

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

EASTERN WASHINGTON GATEWAY
RAILROAD

Respondent.

DOCKET TR-152341

SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Settlement Agreement (“Settlement”) is entered into by the parties in this case:
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”).

2 This Settlement is a “full settlement” as the term is defined in WAC 480-07-730(1)
because it is entered into by the Parties, and it resolves all issues raised in the above docket.

II. AGREED FACTS

3 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 an annual report and attempted to pay its regulatory fees of \$1,159.07,
as required by WAC 480-62-300, for 2015. On April 30, 2015, an ACH payment transaction
was made to the Commission via the Commission’s website for the Company’s 2015

regulatory fees, but this payment was rejected by the Company's banking institution as "No Account/Unable to Locate Account."

5 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.

6 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.

7 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 its 2015 regulatory fees.

8 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.

9 The Parties' full settlement agreement is reflected in this Settlement document, which was entered into voluntarily to resolve all matters that were in dispute. The Parties now wish to present their Settlement for the Commission's consideration and approval. This Settlement is filed in the interest of expediting the orderly disposition of this proceeding. The Parties understand that this Settlement is subject to Commission approval, and hereby respectfully request that the Commission issue an order approving this Settlement in its entirety. The Parties will jointly file supporting documentation, as required by WAC 480-07-740(2).

III. AGREEMENT

10 **Admission of Violations** – EWGRR admits that it committed 145 violations of WAC 480-62-300, as alleged in the Complaint.

11 **Past Due Regulatory Fees** – The Parties agree that EWGRR shall pay its regulatory fees for the 2015 reporting year plus 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. This amount has already been submitted by EWGRR at Staff's request.

12 **Monetary Penalty** – The Parties agree that the Commission should not assess EWGRR any further penalty. The Parties agree that no further penalty assessment is justified in this case when considering the small amount of regulatory fees that the Company owed for 2015, that the Company made a good faith attempt to pay the regulatory fees

before the deadline of May 1, 2015, that this is the first Complaint filed against the Company for failure to pay its regulatory fees, that the Company has now come into full compliance with the Commission's regulatory fees requirements by submitting the amount requested by Staff, and that the Company readily engaged with Staff after the filing of the Complaint to resolve this matter informally without any further litigation costs to either of the Parties or to the Commission.

IV. GENERAL PROVISIONS

13 The Parties agree that this Settlement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement is not binding unless and until accepted by the Commission.

14 The Parties agree that this Agreement promotes the public interest, and that it is appropriate for unconditional Commission acceptance under WAC 480-07-750.

15 The Parties agree to cooperate in submitting this Settlement promptly to the Commission for acceptance. The Parties agree to support adoption of this Settlement in proceedings before the Commission through testimony or briefing. No party to this Settlement or their agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement.

16 Nothing in this Settlement shall limit or bar any other entity from pursuing legal remedies against the Company or the Company's ability to assert defenses to such claims.

17 The Parties have entered into this Settlement to avoid further expense, inconvenience, uncertainty, and delay of continuing litigation. The Parties recognize that this Settlement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement shall not be

admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement or any Commission order fully adopting those terms.

18 The Parties have negotiated this Settlement as an integrated document to be effective upon execution and Commission approval. This Settlement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Settlement in its entirety.

19 The Parties may execute this Settlement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile or electronic mail are as effective as original documents.

20 The Parties shall take all actions necessary, as appropriate, to carry out this Settlement.

21 In the event that the Commission rejects or modifies any portion of this Settlement, each Party reserves the right to withdraw from this Settlement by written notice to the other Parties and the Commission. Written notice must be served within ten (10) business days of the Order rejecting part or all of this Settlement. In such event, no Party will be bound or prejudiced by the terms of this Settlement, and any Party shall be entitled to seek reconsideration of the Order.

22 Each person signing this Settlement warrants that he or she has authority to bind the Party that he or she represents.

Respectfully submitted this 20th day of January, 2016.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

EASTERN WASHINGTON GATEWAY
RAILROAD

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Attorney General



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Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

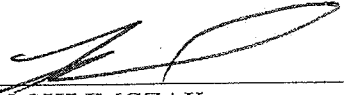
Dated: 1-20, 2016

TOM KLIMCZAK
Treasurer
Eastern Washington Gateway Railroad

Dated: _____, 2016

ANDREW J. O'CONNELL
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

Dated: _____, 2016



TOM KLIMCZAK
Treasurer
Eastern Washington Gateway Railroad

Dated: 1-19, 2016