

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. UNION PACIFIC RAILROAD COMPANY, Respondent.	DOCKET TR-180854 ORDER 02 INITIAL ORDER APPROVING SETTLEMENT AGREEMENT; NOTICE CANCELING HEARING
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BACKGROUND

- 1 On January 19, 2018, the Washington Utilities and Transportation Commission (Commission) issued a complaint (Complaint) against Union Pacific Railroad Company (Union Pacific or Company). The Complaint alleged 11 violations of Washington Administrative Code (WAC) 480-62-310, which requires railroad companies to report, *inter alia*, accidents involving the release of a hazardous material. Within 30 minutes of learning that an event occurred, the railroad company must report it to the Washington State Emergency Operations Center (EOC).
- 2 On August 17, 2018, the Commission received an incident report notification from the EOC. According to the notification, Union Pacific reported to EOC that an incident occurred in which a material was released from an intermodal container in Tacoma on August 6, 2018. The Commission was later informed that the material was 10 gallons of nitric acid, a “hazardous material” within the meaning of WAC 480-62-310(1)(a).
- 3 Commission staff (Staff) ¹ alleges that Union Pacific committed 11 violations of WAC 480-062-310 because the Company failed to report the nitric acid release to the EOC for 11 days after it learned that the incident had occurred.² Staff recommends the

¹ In proceedings such as this, Staff participates like any other party, while an administrative law judge makes the decision. To assure fairness, the presiding administrative law judge does not discuss the merits of this proceeding with Staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² “[I]n case of a continuing violation every day’s continuance thereof shall be and be deemed a separate and distinct offense.” RCW 81.04.380.

Commission impose a penalty of up to \$1,000 per violation, for a total potential penalty of \$11,000.

4 On January 8, 2019, the Commission convened a prehearing conference and adopted a procedural schedule that included an evidentiary hearing set for Tuesday, April 9, 2019, at 9 a.m.

5 On March 29, 2019, Staff filed with the Commission a settlement agreement on behalf of the parties (Settlement Agreement).

6 As part of the Settlement Agreement, Union Pacific admits that it did not notify the EOC until 11 days after one of the Company's contracted employees first learned of the August 6, 2018, release of nitric acid. Union Pacific agrees to pay \$11,000 within 30 calendar days of a Commission order approving the Settlement Agreement. Staff confirms that it will not pursue further enforcement against Union Pacific arising out of any of the allegations set forth in this proceeding.

7 Joe M. Dallas and Harry Fukano, Assistant Attorneys General, Olympia, Washington, represent Staff. Robert C. Bylsma, Sr. General Counsel, represents Union Pacific.

DISCUSSION AND DECISION

8 WAC 480-07-750(2) states in part that "[t]he commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- whether any aspect of the proposal is contrary to law;
- whether any aspect of the proposal offends public policy; and
- whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- approve the proposed settlement without condition;
- approve the proposed settlement subject to conditions; or
- reject the proposed settlement.

9 We approve the Settlement Agreement without condition. Union Pacific acknowledges that it failed to notify the EOC until 11 days after one of the Company's contracted employees first learned of the August 6, 2018, event resulting in the release of a hazardous material. Union Pacific also agrees to pay the maximum penalty for its violations of WAC

480-62-310. The Commission's ultimate goal in any enforcement proceeding is to increase compliance. The Settlement Agreement serves this goal both by requiring Union Pacific to accept responsibility for the violations and by punishing its past conduct.

- 10 Thus, the terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find that the Settlement Agreement is consistent with the public interest and should be approved as filed on March 29, 2019.

NOTICE

- 11 **THE COMMISSION GIVES NOTICE that the hearing set for April 9, 2019, at 9 a.m. in Docket TR-180854 is canceled.**

ORDER

THE COMMISSION ORDERS:

- 12 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 13 (2) Union Pacific Railroad Company is assessed a penalty of \$11,000. The penalty is due and payable by May 1, 2019.
- 14 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective April 1, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NELLI DOROSHKIN
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)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

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 does not 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).

Exhibit A
Settlement Agreement