

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

EASTERN WASHINGTON GATEWAY
RAILROAD

Respondent.

DOCKET TR-152341

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 Eastern Washington Gateway Railroad (“EWGRR” 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 EWGRR’s failure to pay regulatory fees for 2015. 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 EWGRR filed its 2014 annual report and attempted to pay its 2015 regulatory fees of \$1,159.07, as required by WAC 480-62-300, but the Company’s ACH payment transaction was rejected by the Company’s banking institution. Consistent with WAC 480-62-300 and with notice to the Company sent on May 5, 2015, a late payment fee of 2% was applied to the Company’s account because a regulatory fee was not received by May 1. With notice to the Company sent on July 28, 2015, this amount accrued interest at the rate of 1% per month for every month that the balance remained unpaid.

5 On December 22, 2015, the Commission served EWGRR with a Complaint for Penalties and Notice of Brief Adjudicative Proceeding, set for January 19, 2016, at 9:30 a.m. (the “Complaint”). The Complaint alleged that EWGRR committed 145 separate and distinct violations of WAC 480-62-300 for failing to pay regulatory fees for 2015.

6 The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. On January 11, 2016, Staff notified the Commission that the Parties had reached a settlement, and requested, on behalf of the Parties, that the Commission suspend the procedural schedule to provide time to memorialize the agreement. The Commission granted the request on January 12, 2016, and directed the Parties to file a settlement agreement with supporting documentation or a status report on their progress by Wednesday, January 20, 2016.

7 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

8 The Settlement resolves all of the issues in dispute between the Parties. EWGRR admits that it committed 145 violations of WAC 480-62-300, as alleged in the Complaint. The Parties agree that the Commission should require EWGRR to pay its regulatory fees for 2015, the late payment fee of 2% that was applied to the Company's account, and also a portion of the 1% monthly interest that has accrued per month since May of 2015 for a total amount of \$1,193.84. EWGRR has already submitted payment to the Commission in this amount as requested by Staff. The Parties agree that no further penalty assessment should be assessed against the Company.

9 The Parties agree that the settlement provisions outlined in Paragraph 8 are justified in consideration of: the small amount of regulatory fees that the Company owed for 2015; the Company's good faith attempt prior to May 1, 2015 to pay the regulatory fees before the deadline for submitting such payment; the Company's cooperative action to become fully compliant with the Commission's 2015 regulatory fee requirements through submission of the requested amount to Staff; this being the first Complaint against the Company for failure to pay regulatory fees; and, the Company's encouraging engagement with Staff after the serving of the Complaint seeking to resolve this matter informally without any further need for litigation or litigation costs to either of the Parties or to the Commission.

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 EWGRR admits to its violations, commits to paying all of its past due regulatory fees, and has already submitted such payment in the amount requested by Staff.

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

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

13 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

14 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 20th day of January, 2016.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

EASTERN WASHINGTON GATEWAY
RAILROAD

ROBERT W. FERGUSON
Attorney General



ANDREW J. O'CONNELL
Assistant Attorney General

TOM KLIMCZAK
Treasurer

Counsel for the Utilities and
Transportation Commission Staff

Eastern Washington Gateway Railroad

Dated: Jan. 20, 2016

Dated: _____, 2016

11 The Settlement satisfies both Staff's interest and the public interest because EWGRR admits to its violations, commits to paying all of its past due regulatory fees, and has already submitted such payment in the amount requested by Staff.

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

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

13 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

14 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 ____ day of January, 2016.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General

ANDREW J. O'CONNELL
Assistant Attorney General

EASTERN WASHINGTON GATEWAY
RAILROAD



TOM KLIMCZAK
Treasurer

Counsel for the Utilities and
Transportation Commission Staff

Eastern Washington Gateway Railroad

Dated: _____, 2016

Dated: JAN 19, 2016