

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-171021

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Staff) and BNSF Railway Company (BNSF) have settled all issues in Docket TR-171021, which concerns BNSF's compliance with an incident reporting regulation. This Narrative explains the parties' settlement agreement (Agreement) and is intended to provide the evidentiary basis necessary for Commission approval of the Agreement. Nothing in this Narrative modifies any of the terms of the Agreement.

II. PROPOSAL FOR REVIEW

2 The parties contend that a formal settlement hearing and the opportunity for public comment are unnecessary in this case because of the limited scope of the incident, the prompt clean-up on the day of the occurrence, and BNSF's responsiveness and cooperation, as described below. *See* WAC 480-07-740(d). The parties agree that this Narrative, together with all previously docketed materials, supports full Commission approval of the Agreement under WAC 480-07-750. If the Commission requires further evidentiary support, the parties will

present one or more witnesses each to testify in support of the Agreement and to answer questions concerning its terms, costs, and benefits. *See* WAC 480-07-740(2)(b).

III. APPLICABLE LAW

3 Railroad companies that are subject to the Commission's jurisdiction must notify the Commission's designee (the Washington state emergency operations center's 24-hour duty officer), by telephone, of "any event connected to the operation of the railroad company that results in the . . . [r]elease of any hazardous material." WAC 480-62-310(1). The report "must be made by the railroad company within thirty minutes of when it learned of the event." WAC 480-62-310(2).

IV. AGREED STATEMENT OF THE CASE

4 On January 30, 2018, the Commission, acting through its Staff, filed a formal complaint against BNSF alleging that BNSF committed one violation of WAC 480-62-310 in connection with the release of an estimated one gallon of gasoline at one of its facilities on September 1, 2017. Staff alleged that BNSF did not make a telephone report to the emergency operations center (EOC) regarding the hazardous material release for approximately five and a half hours after first learning of the incident. A more detailed description of Staff's allegations appears in Staff's publicly docketed investigation report (Report). Below is an agreed summary of the material facts.

5 On September 1, 2017, the EOC notified the Commission that BNSF had reported a hazardous material incident report of gasoline leaking from a loose valve on tank car UTLX201722 in the company's Spokane railyard. According to the report, gasoline traveled to the exterior of the tank car and onto some railroad ties. The EOC recorded BNSF's report

that the event occurred at approximately 5:00 p.m., and the time reported to the EOC by BNSF is shown as 10:34 p.m. Report at 6 and 14 (Appendix B).

6 Staff received an Emergency Response Incident Report for the incident from BNSF indicating that the initial inspection of the top of the tank car showed gasoline leaking from the housing cover. Upon further inspection, the gasoline was observed to be leaking from between the flanges on the unloading valve and the flange bolts were found to be less than finger tight. Report at 6 and 15 (Appendix C).

7 On October 2, 2017, Staff communicated with Patrick Brady, BNSF's General Director of Hazardous Materials Safety, about the September 1 incident. Mr. Brady stated that the hazardous material response and mitigation were handled in a safe and timely manner but a miscommunication between two BNSF managers resulted in one manager thinking the other one made a timely notification to the EOC. Mr. Brady indicated that both managers are aware of the reporting requirement and are aware of their mistake. Report at 6 and 20 (Appendix D). BNSF reported the incident, including the approximate time of discovery, on discovering the miscommunication.

8 After the Commission filed its complaint, the parties engaged in settlement negotiations and BNSF agreed to pay the maximum allowable penalty as further described below. Both parties were represented by counsel during the settlement process, and negotiations between the parties proceeded in good faith.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

9 The parties agreed to the following terms:

10 Admission of liability: BNSF admits that although clean-up of the hazardous material release was promptly addressed on the day of the incident, the company did not make a

telephone call to the EOC pursuant to the UTC rule for approximately five and a half hours after BNSF first learned of the incident. This delayed reporting was a violation of WAC 480-62-310, which requires railroad companies subject to the Commission's jurisdiction to report such events to the EOC within thirty minutes of learning of the event.

11 Monetary penalty. The Commission will impose a total penalty of \$1,000, the maximum penalty allowed under RCW 81.04.380. In the interest of resolving this matter without further undue burden and expense, BNSF will pay the \$1,000 within 30 days after the effective date of the Agreement.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

12 The parties contend that their Agreement advances the public interest. If the Commission adopts the Agreement, the parties will benefit by avoiding the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. The public will similarly benefit if this dispute concludes without further expenditure of public resources.

13 The recommended penalty is consistent with the Commission's enforcement policy adopted in Docket A-120061. That policy specifies that any penalty amount should depend on, among other factors, the seriousness of the violation and any history of similar violations.

14 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. A Commission rule states, "The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest" WAC 480-07-700. For the reasons stated above, the parties contend that their Agreement is lawful and consistent with the public interest.

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VII. CONCLUSION


15 The parties respectfully request that the Commission approve the Agreement in full.

DATED this 11th day of April 2018.


WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY

ROBERT W. FERGUSON
Attorney General



JULIAN H. BEATTIE, WSBA #45586
Assistant Attorney General
Attorney for Commission Staff
Phone: (360) 664-1225
Email: julian.beattie@utc.wa.gov



CHRISTOPHER EMCH, WSBA #26457
FOSTER PEPPER PLLC
Phone: (206) 447-4400
Email: chris.emch@foster.com
BROOKE KUHL, WSBA #35727
BNSF RAILWAY COMPANY
Phone: (406) 256-4293
Email: brooke.kuhl@bnsf.com
Attorneys for BNSF Railway Company