

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-160912

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-160912, which concerns BNSF's compliance with a statewide 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 after Staff notified BNSF's primary point of contact for such incidents, 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 August 15, 2016, the Commission, acting through its advocacy Staff, filed a formal complaint against BNSF alleging that BNSF committed seven violations of WAC 480-62-310 in connection with the release of an estimated one gallon of diesel fuel at one of its facilities on March 16, 2016. In short, Staff alleged that BNSF failed to make a telephone report to the EOC regarding the release of the hazardous material for seven days after first learning of the incident. A more detailed description of Staff’s allegations appears in Staff’s publicly-docketed investigation report (Report).

5 The Report stated that on March 16, 2016, a Commission inspector noticed leaking fuel from a manway cover on a tank car, notified a local BNSF employee of the incident, and observed the tank car being repaired and cleaned that same day as the Commission inspector concluded his inspections. Report at 6 and 15 (Appendix B). That Report further noted that on March 23, 2016, Staff contacted BNSF’s Director of Hazardous Materials (Commission Enforcement Staff’s designated point of contact at BNSF for questions and

concerns related to hazardous material incidents), and provided information about the March 16 incident. Report at 6. That same day, BNSF contacted the EOC and reported the incident. *Id.* In addition, the Report noted that BNSF provided additional support and counseling on proper spill notification procedures and the company's policy to the local employee initially contacted by the Commission inspector, and that BNSF reiterated its spill reporting policy and procedure to BNSF's operations employees in its Northwest Division. Report at 7. The Report further noted that Staff appreciated BNSF's responsiveness and cooperation. *Id.* The Report also contained EOC's confirmation of BNSF's telephone call to the EOC on March 23, 2016, which noted a leak of an estimated one gallon of diesel fuel due to a loose manway bolt on top of a tank car, that the shipper sent a responder to secure the bolt and clean the car, and that the information was passed to the Department of Ecology and local authorities. Report at 28 (Appendix E).

6 After Staff 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

7 The parties agreed to the following terms:

8 Admission of liability: BNSF admits that although clean up was promptly addressed on the day of the incident, it did not make a telephone call to the EOC until seven days after one of BNSF's employees first learned of the incident. This is 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. Each day the violation continued is considered a separate and distinct violation. (RCW 81.04.380).

9 Monetary penalty. The Commission will impose a total penalty of \$7,000, the maximum penalty allowed by law. In the interest of resolving this matter without further undue burden and expense, BNSF will pay the \$7,000 within 30 days after the effective date of the Agreement.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

10 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.

11 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.

12 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.

//

//

//

VII. CONCLUSION

13

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

DATED this 7th day of December 2016.

BNSF RAILWAY COMPANY



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

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General



JEFF ROBERSON, WSBA #45550
Assistant Attorney General
Attorney for Commission Staff
Phone: (360) 664-1188
Email: jroberso@utc.wa.gov