

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TR-152341
TRANSPORTATION COMMISSION,)	
)	ORDER 01
Complainant,)	
)	
v.)	
)	
EASTERN WASHINGTON GATEWAY)	INITIAL ORDER APPROVING
RAILROAD)	SETTLEMENT AGREEMENT
)	
Respondent.)	
)	

BACKGROUND

- 1 On December 22, 2015, the Washington Utilities and Transportation Commission (Commission), issued a Complaint for Penalties and Notice of Brief Adjudicative Proceeding, set for January 19, 2016, at 9:30 a.m. (Complaint). The Complaint alleges Eastern Washington Gateway Railroad (EWGRR or Company) violated Washington Administrative Code (WAC) 480-62-300 a total of 145 times by failing to pay its 2015 regulatory fees.
- 2 On January 11, 2016, the Commission’s regulatory staff (Staff)¹ notified the Commission that the parties had reached a settlement in principle and requested the procedural schedule be suspended. On January 12, the Commission issued a notice granting the parties’ request. On January 20, Staff filed a settlement agreement on behalf of the parties (Settlement Agreement).

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

3 As part of the Settlement Agreement, the Company admits to each of the 145 violations of WAC 480-62-300 alleged in the Complaint. The Company agrees to pay, and has since paid, its regulatory fees for the 2015 reporting year, plus the late payment fee of 2 percent and a portion of the 1 percent monthly interest that has accrued since May 2015, for a total payment of \$1,193.84. The parties also agree the Commission should not assess any penalties given that the Company made a good faith effort to pay the regulatory fee before the deadline, the Company actively cooperated to resolve this matter, the Company has since come into compliance, and the regulatory fee is small.

4 Andrew J. O’Connell, Assistant Attorney General, Olympia, Washington, represents Staff. Tom Klimczak, Treasurer, Davenport, Washington, represents EWGRR.

DISCUSSION AND DECISION

5 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

6 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding.

7 EWGRR admits that its conduct violated WAC 480-62-300, and the Company has since come into compliance by paying its 2015 regulatory fee. The basis for the Settlement Agreement is consistent with the Commission's enforcement policy, which considers factors such as whether the violations were intentional, whether a company was cooperative and responsive and promptly corrected the violation, and the size of the company.² Here, the violation was unintentional. The Company was responsive to the Complaint and worked with Staff to resolve the underlying issues. In addition, the Company's revenue is relatively low. Finally, the Company timely filed its 2015 annual report and made a good faith attempt to pay its regulatory fees before the deadline. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 8 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 9 (2) No penalty is due.
- 10 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective January 22, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

NOTICE TO 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 ten (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 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.

One 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 **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

**Exhibit A
Settlement Agreement**