

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASHINGTON & IDAHO RAILWAY  
INC.,

Respondent.

DOCKET TR-143978

SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Settlement Agreement (“Settlement”) is entered into by the parties in this case:  
Washington & Idaho Railway Inc. (“WIR” 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 WIR did not file an annual report or pay regulatory fees, as required by WAC 480-  
62-300, for the 2012 and 2013 reporting years. In 2013 and 2014, the Commission assessed  
a penalty against the Company for violating the filing and regulatory fee requirements. The

Company paid both penalty assessments, but did not file its annual report or pay its regulatory fees for either the 2012 or 2013 reporting years.

5           On October 15, 2014, the Commission mailed a Notice of Noncompliance to the Company detailing its failure to comply with WAC 480-62-300. The notice stated that the Company had until November 15, 2014, to file its delinquent reports and pay its delinquent regulatory fees to avoid enforcement action. The Commission did not receive the delinquent filings, fees, or any other response to the notice.

6           On May 28, 2015, the Commission served WIR with a Complaint for Penalties and Notice of Brief Adjudicative Proceeding, set for July 28, 2015, at 9:30 a.m. (the “Complaint”). The Complaint alleged that WIR committed 1,360 separate and distinct violations of WAC 480-62-300 - 680 violations for failing to file its 2012 and 2013 annual reports, and another 680 violations for failing to pay its 2012 and 2013 regulatory fees.

7           The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. On July 23, 2015, Staff notified the Commission that the Parties had reached a settlement in principle, and requested, on behalf of the Parties, that the Commission suspend the procedural schedule to provide time to memorialize their agreement. The Commission granted the request on July 23, 2015, and directed the Parties to file by August 21, 2015, either a settlement agreement and supporting documentation or a status report on their progress.

8           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

9           **Admission of Violations** – WIR admits that it committed 1,360 violations of WAC 480-62-300, as alleged in the Complaint.

10           **Past Due Annual Reports and Regulatory Fees** – The Parties agree that WIR shall file its annual reports and pay its regulatory fees for the 2011, 2012, 2013, and 2014 reporting years. The Parties agree that WIR, as of the date of this Settlement, has filed its annual reports for the 2011, 2012, 2013 and 2014 reporting years. The Parties further agree that WIR's outstanding balance for its past due regulatory fees is \$108,405.77.

11           **Monetary Penalty** – The Parties agree that the Commission should assess WIR with a penalty in the amount of \$100 for each violation, for a total penalty of \$136,000. The Parties agree that WIR shall pay \$34,000 of the penalty assessment, which shall be added to its outstanding balance for past due regulatory fees, and that the remaining \$102,000 shall be suspended for, and waived after June 30, 2017, provided that the Company: (1) meets its annual reporting and regulatory fee requirements for both the 2015 and 2016 reporting years, and (2) pays its outstanding balance to the Commission pursuant to the agreed upon payment schedule described in the paragraph below. If the Company fails to meet either of these two conditions, the suspended penalty amount and any remaining past due balance shall become due and payable immediately.

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**Payment Schedule** – The Parties agree that WIR has a total outstanding balance of \$142,405.77, which consists of \$108,405.77 for its past due regulatory fees, and an additional \$34,000 for the portion of its penalty assessment that is not suspended. The Parties agree that WIR shall pay \$12,405.77 by October 25, 2015, and then shall pay \$6,500 on the 25<sup>th</sup> day of each subsequent month until the total outstanding balance is paid. If the 25<sup>th</sup> day of the month happens to fall on a weekend or a Commission recognized holiday, then the monthly payment shall be due on the next business day in which the Commission is open for business. If the Company misses any payment due date, the suspended penalty amount and any remaining past due balance shall become due and payable immediately. The Parties agree that the Company's payments shall first apply to the portion of its outstanding balance for its past due regulatory fees, and then shall apply to the portion of its outstanding balance for the penalty assessment. According to this schedule, WIR will pay off its outstanding balance with its final payment on June 25, 2017.

#### **IV. GENERAL PROVISIONS**

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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.

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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           The Parties agree to provide each other the right to review, in advance of publication, any announcement or news release that the party intends to make about this Agreement. The right to review includes a reasonable opportunity to comment on and request changes to the text of such announcements or news releases.

17           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.

18           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.

19           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.

20           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.

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

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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.

23

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

Respectfully submitted this 21 day of August, 2015.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

WASHINGTON & IDAHO RAILWAY  
INC.

ROBERT W. FERGUSON  
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CHRISTOPHER M. CASEY  
Assistant Attorney General  
Counsel for the Utilities and  
Transportation Commission Staff

DANIEL DEGON  
General Manager for Washington & Idaho  
Railway Inc.

Dated: Aug. 21, 2015

Dated: \_\_\_\_\_, 2015

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Respectfully submitted this \_\_\_\_ day of August, 2015.

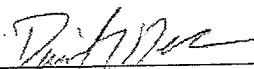
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ROBERT W. FERGUSON  
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Counsel for the Utilities and  
Transportation Commission Staff

Dated: \_\_\_\_\_, 2015

WASHINGTON & IDAHO RAILWAY  
INC.

  
\_\_\_\_\_  
DANIEL DEGON  
General Manager for Washington & Idaho  
Railway Inc.

Dated: Aug 21, 2015