

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment  
Against THE NORTHWEST RAILWAY  
MUSEUM in the Amount of \$100

DOCKET TR-090942

DECLARATION OF  
SHERI HOYT

SHERI HOYT, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Investigator in the Compliance Investigations Section. I have been employed at the Commission for 17 years, holding various positions. As a Compliance Investigator, my responsibilities include conducting investigations regarding the business practices of regulated utility or transportation companies. As part of those duties, I investigate railroad companies that may be operating in violation of Commission statute or rule.
3. On July 13, 2009, The Northwest Railway Museum (Northwest Railway) filed with the Commission an Application for Mitigation (Mitigation Request), in Docket TR-090942. I have read the Mitigation Request. In the Mitigation Request, Northwest Railway admits the violation occurred and requests a decision by an administrative law judge.
4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued by the Commission on June 26, 2009, in Docket TR-090942. In that Notice, the Commission issued a penalty of \$100 for a violation of Washington Administrative Code (WAC) 480-62-300, which requires railroad companies to file annual reports with the Commission by May 1 each year.
5. Before recommending the Commission issue penalties, as part of my job, I conducted an investigation of Commission records concerning Railroad Association. I documented my investigation in a report titled, "Staff Investigation - 2008 Annual Reports."<sup>1</sup> I identified the violation in this case from records maintained by the Commission.

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<sup>1</sup> A true and accurate copy of the investigation report is attached to this declaration as Attachment A.

## Specific Issues Addressed by Northwest Railway in its Mitigation Request

**Northwest Railway states it experienced the worst flood impact in its 52 year history on January 7 and 8, 2009. All paper records were hastily gathered together, put into boxes and stacked on tables out of the reach of flood waters. Six months later, all files are not fully sorted.**

6. In the Mitigation Request, Northwest Railway states it experienced a record flood in January 2009 from which its hastily packed up paper records have not fully been sorted. The Mitigation Request goes on to say that Northwest Railway was not able to find the reminder notice sent to Northwest Railway in March 2009. Northwest Railway assures the Commission that although it is having great difficulty in meeting many obligations, and continues to be burdened by the impact of the flood, safety compliance remains its top priority.
7. Commission Staff sympathizes with Northwest Railway in its difficulties after experiencing a flood less than seven months ago. Staff does not believe that Northwest Railway's failure to file its 2008 annual report was intentional and believes the circumstances warrant full mitigation of the penalty assessed against it. Northwest Railway's complete 2009 annual report accompanied its Mitigation Request. As the company is designated a 501 (c) 3 nonprofit corporation, a regulatory fee was not due. Northwest Railway is now in compliance with the rules.

### Staff Recommendation

8. Northwest Railway has never before received a penalty assessment for late filing its annual report due May 1 each year. The company experienced a flood disaster less than seven months ago and is struggling to recover at this time. The company has now filed its 2008 annual report and is in compliance with the rules. Commission staff supports full mitigation of the penalty.

DATED this        day of July 2009 at Olympia, Washington.

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SHERI HOYT

## **Attachment A**

### **Rail Companies**

Staff Investigation - 2008 Annual Reports

June 9, 2009

#### **Purpose**

The purpose of this investigation is to determine if Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association, Kettle Falls International Railway, LLC, and The Northwest Railway Museum are in violation of Washington Administrative Code (WAC) 480-62-300. WAC 480-62-300 requires rail companies to furnish annual reports to the Washington Utilities and Transportation Commission (commission) no later than May 1 each year.

#### **Background**

This investigation was prompted by commission staff's yearly review of annual reports for rail companies registered in the state of Washington.

On March 2, 2009, the commission mailed 2008 Annual Report forms and 2009 Regulatory Fee packets to rail companies registered in Washington State. A letter from Executive Secretary and Director David W. Danner instructed companies to file annual reports and pay regulatory fees by May 1, 2009.<sup>1</sup> Further, the letter stated failure to file the annual report by May 1 could result in a penalty. Those companies wishing to request an extension to file the annual report were asked to do so prior to May 1, providing a reason for the requested extension. None of the three companies listed above requested an extension.

On March 27, 2009, the commission mailed a notice to all rail companies reminding them that 2008 annual reports and 2009 regulatory fees were due by May 1, 2009<sup>2</sup>.

#### **Investigation**

Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association, Kettle Falls International Railway, LLC, and The Northwest Railway Museum failed to file the 2008 annual report by the May 1 deadline.

On May 15, 2009, the commission sent letters to those companies that had not yet filed their reports. The letter, signed by David Danner, gave an extension to companies to file their reports by May 29, 2009<sup>3</sup>. In the letter, Mr. Danner stated the commission would not seek a fine from any company with a report received by the commission postmarked no later than May 29.

#### **Recommendation:**

Staff recommends the commission penalize Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association, Kettle Falls International Railway, LLC, and The Northwest Railway Museum \$100 each for failure to file the 2008 annual report in accordance with WAC 480-62-300.

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<sup>1</sup> See Appendix A for a copy of the March 2, 2009, letter sent to rail companies.

<sup>2</sup> See Appendix B for a copy of the March 27, 2009, reminder notice sent to rail companies.

<sup>3</sup> See Appendix C for a copy of the May 15, 2009, letter sent to delinquent rail companies.

## APPENDIX A

March 2, 2009

Dear Regulated Company:

**Subject: Your 2008 Annual Report and 2009 Regulatory Fees are Due May 1, 2009**

State law requires you to file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission (UTC).

### **What is required of me?**

By May 1, you must:

- Complete and file one paper copy or electronic version of the enclosed 2008 annual report form
- Pay your 2009 regulatory fees

### **What happens if I do not file a completed annual report by May 1?**

If you do not file your company's annual report by May 1 commission staff will recommend a financial penalty between \$100 and \$800 depending on whether you have filed late in the past. If you have repeatedly filed late, the penalty will be higher. Staff will also recommend a \$100 financial penalty if your annual report is incomplete, *i.e.*, not signed or lacking requested information, even if it is filed on time. Staff may also recommend revocation of your authority to operate in Washington.

### **What happens if I do not pay my regulatory fees by May 1?**

If you do not pay your company's regulatory fee by May 1, you will incur:

- a 2 percent penalty on the amount due; and
- a 1 percent monthly interest charge on the unpaid balance.

### **May I request an extension of time if I am unable to file the annual report by May 1?**

Yes, however, you must make the request in writing, including a valid reason for the extension, no later than May 1. We will notify you whether your request is approved or denied. You will still be liable for penalty and interest payments if you fail to pay your regulatory fees by May 1. If you are late filing your annual report or fail to file, you could incur additional penalties.

### **May I designate any information that I submit in my annual report as confidential?**

Yes, however, you must meet two conditions. You may only request confidential treatment if your company is regulated under Title 80 RCW, that is, if you operate an electric, natural gas, telecommunications, or water company. Transportation companies, regulated under Title 81 RCW, may not request confidential treatment of documents because the authority for such treatment is found only in RCW 80.04.095. If a Title 81 company files their annual report or fee sheet as confidential, we will not treat it as confidential.

Second, you must follow the requirements for filing confidential documents in WAC 480-07-160. You may find this rule at the UTC Website, [www.utc.wa.gov](http://www.utc.wa.gov). Locate "Quick Links" on the right side of the home page then select "2008 annual reports."

**Please note:** The regulatory fee sheet portion of your report is not a confidential document and will not be accorded confidential treatment under the rule. We will not, however, disclose credit card information you list on the fee sheet.

**Where do I mail my completed annual report form and regulatory fee payment?**

Washington Utilities and Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

**May I file my report electronically?**

Yes. You may file your report from the UTC's Website – <http://utc.wa.gov>. From the home page, select the “document” tab at the top of the page and then locate and select “electronic filing” from the colored bar on the left side of the page. Alternatively you may go directly to the electronic filing page by entering <http://utc.wa.gov/e-filing> into your browser.

**Where may I obtain an electronic version of the annual report form?**

Forms are available on our website at [www.utc.wa.gov](http://www.utc.wa.gov). Locate “Quick Links” on the right side of the home page and then select “2008 annual reports.”

**Is there additional information I should file?**

- If you are a gas distribution company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 2.
- If you are an electric company, please also file both a paper and electronic a copy of your Federal Energy Regulatory Commission Form 1.
- If you are a class 1 Railroad, please also file a copy of your Surface Transportation Board Form R-1 - including statistics specific to the state of Washington.

**Who do I contact if I have questions?**

You may call 360-664-1152 or e-mail us at: [annualreports@utc.wa.gov](mailto:annualreports@utc.wa.gov). If you need this letter or an annual report form in an alternate format, please call 360-664-1133. The TTY Toll Free phone number is 1-800-416-5289.

Sincerely,

David W. Danner  
Secretary

Enclosures

## APPENDIX B

### **Reminder!** **Annual Reports and Regulatory Fees are due May 1, 2009**

On February 27, we sent you a 2008 annual report form and 2009 regulatory fee form. This is just a friendly reminder that your company's completed annual report and payment of your regulatory fees are due, postmarked, no later than May 1.

If you already mailed your annual report and regulatory fees, **thank you!** Please disregard this notice. If you have not yet filed, please be sure not to miss this deadline

You may mail your completed annual report form and regulatory fee payment to:

Washington Utilities and Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

You may also file your report electronically via the UTC's Web filing portal. From the UTC's home page, [www.utc.wa.gov](http://www.utc.wa.gov), select the "document" tab at the top of the page and then locate and select "electronic filing" from the colored bar on the left side of the page. Alternatively you may go directly to the electronic filing page by entering <http://utc.wa.gov/e-filing> into your browser.

You may obtain an electronic version of the annual report and regulatory fee sheet at our Website; locate "Quick Links" on the homepage and then select "2008 annual reports".

If you fail to pay your regulatory fee or file your company's completed annual report, postmarked by May 1, UTC staff will recommend the commission issue a financial penalty. Staff may also recommend that the commission cancel your authority to operate in Washington.

Please don't let either happen. If you have questions about your report or fee or need assistance, please contact me at 360-664-1152 or e-mail me at [rcarnes@utc.wa.gov](mailto:rcarnes@utc.wa.gov).

Sincerely,



Rae Lynn Carnes,  
Revenue Accountant

## APPENDIX C

May 15, 2009

Attention:

Your annual report to the Utilities and Transportation Commission (commission) was due by May 1 as required by law. You are now subject to enforcement action by the commission, including financial penalties. This letter tells you what you can do to avoid this. **If you have already submitted your annual report, please disregard this notice.**

Commission staff mailed you a 2008 annual report form and fee calculation sheet on February 29, 2009. On March 27, 2009, staff mailed a reminder to file your report and pay your fees. Commission records indicate that you have not yet filed the completed report form.

**Commission staff will file for enforcement action against your company unless your completed report is received postmarked no later than May 30.** Enforcement action in this matter may include penalties of up to \$100 for each day it is late and revoke your registration. If your annual report was late last year and you received a penalty, the penalty this year will be incrementally higher.

If the commission receives your report **postmarked no later than May 29**, commission staff will not seek a fine or move to revoke your registration.

Annual report forms are available on the commission's Web site at [www.utc.wa.gov](http://www.utc.wa.gov). If you have questions or require additional information, please contact Sheri Hoyt, Compliance Investigator, at (360) 664-1149 or [shoyt@utc.wa.gov](mailto:shoyt@utc.wa.gov).

Sincerely,



David W. Danner  
Executive Director and Secretary