

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.

DOCKET TR-180854

JOINT NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to Washington Administrative Code (WAC) 480-07-740(3)(a) on behalf of Union Pacific Railroad Company (Union Pacific) and Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, the “Parties”). The Parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSAL FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). Accordingly, the Parties submit that conducting a hearing will not assist the Commission to decide whether to approve and adopt the settlement because of the limited scope of the incident and Union Pacific’s cooperation with Staff. *See* WAC 480-07-740(2)(e).

3 If the Commission conducts a hearing, however, the Parties will present one or more witnesses to testify in support of the Agreement and to answer questions concerning the

Agreement's details, costs, and benefits. *See* WAC 480-07-740(3)(b). In addition, counsel for each party will be available to address any legal matters associated with the Agreement. The Parties do not intend to file documentation supporting the Agreement, with the exception of the Agreement itself and this Narrative. If the Commission requires supporting documents beyond the Agreement, Narrative, and the other documents on file in this docket, the Parties will provide documentation as needed.

III. APPLICABLE LAW

4 Railroad companies that are subject to the Commission's jurisdiction must notify the Commission's designee (the Washington State Emergency Operations Center's 24-hour duty officer) by telephone of "any event connected to the operation of the railroad company that results in the . . . [r]elease of any hazardous material." WAC 480-62-310(1). The report "must be made by the railroad company within thirty minutes of when it learned of the event." WAC 480-62-310(2). Every violation "shall be subject to a penalty of not to exceed the sum of one thousand dollars for each offense." RCW 81.04.380 "[I]n [the] case of a continuing violation every day's continuance thereof shall be and be deemed a separate and distinct offense." RCW 81.04.380.

IV. SCOPE OF THE UNDERLYING DISPUTE

5 On November 19, 2018, the Commission entered a Complaint alleging that Union Pacific committed 11 violations of WAC 480-62-310 by failing to report to the Washington State Emergency Operations Center (EOC) the release of a hazardous material within 30 minutes after learning of the incident and, instead, reporting the incident 11 days after it occurred. The Complaint alleged that Union Pacific failed to timely report the release of

approximately 10 gallons of nitric acid that released from an “intermodal container [that] leaked onto the cement at 1738 Milwaukee Way, Tacoma on August 6, 2018.”

6 On January 9, 2019, the Commission issued a Prehearing Conference Order and Notice of Hearing, which set a hearing for this matter on April 9, 2019.

7 On February 20, 2019, the Parties participated in a settlement conference to resolve the allegations set forth in the Complaint.

8 On March 22, 2019, the Parties agreed to the terms of the Agreement in regard to the disputed violations in this Docket. The Agreement contains the complete terms of the Parties’ settlement.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

9 The Agreement resolves all of the issues in dispute. The Parties agree to the following terms set forth in the Agreement:

- Violations: Union Pacific admits that although clean up was promptly addressed once the correct department within the company received notification of the incident, it did not notify the EOC until 11 days after one of Union Pacific’s contracted employees first learned of the release. WAC 480-62-310 requires railroad companies subject to the Commission’s jurisdiction to report such events to the EOC within 30 minutes of learning of the event. Each day the violation continued is considered a separate and distinct violation. RCW 81.04.380.
- Monetary penalty: The Commission will impose a penalty of \$11,000, the maximum penalty allowed by law. In the interest of resolving this matter without further undue burden and expense, Union Pacific will pay the \$11,000 within 30 calendar days of a Commission order approving the Agreement.

- Future enforcement of allegations set forth in complaint: Staff confirms that it will not pursue further enforcement against Union Pacific arising out of any of the allegations set forth in Docket TR-180854.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

10 The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources or litigation expenses.

11 In accordance with WAC 480-07-740-750, the Parties believe the Agreement is in the public interest and appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a) for four reasons. First, the penalty amount is the maximum amount allowed. Staff believes this penalty amount is appropriate in light of the Commission's enforcement policy adopted in Docket A-120061. Second, this case is the first enforcement action ever brought against Union Pacific for violations of WAC 480-62-310. Third Union Pacific admitted that it did not notify the EOC until eleven (11) days after the release was first discovered by its contractor. Union Pacific has communicated to Staff a plan for future compliance with WAC 480-62-310 and has provided contact numbers to Staff for any questions relating to future incidents or accidents.

12 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. The rule states, "The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest" WAC 480-07-700. For the reasons stated above, the Parties contend that their Agreement is lawful and consistent with the public interest.

VII. CONCLUSION

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The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

DATED this 22nd day of March 2019.

UNION PACIFIC RAILROAD
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DATED this 22nd day of March 2019.

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