

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 15th day of May 2013.

CASE NO. 13-0588-COAL-PW

MECHEL BLUESTONE, INC.

Petition for waiver of Rule 4.7.b of the Commission Rules for the Transportation of Coal by Commercial Motor Vehicles.

COMMISSION ORDER

The Commission grants, with conditions, a petition by Mechel Bluestone, Inc. (Mechel Bluestone) for a temporary waiver of Rule 4.7.b of the Commission Rules for the Transportation of Coal by Commercial Motor Vehicle (Coal Transportation Rules), 150 C.S.R. Series 27.

BACKGROUND

On April 26, 2013, Mechel Bluestone, Inc. (Mechel Bluestone), petitioned for a temporary waiver of Rule 4.7.b of the Coal Transportation Rules. The waiver concerns the Bishop Loadout receiving site, PSC Site ID C00007681R. Mechel Bluestone needs to continue moving coal from its Red Fox Surface Mine, PSC Site ID S00007282A, to the Bishop Loadout site in order to meet contractual obligations.

On May 1, 2013, Commission Staff filed an Initial and Final Joint Staff Memorandum. Staff noted Mechel Bluestone and the Justice Companies (Justice) have entered into an agreement regarding the use of temporary certified scales provided by Justice. Per the agreement, Mechel Bluestone would allow Justice to build a belt and train flood loadout facility that would cut off Mechel Bluestone's access to its existing certified scales and loadout area. In exchange, Justice agreed to build a truck dump and new set of certified scales for Mechel Bluestone. The original location proposed for the scales proved unsuitable and Justice had to relocate the site and build off road access thereto, running parallel to County Route 16. The off road access will allow Mechel Bluestone to travel to the truck dump without re-entering the public highway.

The relocated site for the new scales and truck dump was not included in the plant area originally permitted by the West Virginia Department of Environmental Protection (WVDEP). Justice, therefore, filed an incidental boundary revision (IBR) with WVDEP.

Justice will begin construction of the off road access and new permanent certified scales at the Bishop Loadout site upon obtaining approval of the IBR from WVDEP. Staff confirmed that the earliest possible approval date for the IBR would be May 7, 2013.

Mechel Bluestone requests the temporary waiver of Rule 4.7.b for a period of no more than 90 days, during which time Mechel Bluestone will travel on County Route 16 for six miles from its Red Fox Surface Mine to temporary certified scales, provided by Justice, capture a certified weight, re-enter County Route 16, and travel north for approximately four-tenths of a mile to Mechel Bluestone's existing truck dump.

Staff advises that it has conducted an investigation of the facts of the petition and recommends approval of the ninety-day waiver of Rule 4.7.b, provided that (i) Mechel Bluestone place a legal advertisement in a qualified newspaper as provided in W.Va. Code § 59-3-1, et seq., (ii) Justice have certified scales in place at the at the temporary where Mechel Bluestone will weigh its trucks and Mechel Bluestone will report all shipments and the weights thereof, (iii) Commission weight enforcement officers periodically weigh vehicles leaving the shipping site and traveling on Coal Resource Transportation System (CRTS) roads in McDowell County, West Virginia, and (iv) during the waiver period, Mechel Bluestone fully complies with all CRTS legislation, especially regarding accurate and timely electronic reporting and weight limitations placed on trucks entering CRTS highways.

DISCUSSION

The Commission Coal Transportation Rules establish the procedures by which coal shipments are to be weighed and reported. Coal Transportation Rule 4.7.b requires a receiver to use scales certified by the Division of Labor to weigh shipments it receives and to report the gross weight of shipments that have traversed a roadway that is part of the CRTS.

Upon good cause shown, the Commission has, in the past, temporarily waived the requirement for a receiver to report with a certified scale and allowed a receiver to use a duplicate shipping ticket. See Bluestone Indus., Case No. 04-0033-COAL-PW (Jan. 15, 2004); Panther LLC, Case No. 04-0518-COAL-PW (Apr. 12, 2004); Classic Coal Sales, Case No. 04-0529-COAL-PW (Apr. 26, 2004); & Independence Coal Co. dba Anna Branch Mining Co. & Highland Mining Co., Case No. 05-1548-COAL-PW (Nov. 2, 2005).

Mechel Bluestone requests a waiver of Coal Transportation Rule 4.7.b because its coal shipments to the Bishop Loadout site will not be weighed at their ultimate destination, the receiver's dump site, but at temporary scales provided by Justice. The Mechel Bluestone trucks will obtain a certified weight for their shipments at the temporary scales and will then re-enter a CRTS road for four-tenths of a mile in order to reach their final destination, the Bishop Loadout truck dump. Mechel Bluestone wishes

to use the certified weight obtained at the temporary scales as the basis for the receiver's report until such time that new permanent certified scales are installed at the Bishop Loadout site.

The Commission will grant the requested waiver, subject to the Staff recommended conditions, because of the limited period of time of the waiver and the minimal distance to the truck dump area. In addition to the Staff recommended conditions, the Commission will include other standard conditions it imposes when granting requests for waivers of Coal Transportation Rule 4.7.b.

In previous decisions, the Commission has ordered that the waiver becomes null and void upon any violation of any CRTS provision during the waiver period, and the Commission will impose that same condition in this proceeding. XMV Mining, Inc., Case No. 09-0175-COAL-PW (Apr. 2, 2009) at 3; Independence Coal Co. and Highland Mining Co., Case No. 05-1548-COAL-PW (Nov. 2, 2005) at 6.

Coal Transportation Rule 1.5.b requires that notice of each waiver application be provided by publication of a Class I legal advertisement. Legal advertisements shall be made in newspapers as qualified in W.Va. Code § 59-3-1, et seq., published and of general circulation in the area(s) affected.

FINDINGS OF FACT

1. April 26, 2013, Mechel Bluestone petitioned for a waiver of Coal Transportation Rule 4.7.b to allow Mechel Bluestone to obtain weights for coal shipments at the temporary scales provided by Justice to report coal that Mechel Bluestone receives at the Bishop Loadout location.

2. On May 1, 2013, Staff conditionally recommended that the petition be granted.

CONCLUSIONS OF LAW

1. Because Mechel Bluestone has requested a waiver for a short period and new permanent certified scales will be installed at the Bishop Loadout location when construction of the off road access thereto is complete, it is reasonable to allow Mechel Bluestone to use coal shipment weights obtained at the temporary scales provided by Justice to report for ninety days coal received by Mechel Bluestone at its Bishop Loadout site, provided that Mechel Bluestone also complies with the conditions set forth in this Order.

2. Mechel Bluestone should provide notice as required by Coal Transportation Rule 1.5.b., in a qualified newspaper as provided in W.Va. Code § 59-3-1, et seq., published and of general circulation in McDowell County, West Virginia.

ORDER

IT IS THEREFORE ORDERED that, for ninety days from the date of this Order, the requested waiver is granted so that Mechel Bluestone may use coal shipment weights obtained at the temporary scales provided by Justice to report for ninety days coal received by Mechel Bluestone at its Bishop Loadout site, provided that

- 1) If it has not already done so, Mechel Bluestone place a legal advertisement in a qualified newspaper as provided in W.Va. Code § 59-3-1, et seq., published and of general circulation in McDowell County, West Virginia, and file an affidavit of that publication with the Commission as soon after publication as possible;
- 2) Justice has certified scales in place at the temporary location where Mechel-Bluestone will weigh its trucks and Mechel Bluestone will report all shipments and certified weights thereof obtained from those scales;
- 3) During the waiver period, Mechel Bluestone fully complies with all CRTS legislation, especially regarding accurate and timely electronic reporting and weight limitations placed on trucks entering CRTS highways;
- 4) During the waiver, Commission weight enforcement officers will periodically weigh vehicles leaving the shipping site and traveling on CRTS roads in McDowell County, West Virginia, to ensure compliance with weight restrictions on CRTS highways;
- 5) Staff of the CRTS unit at the Commission be advised when the permanent certified scales are installed and operational and the off road access thereto is complete; and
- 6) The ninety-day waiver commence on the date of the Commission Order.

IT IS FURTHER ORDERED that this waiver is conditioned upon Mechel Bluestone not being assessed a Notice of Violation during the waiver period. Should a Notice of Violation be issued to Mechel Bluestone during the ninety-day period, this waiver will immediately terminate without further Order of the Commission.

IT IS FURTHER ORDERED that, if a Notice of Violation is not issued to Mechel Bluestone, this temporary waiver shall automatically expire at 12:01 a.m. on August 13, 2013.

IT IS FURTHER ORDERED that Commission Staff may periodically conduct weight checks, with portable scales, of the shipments to the Bishop Loadout location. Within ten days of each weight check, Commission Staff shall file a report with the Commission.

IT IS FURTHER ORDERED that Mechel Bluestone shall immediately report to the Commission CRTS unit when new permanent certified scales are installed and operational at its Bishop Loadout site.

IT IS FURTHER ORDERED that this case is removed from the Commission docket of active cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order **upon Mechel Bluestone by certified mail, return receipt requested**, and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

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