**BEFORE THE WASHINGTON**

**UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of a Penalty Assessment Against BATTLE GROUND, YACOLT & CHELATCHIE PRAIRIE RAILROAD ASSOCIATION, in the amount of $1,900.00.. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  | ))))))))) | DOCKET TR-120876ORDER 01ORDER DENYING MITIGATION |

**MEMORANDUM**

1. **Penalty.** On July 11, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of $1,900 against Battle Ground, Yacolt & Chelatchie Prairie Railroad Association (BGY&CP RR), for violations of Washington Administrative Code (WAC) 480-62-300. This rule requires regulated railroad companies to file annual reports with the Commission by May 1 each year.
2. On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated railroad companies. On May 14, 2012, the Commission mailed a letter to companies that had not yet filed an annual report notifying them that they had incurred, as of that date, a penalty of $800. The letter explained that companies that filed their annual reports no later than May 25, 2012, would receive mitigated penalties of $25 per day, with an additional $25 per day assessed for each instance in the previous five years that the company received a penalty for filing a late report.
3. BGY&CP RR, however, did not file its 2011 annual report until May 29, 2012. This is 28 days late, making the company liable for a penalty of up to $2,800 as provided in RCW [80.04.405](http://apps.leg.wa.gov/RCW/default.aspx?cite=81.04.405). The Commission, considering the nature of the offense and other factors, exercised its discretion to assess less than the maximum penalty. The Commission assessed a significant, but not unduly punitive, penalty of $1,900.
4. **Mitigation Request.** On May 29, 2012, the company filed its annual report. The company filed a Commission form requesting mitigation of the penalty (Mitigation Request) on August 6, 2012. In its Mitigation Request, BGY&CP RR does not dispute that the violation occurred. The company states:

The only copy of the required forms was received via electronic means on the day notification of violation occurred and I called your office. … The State of Washington Utilities and Transportation Commission was remiss in their duties to notify us within a reasonable length of time (19 business days). We should have been notified within 5 days. … The penalty should be reduced to an amount that reflects filling out the forms on the same the day as notified by the commission of delinquent, that time should have been no more than five days. There [sic] we request that the fine be reduced to $500.00.

1. **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response to the Mitigation Request on August 10, 2012. Staff opposes mitigating the assessed penalty because this is not BGY&CP RR’s first offense. The Commission fined the company $100 for a late-filed report in 2009.
2. **Commission Determination.** The Commission determines that it should deny the Mitigation Request, consistent with Staff’s recommendation and because the company does not accept responsibility for its obligation to comply. It is the company’s responsibility to ensure that its regulatory fee and annual report are filed by the May 1 deadline each year. Nevertheless, the Commission reminds companies of their obligation each year, as it did in this case by its mailing of an Annual Report form and Regulatory Fee packet to BGY&CP RR on February 29, 2012, well ahead of the May 1, 2012, deadline. The company did not respond to this reminder. The Commission again contacted BGY&CP RR via notice dated May 14, 2012, stating that it was overdue in meeting its filing requirement and offering administrative “mitigation” of potential penalties if the company filed by May 25, 2012. Yet, BGY&CP RR did not file its report until May 29, 2012.
3. Under these circumstances BGY&CP RR’s argument that the Commission is somehow remiss in this matter and should therefore mitigate the penalty assessed rings hollow. The company simply offers no good reason to grant its request for mitigation. Moreover, its suggestion that it is not at fault in this situation, or has somehow been mistreated by the Commission, brings into question its continuing regulatory fitness. It is appropriate, therefore, to impress upon the company the importance of meeting its regulatory filing obligations in the future and to penalize its failure to do so in this instance.

**ORDER**

THE COMMISSION ORDERS THAT:

1. (1) The penalty of $1,900 assessed against Battle Ground, Yacolt & Chelatchie Prairie Railroad Association on July 11, 2012, is due and payable to the Commission within 15 days following the date of this Order.
2. (2) The Commission delegates to its Secretary authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective August 28, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER

 Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. Under WAC 480-07-904(3), you may seek Commission review of this decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision under WAC 480-07-904(1). You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission’s Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.**

**The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.**