed for all wires crossing under or over any railroad track at a public highway crossing in the State of Nebraska.

001.02(B) EXCEPTIONS. In matters not specifically prescribed by the National Electrical Safety Code, or where local conditions make the prescribed practice impracticable, methods which will provide equivalent security and protection to the public ~~shall~~will be submitted to the Commission for approval.

2 CLEARANCES.

2.1 GENERAL.

002.01(A) NOT RETROACTIVE. All existing structures, operating appurtenances, pole lines, service facilities, and track arrangements ~~shall~~will be exempt from these regulations except as hereinafter provided.

002.01(B) EXEMPTIONS. Exemptions from any of the requirements contained herein will be considered by the Commission upon proper application from the carriers, industries, or other interested persons. A request for such exemption must be accompanied by a full statement of the conditions existing, and the reasons why such exemption is asked. Any exemption so granted ~~shall~~will be limited to the particular case covered by the application.

002.01(C) EMERGENCIES. No restricted clearance set out herein ~~shall~~will apply to false-work, shoe-fly tracks, or other temporary emergency conditions caused by derailments, washouts, slides, or other unavoidable disasters.

002.01(D) CONSTRUCTION MATERIALS. No restricted clearances set out herein ~~shall~~will apply to ballast, track material, or construction material unloaded on and adjacent to tracks for contemplated use thereon or in the immediate vicinity, nor shall they apply to false-work or temporary construction necessary on any construction project.

002.01(E) WARNING SIGNS. Wherever an existing clearance is reduced, so as to endanger the life or limb of any person working along or upon any railroad engine or car, a sign warning such workman of the reduction ~~shall~~will be maintained by the railroad.

2.2 DEFINITIONS. As used in Chapter 4 unless the context otherwise requires:

002.02(A) EMERGENCY. Any case of casualty or unavoidable accident, trackage or signal failure, or equipment failure of the train causing a crossing blockage, or act of God.

002.02(B) OVERHEAD CLEARANCE. The vertical distance from the top of the highest rail to a structure or obstruction above;

002.02(C) SIDE CLEARANCE. The shortest horizontal distance from the center line of track to a structure or obstruction at the side of the track.

002.02(D) TRACK CLEARANCE. The shortest horizontal distance between the center lines of adjacent tracks.

2.3 MINIMUM CLEARANCE FOR RAILROAD STRUCTURES.

002.03(A) DESCRIPTION. As used in this section, minimum clearance is described as follows: Starting at the center line of track at 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.

002.03(B) CHANGES IN TRACK LOCATION OR ELEVATION. No changes in track location or elevation ~~shall~~will hereafter be made which will reduce existing vertical or horizontal structural clearances below the minimum specified in Chapter 4.

002.03(C) CHANGES ADJACENT TO TRACKS. No repair or maintenance work ~~shall~~will hereafter be done on structures, facilities or appurtenances adjacent to tracks which will reduce existing vertical or horizontal structural clearance below the minimum specified in Chapter 4.

2.4 NON-CONFORMANCE.

002.04(A) REPAIR OF NON-CONFORMING STRUCTURES. Where an existing structure does not provide clearance equal to the minimum of subsection 002.03(A) or such other minimum which may be herein specified, the portion of the structure producing the impaired clearance may be repaired and maintained by partial replacements.

002.04(B) REPLACEMENT OF NON-CONFORMING STRUCTURES. When the owner ~~shall~~ replaces in its entirety the portion of a structure which has not previously provided standard clearance, the rebuilt portion must, when complete, provide the full standard clearance of Chapter 4 unless otherwise ordered by the Commission.

002.04(C) NON-CONFORMING TRACKS AND YARDS. Existing tracks of all kinds may be maintained by reballasting, resurfacing, and replacing rails and ties subject to the limitations of Subsection 002.01A. Where existing yards are completely replaced or are partially replaced as a unit or section of a master plan, the arrangement must meet the provisions of Chapter 4 both as to track centers and clearance to structures and other facilities being built in connection with and as a part of such plan. Existing structures which are to remain and which do not provide the minimum clearance of Subsection 002.03A with respect to the proposed new tracks must be approved by the Commission for exemption from the terms of Chapter 4. Existing tracks having less vertical clearance than that specified in Subsection 002.03A may be maintained but the top of rail may not be raised without a corresponding raise of the overhead structure so as to maintain the existing available clearance. Existing tracks having less horizontal clearance between them than is herein specified for new construction or having less horizontal clearance to structures than is specified in Subsection 002.03A may be maintained but they may not be shifted horizontally to reduce either the existing track centers or the existing structural clearance.

2.5 OVERHEAD CLEARANCE.

~~002.05A General: Overhead clearances may be reduced to 22'6" comply with provisions 002.05D and 002.05E.~~

002.05(A) GENERAL. Overhead clearances will be a minimum of twenty-two feet six inches (22' 6") unless specified in another subsection.

002.05~~B~~(B) IN BUILDINGS. The overhead clearance inside of ~~18'0"~~ enclosed buildings may be reduced to:

002.05(B)(ii). ~~eighteen~~Eighteen feet zero inches (18' 0") ~~provided that this clearance shall apply~~ only ~~to~~for tracks terminating within the building or in the immediate plant area if said tracks should extend through the building.

002.05(B)(ii). ~~Overhead clearance of door may be reduced to seventeen~~Seventeen feet zero inches (17'0") for overhead clearance of doors, provided that engine houses and railroad shops are exempt from the requirements of this section.

002.05~~C~~(C) IN TUNNELS. The minimum overhead clearance in ~~23'0"~~ tunnels may be decreased to the extent defined by the half circumference of a circle having radius of eight feet (8') and tangent to a horizontal line twenty-three feet (23') above the top of rail at a point directly over the center line of track.

002.05~~D~~(D) IN THROUGH BRIDGES. Overhead clearance in ~~22'6"~~ through bridges will require telltales if built less than twenty-two feet six inches (22'6") overhead clearance.

002.05~~E~~(E) ALL OTHER STRUCTURES. Except as herein speci~~- 22'6"~~fically provided, all other structures ~~shall~~will have the clearance described as follows: Starting at the center of track at top of rail and extending six feet (6') both sides horizontally and level therewith, thence diagonally upward to a point four (4) feet above top of rail and eight feet six inches (8'6") laterally from center of track, thence vertically upward to a point fifteen feet nine inches (15'9") above top of rail, thence diagonally upward to a point twenty-two feet six inches (22'6") above top and rail and four feet (4') horizontally from center of track, thence horizontally to center of track. Overhead clearance for structures other than buildings may be reduced if overhead telltales are maintained for clearances less than twenty-two feet zero inches (22'0") which must have been approved by the Commission.

2.5 ~~F~~(F) WIRES. All wires in general ~~shall~~will have a minimum vertical clearance of not less than that specified by the National Electrical Safety Code as published by the United States Department of Commerce, National Bureau of Standards, or any revisions thereto.

2.6 SIDE CLEARANCE.

002.06(A) GENERAL. Wherever practicable, all posts, ~~8'6"~~pipes, warning signs and other small obstructions ~~shall~~will be given a side clearance of eight feet six inches (8’6”)~~ten feet (10')~~.

002.06(B) PLATFORMS. The following side clearances apply to both mainline and side tracks unless otherwise indicated, but do not apply to engine houses, railroad shop buildings, and passenger platforms at car floor height:

002.06(B)(i). Platforms eight inches (8") or less above top of rail will be five feet zero inches (~~-~~5'0") from center of the track.

002.06(B)(ii). Platforms four feet (4') or less above top of rail (except as provided in 1) will be as follows:

002.06(B)(ii)(a). Platform on side tracks will be five feet nine inches (5’9”)

002.06(B)(ii)(b). If side clearance is reduced to five feet nine inches (5’9”) on one side, a full clearance of eight feet six inches (8’6”) will be maintained on the opposite side.
~~Platform on side tracks 5'9"~~

~~If side clearance is reduced to 5'9" on one side, a full clearance of 8'6" shall be maintained on the opposite side.~~

002.06(B)(iii). Platforms more than four feet (4') above top of rail side will be a minimum of eight feet zero inches (8'0")

002.06(B)(iv). Platforms on~~Tracks~~ main line~~s~~ tracks and passing tracks will be eight feet six inches (~~———————~~8'6")

002.06(B)(v). Retractable platforms, permitted on side tracks only, either sliding or hinged, which are attached to a permanent structure, must be so constructed that when retracted or in a non-working position and firmly secured or anchored, the resulting clearance shall not be less than the clearances provided in these regulations.

002.06(C) TUNNELS AND BRIDGES. The minimum side clearance for tunnels and bridges is eight feet zero inches (8’0”)

002.06(C)(i) TUNNELS - UPPER SECTION. Side clear ~~8'0"~~ances in tunnels may be decreased to the extent defined in Subsection 002.05C.

002.06(C)(ii) BRIDGES~~:—~~. Lower section and structures at or less than four feet zero inches (~~—~~4'0") above top of rail: ~~high or less.—~~Same clearances as set forth in Subsection 002.03A; provided, that the clearances authorized in this section are not permitted on through bridges where the work of trainmen require them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead.

002.06(D) INTERLOCKING MECHANISM. The minimum side clearance for interlocking mechanisms is three feet zero inches (3’0”). This includes switch ~~——~~ ~~3'0"~~boxes, and switch operating mechanism necessary for the control and operation of signals and interlockers projecting four inches (4") or less above the top of rail.

002.06(E) MAIL CRANES AND TRAIN ORDER STANDS. The minimum side clearance for mail cranes and train order stands not in operative position is eight feet six inches (8’6”).~~Not in ———— 8'6"operative position.~~

002.06(F) OIL AND WATER COLUMNS. The minimum side clearance for oil and water columns is eight feet zero inches (~~————————————~~8'0")

002.06(G) ELECTRIC SUPPLY AND COMMUNICATION LINE POLES. The minimum side~~——— 8'6" C~~clearance for such poles shall be governed by the National Electrical Safety Code and all additions and amendments thereto.

002.06(H) SIGNALS AND SWITCH STANDS.

002.06(H)(i). The minimum side clearance for signals and switch stands will be six feet zero inches (6’0”) if such signals are ~~T~~three feet (3') high or less above~~—~~ ~~6'0"~~ top of rail when located between tracks or where not practicable to provide clearances otherwise prescribed in this section.

002.06(H)(ii). The minimum side clearance for signals and switch stands ~~O~~over three feet 3' high above top of rail will be eight feet three inches (~~————~~8'3")~~of rail~~.

002.06(H)(iii). Signals and ~~P~~portions of signal poles higher than ~~8'6"~~ four feet (4') and less than sixteen feet (16') above top of rail will have a minimum side clearance of eight feet six inches (8’6”).

002.06(I) BUILDING ENTRANCES. The minimum side clearance ~~Clearances~~ inside buildings is seven feet zero inches (7'0"). Such clearance may be reduced on one side of the track to five feet nine inches (5'9") not more than four inches (4") above top of rail, provided that a side clearance of eight feet six inches (8'6") is maintained on the opposite side.

002.06(J) CURVED TRACK. The horizontal clearances specified herein relate to tracks on tangent. On curved track, the clearances shall be increased to allow for the overhang and the tilting of a car eighty~~-~~five feet (85') long, sixty feet (60') between centers of trucks, and fourteen feet (14') high.

002.06(K) MATERIAL AND OTHER ARTICLES ADJACENT TO TRACK. The minimum side clearance for material and other articles adjacent to track is eight feet six inches (8'6").

2.7 TRACK CLEARANCES.

002.07(A) IN GENERAL. The minimum distance between the ~~14'0"~~ center lines of parallel standard gauge railroad tracks, which are used or proposed to be used for transporting freight cars, ~~shall~~will be fourteen feet (14'), except as hereinafter prescribed.

002.07(B) MAIN AND SUBSIDIARY TRACKS. The minimum distance between ~~M~~main and passing tracks will be fifteen feet (15'~~0"~~). ~~tracks.~~

002.07(C) PARALLEL TEAM, HOUSE OR INDUSTRY TRACKS. The minimum distance between parallel team, house, or industry tracks will be thirteen feet (13’). ~~13'0"~~

002.07(D) LADDER TRACKS. Minimum clearances shall be as follows:

002.07(D)(i). Ladder track and any parallel track, except another ladder track will be seventeen feet (17'~~0"~~). ~~ladder track.~~

002.07(D)(ii). Ladder track and another parallel ladder track. will be twenty feet (20'~~0"~~).

002.07(E) EXISTING TRACKS. Existing tracks may be extended at clearances prevailing prior to the effective date of these regulations.

2.8 PUBLIC ROADS, HIGHWAYS AND STREET CROSSINGS OVER OR UNDER TRACKS.

002.08(A) ROADS, HIGHWAYS OR STREET CROSSINGS OVER RAILROAD TRACK: Where a public road, highway or street crosses above any railroad track used or proposed to be used for transporting freight cars, side clearance in general provided in Chapter 4 for such tracks must be observed. Minimum overhead clearance ~~shall~~will be twenty-three feet zero inches (23'0").

002.08(B) RAILROAD CROSSINGS OVER ROADS, HIGHWAYS OR STREET. Where a railroad crosses above any public road, highway, or street, a minimum overhead clearance of fourteen feet zero inches (14'0") ~~shall~~will be provided above the surface of such road, highway or street. Where a railroad crosses above any highway of the State Highway System or any street or highway of the Federal Aid Urban Systems, a minimum overhead clearance of fifteen feet zero inches (15'0") ~~shall~~will be provided above the surface of such highway or street.

002.08(C) MINIMUM WIDTH AT CROSSINGS. Where a railroad or street railroad crosses above any public road, highway, or street, on a single supporting span, a minimum width of twenty-six feet (26') ~~shall~~will be provided for the opening for such public road, highway or street. Where a railroad or street railroad crosses any highway of the State Highway System, or any street or highway of the Federal Aid Urban System, on a single supporting span, a minimum width of thirty feet (30') ~~shall~~will be provided for the opening of such highway or street. Where two or more supporting spans are used for such an opening, the minimum widths above specified ~~shall~~will be provided for each of such supporting spans.

2.8 ~~D. It is the policy of this Commission to improve the safety and convenience of railroad crossings in this state. In order to eliminate safety hazards and to make railroad crossings more convenient for the public, the Commission encourages counties and municipalities to confer with railroads to prioritize crossings so that the public can rely on at least one crossing in every three miles of trackage being open at all times, except when trains are actually moving over the crossing and in case of an emergency as defined in Section 002.02A of these rules. Counties are encouraged to cooperate with each other to achieve an integrated system of prioritized crossings along an entire rail corridor. In the selection of priority crossings, governmental subdivisions and railroads should consider such matters as school bus routes, access to areas served by fire and rescue vehicles and the commercial importance of the crossing. When a municipality, county or counties and a railroad cannot agree on the change to be made on any crossing, the dispute may be brought before the Commission pursuant to Neb. Rev. Stat. '75-414 to '75-418 (1994).~~

~~Once a priority crossing has been established by agreement between a governmental subdivision and a railroad or by decision of this Commission, the location of such crossing should be recorded in the office of the county engineer of the county in which the crossing lies.~~

2.9 RAILROAD CAR STORAGE OR PARKING DISTANCE FROM CROSSINGS.

002.09(A). Upon complaint or on its own motion, the Commission may direct that any railroad car or cars stored or parked on a railroad track which may be obstructing or obscuring the traveling public's view of any oncoming train be stored or parked at a minimum distance from the crossing of such railroad track and particular public road.

002.09(B). A person who has been directed by the Commission under 002.09A to move a railroad car or cars may file an application for a hearing on the matter. The Commission ~~shall~~will hear the matter within seven (7) days of the filing of the application.

002.09(C). After notice and hearing, the Commission may establish a specific minimum distance for storage or parking of a railroad car or cars from the crossing of a railroad track and a particular public road, and it ~~shall~~will be that distance reasonable and necessary to provide a range of vision at the crossing adequate to protect the safety of the public using the crossing.

002.09(C)(i). Unless a different distance is prescribed by the Commission, railroad cars, locomotives and equipment ~~shall~~will not be parked nor stored within 250 feet from any public or private crossings, of multiple adjacent railroad tracks, except upon written waiver from the Commission, or from private crossing owners. In the event of single track blockages, crossings ~~shall~~will be opened a safe distance as ~~shall~~will be determined by the operating railroad employee when the way is seen to be clear.

002.09(D). Standing trains, parked or stored cars, locomotives, equipment and switching movements ~~shall~~will not block a public or private crossing longer than ten (10) minutes after a person appears and wants to cross a crossing, except in case of emergency ~~and except in case where the trains are complying with the provisions of Section 002.08D herein~~. In a situation where a standing train has an operating crew on that train, and a multiple access crossing that is blocked is visible and accessible from the locomotive, such crossing need not be opened if a vehicle or pedestrian is not present at the expiration of ten (10) minutes. However, it ~~shall~~ will be opened or the train must be moving within ten (10) minutes after a pedestrian or vehicle becomes present at that crossing.

2.10 CROSSING GATES. All operating railroads within this state ~~shall~~ will clearly mark the location of the actuating devices (bonds) which control crossing gate operation ~~no later than july 1, 1997~~.~~002.11 HEADLIGHT DISPLAY: employees who operate locomotives adjacent to public roadways may, upon signal of any motor vehicle operator(s), dim headlights and ditch lights so as not to blind or confuse the vision of such motorist(s).~~

3 MINIMUM SAFETY REQUIREMENTS.

3.1 RAILROAD MINIMUM INJURY AND PROPERTY DAMAGE REPORT.

003.01(A) ACCIDENT REPORTS. Upon occurrence of any serious personal injury or loss of life to persons other than railroad employees or railroad contractors resulting from an accident at a railroad crossing or from an accident involving an explosion, fire, or release of noxious fumes occurring upon any railroad within the State of Nebraska, the corporation which operates the railroad upon which the accident occurred will report such accident in writing or by telephone to the Commission within twenty-four (24) hours of the time such accident occurred.

003.01A(B) SUPPLEMENTAL ACCIDENT REPORTS. All corporations which operate railroads operating in the State of Nebraska shall report in writing to the Commission all accidents on their lines in Nebraska involving personal injury from which there is a 24-hour disability or more, or or property damage in excess of $750.00 as determined pursuant to Title 49 C.F.R. Part 225 accident reporting requirements to the Federal Railroad Administration. These reports are due within thirty (30) days from the end of the month in which the accident occurred.

4 SANITATION AND SAFETY:

4.1 GENERAL:

4.1 A Jurisdiction: The following rules and regulations are proposed pursuant to the authority conferred upon the Nebraska Public Service Commission by '74-918, R.R.S., (1994 Supp.)

4.1 B Intent: After investigation, notice and hearing, it may be ordered by the Nebraska Public Service Commission that any locomotive or way car owned by a railroad carrier operating in this state, placed in service prior to the effective date of the rules and regulations promulgated by the Commission pursuant to Ne. Rev. Stat. '74-918, R.R.S., (1994 Supp.) provide sanitary drinking water and toilet facilities. The rules and regulations promulgated by the Commission in pursuance of Ne. Rev. Stat. '74-918, R.R.S., (1994 Supp.) prescribed a minimum standard for sanitary drinking water and toilet facilities to be maintained in all locomotives and way cars, owned by railroad carriers operating in this state which are placed in service subsequent to the effective date of the rules and regulations.

4.2 SANITATION STANDARDS:

004.02A Sanitary Drinking Water:

004.02A1 An adequate supply of sanitary drinking water shall be provided on all locomotives and way cars owned by railroad carriers operating in this state.

004.02A2 Each drinking water container shall be constructed of a noncorrodible material and so as to be easily cleansed and disinfected.

004.02A3 All containers used to furnish drinking water shall be thoroughly cleansed and disinfected as often as is necessary to assure a sanitary and palatable drinking water supply.

004.02A4 The use of single or common drinking cups is prohibited, and either

~~single service drinking cups or drinking fountains with a sanitary angle head shall be used in lieu thereof~~

4.2 ~~A5 Nothing in Subsection 005.02A shall prevent any railroad carrier from operating equipment not in conformity with the provisions of this section over any main line for a distance of less than 50 miles and on any branch line of such carrier for a distance of less than 50 miles.~~

~~004.02B Toilet Facilities:~~

~~004.02B1 Toilet facilities shall be provided on all locomotives and way cars owned by railroad carriers operating in this state.~~

~~004.02B2 All toilets shall be constructed so as to be easily cleaned and disinfected, so as to prevent the accumulation of fecal matter on the bowl, and so as to be impervious to moisture.~~

~~004.02B3 Toilet facilities and toilet rooms shall be maintained at all times in a clean and sanitary manner.~~

~~004.02B4 An adequate supply of toilet paper contained in a holder, constructed for the purpose, shall be provided.~~

~~004.02B5 Nothing in Subsection 004.02A shall prevent any railroad carrier from operating equipment not in conformity with the provisions of this section over any main line for a distance of less than 50 miles and on any branch line of such carrier for a distance of less than 50 miles.~~