

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty)	DOCKET TR-090940
Assessment Against)	
)	ORDER 01
BATTLE GROUND, YACOLT &)	
CHELATCHIE PRAIRIE)	INITIAL ORDER GRANTING
RAILROAD ASSOCIATION)	LEAVE TO WITHDRAW
)	REQUEST FOR HEARING;
In the Amount of \$100)	CANCELLING BRIEF
)	ADJUDICATION; CLOSING
)	DOCKET
.....)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would grant Battle Ground, Yacolt & Chelatchie Prairie Railroad Association’s request for leave to withdraw its request for hearing because the association elected to pay the assessed penalty.*

DISCUSSION

2 **PENALTY ASSESSMENT:** On June 26, 2009, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment TR-090940 against Battle Ground, Yacolt & Chelatchie Prairie Railroad Association (Railroad Association) in the amount of \$100, alleging one violation of WAC 480-62-300 which requires rail companies to file annual reports with the Commission by May 1 each year.

3 **REQUEST FOR HEARING:** On July 10, 2009, the Railroad Association filed with the Commission a Request for Hearing. The Railroad Association stated that it had not received any mailing from the Commission or Executive Secretary and Director.

4 On July 16, 2009, Commission Staff (Staff) filed a Response to the Railroad Association's Request for Hearing.¹ Staff did not oppose the Railroad Association's Request for Hearing, but did dispute the Railroad Association's contention that the alleged violation had not occurred.

5 **NOTICE OF BRIEF ADJUDICATION:** On July 22, 2009, the Commission gave notice to the parties that it would conduct a brief adjudicative proceeding on August 18, 2009.

6 **MOTION FOR LEAVE TO WITHDRAW:** On August 10, 2009, the Railroad Association filed a letter with the Commission enclosing a check for \$100 in full payment of the penalty assessed and requesting cancellation of the scheduled hearing. The Commission, exercising its discretion to liberally construe pleadings, treats the Railroad Association's letter as a motion for leave to withdraw its earlier request for a hearing. On August 12, 2009, Commission Staff filed a letter with the Commission stating that Staff does not oppose cancellation of the hearing.

7 **COMMISSION DECISION:** The Commission finds that the Railroad Association has paid the assessed penalty of \$100 and no longer requests a hearing. In addition, the Railroad Association has filed its 2008 annual report and paid its 2009 regulatory fees, and is no longer in violation of WAC 480-62-300.

ORDER

THE COMMISSION ORDERS THAT:

8 (1) The Railroad Association's request for leave to withdraw is granted and the brief adjudicative proceeding in this matter scheduled for August 18, 2009, is cancelled.

¹ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. RCW 34.05.455.

- 9 (2) Docket TR 090940 is closed.

DATED at Olympia, Washington, and effective August 13, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

On copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **3** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250