

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TR-131320
PENALTY AMOUNT: \$2,500

UNION PACIFIC RAILROAD COMPANY
2770 NORTH GOING STREET
PORTLAND, OR 97217

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of Washington Administrative Code (WAC) 480-62-225, Crossing surfaces, which requires railroad companies to maintain and keep crossing surfaces in repair. Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for every such violation. In the case of a continuing violation, every day's continuance is deemed to be a separate and distinct violation. As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$2,500, as follows:

Commission Rail Safety staff issued a notice of a crossing surface defect at Adams at Olympia St. (USDOT #807857V) to Union Pacific Railroad Company (UPRR) on May 9, 2103. UPRR provided a commitment date of June 21, 2013, for repairing the crossing surface defect. However, upon re-inspection by Commission staff on June 26, 2013, the crossing surface defect had not been repaired.

On June 28, 2013, Commission staff sent a letter to Mario Ortegon, Roadmaster at UPRR, regarding the unresolved crossing surface defect at this crossing. The letter directed UPRR to respond by July 12, 2013, providing photos verifying the crossing surface defect repair or a plan for repairing the defect by a specific date. Commission staff has received no response from UPRR.

On July 16, 2013, Rail Safety Manager Kathy Hunter re-inspected the Adams at Olympia St. crossing and the crossing surface defect had not been corrected. The violation at the crossing has continued for 25 days beyond UPRR's June 21, 2013, commitment date. In the case of a continuing violation, every day's continuance is deemed to be a separate and distinct violation.

This information, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective July 19, 2013.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TR-131320

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

- 1. **Payment of penalty.** I admit that the violation occurred and enclose \$_____ in payment of the penalty.

- 2. **Request for a hearing.** I believe that the alleged violation did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
 - a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
 - OR b) I waive a hearing and ask for an administrative decision on the information I present directly above.

- 3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reason(s) set out below,
 - a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
 - OR b) I waive a hearing and ask for an administrative decision on the information I present directly above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”