



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • www.utc.wa.gov

July 1, 2014

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Ballard Terminal Railroad Company*

Commission Staff's Response to Application for Mitigation of Penalties TR-140999

Dear Mr. King:

On May 27, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket TR-140999 against Ballard Terminal Railroad Company for 10 violations of Washington Administrative Code (WAC) 480-62-300, which requires railroad companies to furnish annual reports to the commission no later than May 1 each year.¹

On June 17, 2014, Ballard Terminal Railroad Company wrote the commission requesting mitigation of penalties (Mitigation Request).² In its Mitigation Request, Ballard Terminal Railroad Company does not dispute that the violation occurred. The company states, "To the best of my knowledge, the initial 2013 WUTC annual report form for Ballard Terminal Railroad (BDTL) was not received by our parent company, BALLARD TERMINAL RAILROAD COMPANY, LLC. Had it been received, the report would have been filed for completion and payment by its due date as have been all previous WUTC requested reports from BTRC, LLC. Unfortunately, the filing date for this report, and the absence of the required report form, were overlooked until the WUTC report form, sent by certified mail, was received."

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the May 1 deadline. On February 28, 2014, Annual Report packets were mailed to all regulated railroad companies. The instructions for annual report completion page of the annual report informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2014, to avoid enforcement action.

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ballard Terminal's Mitigation Request received on June 17, 2014

UTC Annual Reports
July 1, 2014
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On June 16, 2014, Ballard Terminal Railroad Company filed the 2013 annual report and paid the regulatory fees and late payment penalty. The company was previously delinquent in filing the 2004 and 2005 annual reports but has filed timely every year since those occurrences. Commission staff supports the company's request for mitigation. Staff recommends a reduced penalty of \$25 per day for a total assessment of \$250.

If you have any questions regarding this recommendation, please contact Amy Andrews, Regulatory Analyst, at (360) 664-1157, or aandrews@utc.wa.gov.

Sincerely,

Sondra Walsh, Director
Administrative Services

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ballard Terminal's Mitigation Request received on June 17, 2014

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TR-140999
PENALTY AMOUNT: \$1,000

Ballard Terminal Railroad Company
4725 Ballard Avenue NW
Seattle, WA 98107

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-62-300, which requires railroad companies to file their annual report and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2014.

Revised Code of Washington (RCW) 81.04.080 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-62-300 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$1,000 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all railroad companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2014. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 17. You did not request an extension.

As of May 15, 2014, Ballard Terminal Railroad Company has not filed its 2013 annual report or paid its 2014 regulatory fee. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request.

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ballard Terminal's Mitigation Request received on June 17, 2014

Failure to provide such a statement will result in denial of the request. If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection, which may file suit in state court to collect the penalty.

DATED at Olympia, Washington, and effective May 27, 2014.

DENNIS J. MOSS
Administrative Law Judge

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ballard Terminal's Mitigation Request received on June 17, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TR-140999

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred. I have:

Enclosed \$ _____ in payment of the penalty

Submitted my payment of \$ _____ online at www.utc.wa.gov.
My confirmation number is _____.

2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ballard Terminal’s Mitigation Request received on June 17, 2014

ATTACHMENT B

Jun 17 14 01:24p COLE

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P. 2

**BALLARD TERMINAL RAILROAD
EASTSIDE FREIGHT RAILROAD
MEEKER SOUTHERN RAILROAD**

Subsidiaries of:

**Ballard Terminal Railroad Company, LLC
4725 Ballard Avenue NW
Seattle, WA 98107**

Office: (206) 782-1447 Fax: (206) 782-7724

16 June 2014

TO: WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RE: PENALTY ASSESSMENT TR-140999

SIRS:

To the best of my knowledge, the initial 2013 WUTC annual report form for Ballard Terminal Railroad (BDTL) was not received by our parent company, BALLARD TERMINAL RAILROAD COMPANY, LLC. Had it been received, the report would have been filed for completion and payment by its due date as have been all previous WUTC requested reports from BTRC,LLC.

Unfortunately, the filing date for this report, and the absence of the required report form, were overlooked until the WUTC report form, sent by certified mail, was received.

Today, the completed form relating to the intrastate operation of the Ballard Terminal Railroad (BDTL) with the payment and penalty due were delivered to the WUTC office in Olympia.


Byron Cole, General Manager
Ballard Terminal Railroad Co. LLC

2014 JUN 17 PM 2:19

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ballard Terminal's Mitigation Request received on June 17, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TR-140999

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I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

2014 JUN 17 PM 2:19

[] 1. Payment of penalty. I admit that the violations occurred. I have:

[] Enclosed \$ _____ in payment of the penalty

[] Submitted my payment of \$ _____ online at www.utc.wa.gov. My confirmation number is _____.

[] 2. Request for a hearing. I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

[X] 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

Please see attached letter.

[] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR [X] b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 6-16-2014 [month/day/year], at SEATTLE WA [city, state]

BALLARD TERMINAL RAILROAD
Name of Respondent (company) - please print

Byron D Cole
Signature of Applicant

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

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2See attachment B for a copy of Ballard Terminal's Mitigation Request received on June 17, 2014