

Service Date: September 13, 2017

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TR-170957

PENALTY AMOUNT: \$100

Eastern Washington Gateway Railroad
809 Madison Avenue
Davenport, WA 99122

The Washington Utilities and Transportation Commission (Commission) believes that Eastern Washington Gateway Railroad (EWG) has committed a violation of Washington Administrative Code (WAC) 480-62-310 - Accident Reports, which requires railroad companies to report certain events, within 30 minutes of learning of the event's occurrence, to the Washington State Emergency Operations Center (EOC). This includes any event connected to the operation of the railroad company that results in:

- (a) Release of any hazardous material (i.e., materials that are corrosive, flammable, explosive, reactive with other materials, or toxic).
- (b) Death of any person.
- (c) Injury to any person involved in a railroad-highway crossing accident that requires medical treatment in addition to first aid.
- (d) Property damage, amounting to fifty thousand dollars or more to property.

Violations of WAC 480-62-310 are continuing in nature: each day that the railroad company fails to report the incident constitutes a new violation. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$100 on the following grounds:

On August 5, 2017, at 7:55 p.m., an EWG freight train derailed in Mondovi, Washington. The rail car derailed while in a curve, causing eight additional cars to flip over and spill grain onto ballast and grass. EWG did not report the incident to the EOC until the following day, August 6, 2017, at 10:07 a.m. The EOC report indicated that no hazardous material was spilled and there were no fatalities. Commission staff received information from the Federal Railroad Administration indicating that there was 1,000 feet of track damage and \$125,000 in material damage as a result of the derailment. Commission staff contacted EWG on August 8, 2017, requesting information about the incident report. Donald Purdie, Vice President of Operations for EWG, responded on August 20, 2017, stating that at the time of the incident, he was on the train and his first thoughts were to make sure the crew on the ground was safe and to find ways to get the spill cleaned up

and the main line back open. Mr. Purdie also indicated that he failed to remember the \$50,000 property damage reporting requirement. Commission staff provided prior technical assistance to EWG on the accident reporting requirements in WAC 480-62-310 in February 2015 and July 2016. EWG knew or should have known how to comply.

This information, if proven 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 violation did not occur, you may deny committing the violation and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will 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.
- Contest the occurrence of the violation.
- 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 take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective September 13, 2017.

GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TR-170957

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. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision
- OR b) I ask for a Commission decision based solely on the information I provide above.
3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your contest here, your request will be denied**):
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision
- OR b) I ask for a Commission decision based solely on the information I provide 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.”