

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

BALLARD TERMINAL RAILROAD
COMPANY

in the amount of \$1,000

DOCKET TR-170553

ORDER 01

DENYING MITIGATION

BACKGROUND

- 1 On February 28, 2017, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all railroad companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by May 1, 2017, 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 Ballard Terminal Railroad Company (Ballard Terminal or Company) did not file an annual report on May 1, 2017, and had not made that filing by May 15. On July 6, 2017, the Commission assessed a penalty of \$1,000 against Ballard Terminal, calculated as \$100 per business day from May 1 to May 15.
- 3 On July 12, 2017, Ballard Terminal filed a complete annual report and paid its regulatory fee. On July 20, the Company responded to the Commission's penalty assessment, admitting the violations and requesting mitigation based on the written information provided. In its response, the Company states, "... we never received any paper returns to be prepared for 2016 nor any email notification. It appears you had an out of date email address ... and thus we were not made aware of the ability to access the 2016 return template online ... For a small business like ours, this fine is a financial burden."
- 4 On August 7, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. The penalty assessment notified the Company that mitigation would only be granted if the Company could demonstrate that the violations occurred due to circumstances beyond its control. Because Ballard Terminal failed to identify any such circumstances, Staff does not support the Company's request. Due to the Company's financial status, however, Staff recommends the

Commission suspend a \$500 portion of the penalty on the condition the Company files its 2017 annual report no later than May 1, 2018.

DISCUSSION

- 5 WAC 480-62-300 requires railroad companies to file annual reports by May 1 of each year. Companies are responsible for complying with their legal obligations, and the Company should not rely on reminders from the Commission to ensure compliance.
- 6 We agree with Staff that mitigation of the penalty is not appropriate in the circumstances presented here. The penalty assessment advised the Company that a request for mitigation will only be granted if the violations occurred due to circumstances beyond its control.¹ Ballard Terminal's explanation for its late filing – that it did not receive an annual report form from the Commission – is expressly identified in the penalty assessment as an unacceptable basis for mitigation. Accordingly, we find that Ballard Terminal failed to demonstrate that the violations occurred due to circumstances beyond its control, and conclude that its request for mitigation should be denied.
- 7 Finally, we decline to adopt Staff's recommendation to suspend a portion of the penalty. Ballard Terminal has failed to timely file its annual reports for three of the last four reporting years. In 2015 and 2014, the Company received penalties of \$200 and \$250, respectively. We find that the Company's history of noncompliance demonstrates a pattern of behavior that is likely to continue absent an escalated penalty.
- 8 To reduce the financial impact of the penalty, the Company may work with Staff to establish mutually agreeable payment arrangements.

¹ Those circumstances include, but are not limited to: death or serious illness of the person responsible for filing the report, or a member of that person's immediate family; destruction by fire or other casualty of the company's place of business or business records; or an act of fraud, embezzlement, theft, or conversion on the part of an employee. Circumstances that do not qualify as an acceptable basis for requesting mitigation include: financial hardship; a misunderstanding or lack of knowledge of Commission rules; failure to receive an annual report form from the Commission; mistakes or misconduct on the part of an employee; employee termination or turnover; personal events such as weddings or graduation ceremonies; and vacations or business trips.

ORDER

THE COMMISSION ORDERS:

- 9 (1) Ballard Terminal Railroad Company's request for mitigation of the \$1,000 penalty is DENIED.
- 10 (2) Ballard Terminal Railroad Company must either pay the \$1,000 penalty or file jointly with Staff a proposed payment arrangement no later than September 19, 2017.
- 11 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 September 5, 2017.

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.