

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-171021

ORDER 01

INITIAL ORDER APPROVING  
SETTLEMENT AGREEMENT

**BACKGROUND**

- 1 On January 30, 2018, the regulatory staff (Staff)<sup>1</sup> of the Washington Utilities and Transportation Commission (Commission) filed a Complaint and Investigation Report against BNSF Railway Company (BNSF or the Company) alleging that BNSF failed to report a release of hazardous materials for five and a half hours after the incident, in violation of WAC 480-62-310. This regulation requires railroad companies to alert the Washington State Emergency Operations Center (EOC) within 30 minutes of the Company learning of the release of hazardous materials. Staff recommended that the Commission impose a \$1,000 penalty for the September 1, 2017, incident.
- 2 Staff's Investigation Report cited two prior Commission enforcement actions against BNSF.<sup>2</sup> The first action, Docket TR-150284, involved 14 incidents of hazardous material releases.<sup>3</sup> BNSF and Staff reached a settlement in that matter that the Commission approved with conditions, which included a \$71,700 penalty.<sup>4</sup> The second action, Docket TR-160912, involved one incident of hazardous materials release.<sup>5</sup> Again, Staff and the

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<sup>1</sup> 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 this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

<sup>2</sup> Staff Investigation Report at 4-5.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

**Pursuant to RCW 80.01.060(3)  
This packet is the final order  
In this docket.**

Company entered into a settlement, which the Commission approved, and BNSF paid a \$7,000 penalty for the violation.<sup>6</sup>

- 3 On April 12, 2018, Staff and BNSF filed a Settlement Agreement (Settlement) in this matter, which is included as Appendix A to this Order. The Settlement and Supporting Narrative purport to resolve all of the contested issues in this proceeding. The Commission issued two bench requests, which Staff and BNSF responded to on May 8, and May 15, 2018, respectively.

### COMPLAINT

- 4 On September 1, 2017, the EOC notified the Commission that one gallon of gasoline had leaked out of a loose valve at the top of a BNSF tank car.<sup>7</sup> The leak occurred at approximately 5:00 p.m., and was reported to EOC at 10:34 p.m., a little over five and a half hours after the event.<sup>8</sup> BNSF asserted that:

Communication between two BNSF managers was poor which resulted in one manager thinking the other one made the timely notification. Both parties are aware of the [Commission's] 30 minute notification requirement and they are also aware of their mistake.<sup>9</sup>

- 5 Staff received an Emergency Response Incident Report (Report) from BNSF stating that the incident was caused by flange bolts that "were less than finger tight."<sup>10</sup> The Report explained that NRC Environmental responded to the leak and closed the flange bolts.<sup>11</sup> With the bolts tightened, NRC Environmental performed several testing functions and contacted BNSF to report that:

[T]he leak had been stopped and that the car was ready to be released. There was no impact to soil from the leak as the leak was extremely slow and with the high

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<sup>6</sup> *Id.*

<sup>7</sup> Appendix B, Email from State Emergency Operations Officer to Kathy Hunter, et al., WUTC at 1 (Sept. 1, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> Appendix D, Email from Patrick M. Brady, BNSF, to Betty Young, et al., WUTC at 1 (Oct. 2, 2017).

<sup>10</sup> Appendix C, Emergency Response Incident Report from BNSF at 3.

<sup>11</sup> Appendix B, Email from State Emergency Operations Officer to Kathy Hunter, et al., WUTC at 1 (Sept. 1, 2017).

temperature of the day, the gasoline seemed to be evaporating as fast as it was leaking.<sup>12</sup>

6 As stated above, Staff filed a Complaint against the Company on January 30, 2018. BNSF did not file an answer to the Complaint. Instead, on April 12, 2018, the Company and Staff filed a full Settlement and Supporting Narrative.

### **SETTLEMENT**

7 The terms of the Settlement are quite straightforward. BNSF admits that it failed to “make a telephone call to the EOC for approximately five and a half hours after BNSF first learned of the incident” in violation of WAC 480-62-310.<sup>13</sup> In addition, the Company agrees to pay a \$1,000 penalty, which was originally requested by Staff in its Complaint.<sup>14</sup>

8 On May 15, 2018, BNSF responded to Bench Request No. 1, which sought information on any remedial measure(s) the Company might have taken to prevent this delay from happening in the future. BNSF asserted that it “has reviewed its internal communication process and Washington State reporting protocols with its managers to address this incident.”<sup>15</sup>

### **DISCUSSION AND DECISION**

9 Pursuant to WAC 480-07-750(1), 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. We may approve the Settlement, with or without conditions, or reject it. The Commission has reviewed the Settlement and supporting evidence and concludes that the Settlement terms meet the legal requirements set forth in our regulations.

10 BNSF has admitted violating WAC 480-62-310 by not reporting the September 1, 2017, hazardous materials leak to the EOC within thirty minutes of learning of the event, and the public interest will be advanced with the imposition of the \$1,000 penalty against the Company. BNSF, while markedly late in fulfilling its reporting requirements, appears to have swiftly resolved the leak and addressed the aftermath with both employee education

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<sup>12</sup> Appendix C, Emergency Response Incident Report from BNSF at 3.

<sup>13</sup> Settlement ¶ 4.

<sup>14</sup> *Id.* ¶ 5.

<sup>15</sup> Response to Bench Request No. 1 at 1.

and hazardous materials clean up. We find that the Settlement terms are lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the Commission. We therefore approve the Settlement without conditions.

**FINDINGS AND CONCLUSIONS**

- 11 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate railroad companies operating in Washington.
- 12 (2) The Commission has jurisdiction over BNSF Railway Company (BNSF) and the subject matter of this proceeding.
- 13 (3) The Settlement terms are lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the Commission.
- 14 (4) The Commission should approve the Settlement without condition.

**ORDER**

THE COMMISSION ORDERS That

- 15 (1) The Commission approves without conditions the Settlement Agreement filed by BNSF Railway Company and the Commission's regulatory staff, which is included as Appendix A to this Order.
- 16 (2) BNSF Railway Company is assessed a penalty of \$1,000, which is due and payable within 30 calendar days of the effective date of this Order.
- 17 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington and effective June 18, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
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 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 and serve an *Answer* to a Petition for Review within ten (10) days after the Petition is filed.

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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).

# Appendix A