

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

EASTERN WASHINGTON GATEWAY  
RAILROAD

Respondent.

DOCKET TR-152341

COMPLAINT FOR PENALTIES;  
NOTICE OF BRIEF ADJUDICATIVE  
PROCEEDING

(Set for January 19, 2016, at 9:30 a.m.)

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its Staff, alleges as follows:

**I. BACKGROUND**

2 According to Commission records, Eastern Washington Gateway Railroad (the Company) has not paid its regulatory fees, as required by WAC 480-62-300, for the 2014 reporting year.

3 On April 30, 2015, an ACH payment transaction was made to the Commission via the Commission's website for the 2014 annual report regulatory fees by the Company in the amount of \$1,159.07, but this payment was rejected by the Company's banking institution as "No Account/Unable to Locate Account."

4 On May 5, 2015, the Commission was notified that the ACH payment was rejected by the Company's banking institution. That same day, the Commission mailed a Notice of Rejected ACH Payment to the Company detailing the rejection of payment. Consistent with WAC 480-62-300, the notice stated that a late payment fee of 2% was applied to the Company's account because a regulatory fee was not received by May 1. The Company's total fee due to the Commission was updated and included in the notice. The Company was also informed that this amount would accrue interest at the rate of 1% per month for

every month that the balance remained unpaid. The Commission has not received the delinquent fees or any other response to this notice.

5 On July 28, 2015, the Commission mailed a Notice of Noncompliance to the Company detailing the Company's failure to comply with WAC 480-62-300. The notice stated that the Company had filed its 2014 annual report, but had failed to pay the regulatory fees, late payment fees, and interest owed. The notice informed the Company of the accrual of penalties that could be assessed from a continuing violation. The Commission has not received the delinquent fees or any other response to this notice.

6 Commission Staff (Staff) alleges that the Company violated multiple state laws and Commission rules, as described below.

**II. PARTIES**

7 The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including railroad companies, under Title 81 RCW.

8 Eastern Washington Gateway Railroad (the Company) is a railroad company subject to regulation by the Commission under Title 81 RCW.

**III. JURISDICTION**

9 The Commission has jurisdiction over this matter pursuant to RCW 81.01.010, RCW 81.04.110, RCW 81.04.380, RCW 81.04.405, Title 81.24 RCW, Chapter 480-07 WAC, and Chapter 480-62 WAC.

**IV. CAUSE OF ACTION**

10 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 – 9 above.

11 Under RCW 81.24.010, public service companies, including railroad companies, are required to pay regulatory fees annually on or before the date specified by the Commission for filing annual reports.

- 12 WAC 480-62-300(2) provides, in part: “One copy of the completed annual report, along with the regulatory fee, must be submitted to the commission no later than May 1 of each year.”
- 13 WAC 480-62-300(3)(e) provides, in part: “If a company does not pay its regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.
- 14 RCW 81.04.380 provides, in part: “Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of [Title 81 RCW], so long as the same shall be and remain in force.”
- 15 RCW 81.04.380 further provides that every violation of state laws and Commission rules is a separate and distinct offense, and “in case of a continuing violation every day's continuance . . . [is] a separate and distinct offense.”
- 16 The Company violated WAC 480-62-300 by failing to pay its regulatory fee for the 2014 reporting year. Noncompliance with WAC 480-62-300 beyond May 1 is a continuing violation. Thus, each business day after May 1, 2015, in which the Company failed to pay its regulatory fee is a separate and distinct violation.
- 17 Staff alleges that the Company committed 145 violations of WAC 480-62-300 by failing to pay its regulatory fees for the 2014 reporting year.

## V. APPLICABLE LAW

- 18 Under RCW 81.04.380, the Commission may penalize a public service company that violates any provision of Title 81 RCW or any rule of the Commission up to \$1,000 for each and every offense. Under the statute, every violation is considered a separate and distinct offense, and, in the case of a continuing violation, every day's continued violation is deemed to be a separate and distinct offense.

## VI. REQUEST FOR RELIEF

- 19 Staff requests that the Commission find that the Company committed a total of 145 violations of state laws and Commission rules as set forth in the allegations above.

20 Staff requests that the Commission impose monetary penalties on the Company under RCW 81.04.380 of up to \$1,000 for each violation.

21 Staff further requests that the Commission order such other or further relief as appropriate under the circumstances.

### VII. PROBABLE CAUSE

22 Based on a review of Commission records, and consistent with RCW 81.01.010, RCW 80.01.060, and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

### VIII. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

23 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate for determining whether the alleged violations occurred and, if so, the appropriate remedy for those violations.

24 **THE COMMISSION GIVES NOTICE that it will hold a brief adjudicative proceeding in this matter at 9:30 a.m., January 19, 2016, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

25 The record in this case will consist of any documents regarding the matter that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.

26 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Olympia, Washington, copies of documents in the current record for use by the parties or others who may want to review them.

27 Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents by **5:00 p.m., January 12, 2016**, and bring an original and three (3) copies to the hearing. Filing shall be in accordance with WAC 480-07-140 and -145.

28 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

29 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

30 The names and mailing addresses of all known parties and their known representatives are as follows:

Complainant: Washington Utilities and  
Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
PO Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

Representative: Andrew J. O'Connell  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
PO Box 40128  
Olympia, WA 98504-0128  
(360) 664-1192

Respondent: Eastern Washington Gateway Railroad  
809 Madison Avenue  
Davenport, WA 99122  
(509) 228-8979

31 Rayne Pearson is appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, and will preside at the hearing.

32 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective December 22, 2015.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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**GREGORY J. KOPTA**  
Director, Administrative Law Division

Inquiries may be addressed to:

Executive Director and Secretary  
Washington Utilities and  
Transportation Commission  
Richard Hemstad Building  
1300 S. Evergreen Park Drive S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

**NOTICE**

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Steven V. King, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired: (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter?

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be contacted if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: (\_\_\_\_\_) \_\_\_\_\_