

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASHINGTON & IDAHO RAILWAY  
INC.,

Respondent.

DOCKET TR-143978

NARRATIVE SUPPORTING  
SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to  
WAC 480-07-740(2)(a) on behalf of Washington & Idaho Railway Inc. (“WIR” or the  
“Company) and staff of the Washington Utilities and Transportation Commission (“Staff”)  
(hereinafter collectively referred to as “Parties” and individually as a “Party”). This  
Narrative summarizes the Settlement Agreement (“Settlement”); it does not modify any  
terms of the Settlement.

**II. PROPOSALS FOR REVIEW PROCEDURE**

2 The Parties do not request a hearing to present the Settlement. The Parties instead  
respectfully request a streamlined review of the proposed Settlement on a paper record. If  
the Commission requires a hearing, the Parties are prepared to present one or more witnesses  
to testify in support of the Settlement.

**III. SCOPE OF THE UNDERLYING DISPUTE**

3 The underlying dispute concerns WIR’s failure to file annual reports and pay  
regulatory fees for the 2012 and 2013 reporting years. Every railroad company that operates

in Washington State must file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission (“Commission”) each year by May 1. WAC 480-62-300.

4           WIR did not file an annual report or pay regulatory fees, as required by WAC 480-62-300, for the 2012 and 2013 reporting years. In 2013 and 2014, the Commission assessed a penalty against the Company for violating the filing and regulatory fee requirements. The Company paid both penalty assessments, but did not file its annual report or pay its regulatory fees for either the 2012 or 2013 reporting years.

5           On October 15, 2014, the Commission mailed a Notice of Noncompliance to the Company detailing its failure to comply with WAC 480-62-300. The notice stated that the Company had until November 15, 2014, to file its delinquent reports and pay its delinquent regulatory fees to avoid enforcement action. The Commission did not receive the delinquent filings, fees, or any other response to the notice.

6           On May 28, 2015, the Commission served WIR with a Complaint for Penalties and Notice of Brief Adjudicative Proceeding, set for July 28, 2015, at 9:30 a.m. (the “Complaint”). The Complaint alleged that WIR committed 1,360 separate and distinct violations of WAC 480-62-300 - 680 violations for failing to file its 2012 and 2013 annual reports, and another 680 violations for failing to pay its 2012 and 2013 regulatory fees.

7           The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. On July 23, 2015, Staff notified the Commission that the Parties had reached a settlement in principle, and requested, on behalf of the Parties, that the Commission suspend the procedural schedule to provide time to memorialize their agreement. The Commission granted the request on July 23, 2015, and directed the Parties to file by August 21, 2015,

either a settlement agreement and supporting documentation or a status report on their progress.

8           The Parties' full settlement agreement is reflected in the Settlement Agreement, which was entered into voluntarily to resolve all matters that were in dispute.

#### **IV. SUMMARY OF PROPOSED SETTLEMENT**

9           The Settlement resolves all of the issues in dispute between the Parties. WIR admits that it committed 1,360 violations of WAC 480-62-300, as alleged in the Complaint. The Parties agree that WIR shall file its annual reports and pay its regulatory fees for the 2011, 2012, 2013, and 2014 reporting years—WIR already filed these annual reports, and has an outstanding balance for its past due regulatory fees of \$108,405.77. The Parties agree that the Commission should assess WIR with a total penalty assessment of \$136,000, and that WIR shall pay \$34,000 of the penalty assessment, and that the remaining \$102,000 shall be suspended for, and waived after June 30, 2017, provided that the Company: (1) meets its annual reporting and regulatory fee requirements for the 2015 and 2016 reporting years, and (2) pays its outstanding balance pursuant to an agreed upon payment schedule. Finally, the Parties agree that WIR has a total outstanding balance of \$142,405.77, which consists of \$108,405.77 for its past due regulatory fees, and an additional \$34,000 penalty assessment.

#### **V. STATEMENT OF THE PARTIES THAT THE SETTLEMENT AGREEMENT SATISFIES THEIR INTERESTS AND THE PUBLIC INTEREST**

10           The Settlement represents a compromise of the positions of the Parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, the public interest is served by concluding this dispute without the further expenditure of public resources on litigation expenses.

11           The Settlement satisfies both Staff's interest and the public interest because WIR admits to its violations, and commits to filing all of its past due annual reports and paying all of its past due regulatory fees. The Commission will receive the \$34,000 penalty amount without expending further resources on litigation. Further, the \$102,000 suspended penalty amount provides a significant incentive for the Company to meet its annual reporting and regulatory fee requirements going forward.

12           The Settlement also satisfies the public interest and the interests of the Parties because WIR has taken steps to conform to state laws and regulations. The Company has engaged in technical assistance discussions with Staff to ensure it understands its annual reporting and regulatory fee obligations. The Company has already filed all of its past due reports. It has also restructured its ownership and hired a new General Manager to help ensure that the Company remains in compliance with state laws and Commission rules.

13           For these reasons, the Settlement as a whole is in the public interest, as well as the interests of the Parties. Staff and WIR, therefore, recommend that the Commission approve the Settlement in its entirety.

## **VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT**

14           In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

VII. CONCLUSION

15 Because the Parties have negotiated a compromise on all of the issues in this dispute and because the Settlement is in the public interest, the Parties request that the Commission issue an order approving the Settlement in full.

Respectfully submitted this 21 day of August, 2015.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

WASHINGTON & IDAHO RAILWAY  
INC.

ROBERT W. FERGUSON  
Attorney General



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Counsel for the Utilities and  
Transportation Commission Staff

DANIEL DEGON  
General Manager for Washington & Idaho  
Railway Inc.

Dated: Aug. 21, 2015

Dated: \_\_\_\_\_, 2015

VII. CONCLUSION

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Respectfully submitted this \_\_\_\_\_ day of August, 2015.


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