

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TR-160652
MT. RAINIER SCENIC RAILROAD	ORDER 01
in the amount of \$1,000	ORDER GRANTING MITIGATION TO \$100

BACKGROUND

- 1 On February 29, 2016, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all regulated railroad companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by Monday, May 2, 2016, or face penalties of \$100 for each violation of Commission rules. In the case of continuing violations, each day’s continuance is a separate violation. RCW 80.04.405.
- 2 Mt. Rainier Scenic Railroad did not file its annual report on May 2, 2016, and had not made that filing by May 16. On June 17, the Commission assessed a penalty of \$1,000 against Mt. Rainier Scenic Railroad, calculated as \$100 per business day from May 2 to May 16.
- 3 On June 24, 2016, Mt. Rainier Scenic Railroad filed its annual report. On June 28, Mt. Rainier Scenic Railroad responded to the Commission’s penalty assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, Mt. Rainier Scenic Railroad states, “the Mt. Rainier Scenic Railroad (“MRSR”) assets were sold to an outside entity on February 1, 2016, and the annual report paperwork was lost during the transition of personnel and operating entities. As a result, new entity called the Mt. Rainier Railroad & Logging Museum, LLC (“MRRLM”) was formed. The new management filed a timely report with the Secretary of state and believed they had met the filing requirements. It was only after speaking with commission staff did the management of the new entity realize that the two annual reports were separate and different.”

4 On July 12, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation because Mt. Rainier Scenic Railroad has no prior violations of WAC 480-62-300, the Company's ownership recently changed, and the Company's new management mistakenly believed it had complied with all filing requirements.

DISCUSSION

5 WAC 480-62-300 requires railroad companies to file annual reports by May 1 of each year, or the first business day thereafter. Companies are responsible for complying with their legal obligations, and the Company should have ensured its report was timely filed, despite any organizational changes.

6 Although we do not agree with Staff that the penalty should be waived in its entirety, we will nevertheless exercise our discretion to assess a reduced penalty due to the circumstances presented here. The Commission may consider a number of factors when entertaining a request for mitigation, including whether the violation was promptly corrected, a company's history of compliance, and the likelihood the violation will recur.¹ Mt. Rainier Scenic Railroad has no prior violations of WAC 480-62-300, and has since corrected the violations by filing a complete annual report. Moreover, the Company was recently acquired by an outside entity that mistakenly believed it had complied with all annual report filing requirements. Accordingly, assessing a \$100 penalty for one violation of WAC 480-30-080 rather than a "per violation" penalty is appropriate in light of fact that the violations are unlikely to recur.

ORDER

THE COMMISSION ORDERS:

- 7 (1) Mt. Rainier Scenic Railroad's request for mitigation of the \$1,000 penalty is GRANTED, in part, and the penalty is reduced to \$100.
- 8 (2) The penalty is due and payable no later than August 16, 2016.

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

- 9 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective August 2, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.