

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TR-143978
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 01
)	
v.)	
)	
WASHINGTON & IDAHO RAILWAY)	INITIAL ORDER APPROVING
INC.,)	SETTLEMENT AGREEMENT
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On May 29, 2015, the Washington Utilities and Transportation Commission (Commission), issued a Complaint for Penalties and Notice of Brief Adjudicative Proceeding, set for July 28, 2015, at 9:30 a.m. The Complaint alleges that Washington & Idaho Railway (WIR or Company) violated Washington Administrative Code (WAC) 480-62-300 a total of 1,360 times by failing to file an annual report and pay regulatory fees as required for the 2012 and 2013 reporting years.

- 2 On July 23, 2015, 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. That same day, the Commission issued a notice granting the parties’ request. On August 21, Staff filed a settlement agreement on behalf of the parties (Settlement Agreement).

- 3 As part of the settlement, the Company admits to each of the 1,360 violations of WAC 480-62-300 alleged in the Complaint. The Company agrees to file and pay, and has since filed and paid, annual reports for the 2010, 2011, 2012, 2013, and 2014 reporting years.²

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.

² On May 21, 2015, the Commission issued a penalty assessment in the amount of \$1,000 against WIR in Docket TR-150961 for failing to file its 2014 annual report by the May 1, 2015, deadline.

The parties agree that the Company's outstanding balance for its past due regulatory fees is \$108,405.77. The parties also agree that the Commission should assess a penalty of \$100 for each violation of WAC 480-62-300, for a total penalty of \$136,000. The parties agree that a \$102,000 portion of the penalty should be suspended until June 30, 2017, and then waived, provided the Company: 1) meets its annual reporting and regulatory fee requirements for the 2015 and 2016 reporting years, and 2) pays the remaining \$34,000 penalty and \$108,405.77 in outstanding regulatory fees, totaling \$142,405.77, according to the agreed payment schedule.

- 4 The parties agree that the \$142,405.77 in penalties and fees should be paid according to the following payment schedule: \$12,405.77 is due and payable no later than October 15, 2015; subsequent payments of \$6,500 each will be due and payable by the 25th day of each month, beginning November 25, 2015, and continuing until June 25, 2017. If the 25th day of the month happens to fall on a weekend or a Commission-recognized holiday, the parties agree that the payment will be due on the next business day the Commission is open. The parties agree that if the Company misses any payment due date, the suspended penalty amount and any remaining past due balance will immediately become due and payable. The parties agree that the payments will apply first to the Company's outstanding regulatory fees, then to the penalty.
- 5 Christopher Casey, Assistant Attorney General, Olympia, Washington, represents Staff. Daniel Degon, General Manager, Rosalia, Washington, represents WIR.

DISCUSSION AND DECISION

- 6 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 Company's 2014 annual report was filed as part of the settlement agreement in these dockets, and the \$1,000 penalty was paid in full on July 7, 2015.

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.

7 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. WIR admits that its conduct violated WAC 480-62-300, and has since come into compliance by filing its annual reports for the 2010, 2011, 2012, 2013, and 2014 reporting years. WIR also agrees to pay its past due regulatory fees according to the agreed payment schedule. The Settlement Agreement supports the Commission's goal of compliance by permitting the Company to pay a reduced penalty of \$34,000, and suspending, then waiving, the \$102,000 remainder of the penalty conditioned on the Company timely filing its annual reports and paying its regulatory fees for the 2015 and 2016 reporting years, making its payments according to the agreed payment schedule, and complying with the terms of the Settlement Agreement.

8 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Although the Company's history of compliance is poor, the risk of incurring the substantial suspended penalty should ensure timely filings going forward. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 9 (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.
- 10 (2) Washington & Idaho Railway Inc. is assessed a penalty of \$136,000, a \$102,000 portion of which is suspended, until June 30, 2017, and then waived, provided the Company files its complete annual report and pays its required regulatory fees no later than May 1, 2016, for the 2015 reporting year, and no later than May 1, 2017, for the 2016 reporting year. If Washington & Idaho Railway Inc. fails to file its complete annual report and pay its required regulatory fees by either May 1, 2016, or May 1, 2017, the \$31,500 suspended portion of the penalty will immediately become due and payable without further action by the Commission.

- 11 (3) The remaining \$34,000 portion of the penalty, along with the outstanding regulatory fee balance of \$108,455.70, is due and payable according to the following payment schedule: \$12,405.77 is due and payable no later than October 15, 2015; subsequent payments of \$6,500 each will be due and payable by the 25th day of each month, beginning November 25, 2015, and continuing until June 25, 2017. If the 25th day of the month happens to fall on a weekend or a Commission-recognized holiday, the payment shall be due on the next business day the Commission is open. If Washington & Idaho Railway Inc. misses any payment due date, the \$102,000 suspended penalty amount and any remaining past due balance will immediately become due and payable without further action by the Commission.
- 12 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective September 9, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

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