

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. BNSF RAILWAY COMPANY, Respondent.	DOCKET TR-150284 ORDER 04 ORDER ACCEPTING STIPULATION AS COMPLIANT WITH ORDER 02
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BACKGROUND

- 1 On March 19, 2015, the Washington Utilities and Transportation Commission (Commission) through its regulatory Staff (Staff) filed a complaint against BNSF Railway Company (BNSF or Company). The complaint alleges that BNSF failed to report 14 hazardous material releases in the manner required by WAC 480-62-310, resulting in 700 violations of that rule.
- 2 On August 27, 2015, BNSF and Commission staff (Staff) filed a Settlement Agreement (Settlement) that the parties represented would resolve all issues in this docket. The Commission conducted a hearing on the Settlement, and on December 7, 2015, entered Order 02, Final Order Approving Settlement Agreement with Conditions (Order 02). Among the conditions in Order 02 is the requirement that the parties file a stipulation with the Commission by February 1, 2016, that details how BNSF will comply with WAC 480-62-310 in the future, which must address, at a minimum, the following topics:
 - (a) What constitutes an “event connected to the operation of the railroad company that results in the . . . [r]elease of any hazardous material” that BNSF Railway Company will report pursuant to WAC 480-62-310, including but not necessarily limited to the extent to which BNSF Railway Company will report leaks or spills on the property of a shipper or a third party and the other types of events involved in the violations alleged in the complaint;

- (b) What constitutes a “hazardous material” the release of which BNSF Railway Company will report pursuant to WAC 480-62-310, with examples of materials that the Commission should (or should not) consider to be “hazardous” within the meaning of the rule, including but not necessarily limited to the materials involved in the violations alleged in the complaint; and
- (c) The best practices for compliance with WAC 480-62-310 that BNSF Railway Company will implement and the strategies for more effective communication BNSF Railway Company and Commission Staff will use on a going-forward basis, including but not limited to the desirability and feasibility of BNSF Railway Company reporting the events identified in WAC 480-62-310 to both the Washington state emergency operations center and Commission Staff.¹

3 On February 1, 2016, BNSF and Staff filed a Stipulation pursuant to this condition. With respect to the first topic, the parties agree that a rulemaking, interpretive and policy statement, or declaratory order would be required to clarify what constitutes an “event connected to the operation of the railroad company that results in the . . . [r]elease of any hazardous material” that BNSF Railway Company will report pursuant to WAC 480-62-310.² The Stipulation, however, provides additional information on the extent to which a hazardous material release on the property of a shipper or third party is a reportable event under the rule.³

4 The parties also stipulate that a more detailed definition of “hazardous material” similarly is beyond the scope of this proceeding. The Stipulation nevertheless explains that WAC 480-62-310 incorporates the definition of that term under federal law, which is more expansive.⁴

¹ Order 02 ¶ 48.

² Stipulation ¶ 3.

³ *Id.* ¶ 4.

⁴ *Id.* ¶ 7.

5 Finally, the Stipulation describes adjustments BNSF has made to its environmental compliance program to maximize the Company's compliance with WAC 480-62-310 and to facilitate constructive communications with Staff. As a result, BNSF understands that it currently is in compliance with its reporting obligations.⁵ Staff finds the Company's policies and procedures in this area satisfactory, "pledges to use effective, thorough techniques when investigating potential violations," and "seeks to maintain a collaborative relationship with BNSF."⁶ The parties agree that BNSF should not submit reports to Staff simultaneously with the reports the Company submits to the emergency operations center in compliance with the rule.⁷

DISCUSSION

6 The Commission's ultimate objective in any enforcement action is to ensure compliance with statutes and rules within the Commission's jurisdiction. The Settlement lacked specificity with respect to the parties' agreement to meet and discuss best practices for BNSF's compliance with WAC 480-62-310. Accordingly, we conditioned approval of the Settlement on a stipulation that provides more details and a tangible outcome to the parties' discussions.

7 The parties' Stipulation continues to leave significant terms in WAC 480-62-310 subject to differing interpretations and potential dispute. We nevertheless are encouraged that BNSF has improved its environmental compliance program to enhance the Company's compliance with the rule and communication with Staff and that the Company has been, and continues to be, complying with its reporting obligations under the rule. On balance, we find that the Stipulation furthers the Commission's enforcement goal and complies with the condition in paragraph 48 of Order 02.

⁵ *Id.* ¶ 9.

⁶ *Id.* ¶ 10.

⁷ *Id.* ¶ 11.

ORDER

- 8 THE COMMISSION ORDERS that the Commission accepts the Stipulation as compliant with the condition in Order 02, paragraph 48, that BNSF Railway Company and Commission Staff file a stipulation detailing how BNSF Railway Company will comply with WAC 480-62-310 in the future.

DATED at Olympia, Washington and effective February 25, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner