

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-150284

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Staff) and BNSF
Railway Company (BNSF or the Company) have settled all issues in Docket TR-150284,
which concerns BNSF's compliance with a statewide accident reporting regulation. This
Narrative explains the parties' settlement agreement (Agreement) and is intended to provide
the evidentiary basis necessary for full Commission approval of the Agreement. Nothing in
this Narrative modifies any of the terms of the Agreement.

II. PROPOSAL FOR REVIEW

2 The parties contend that a formal settlement hearing and the opportunity for public
comment are unnecessary in this case. The parties agree that this Narrative, together with all
previously-docketed materials, supports full Commission approval of the Agreement under
WAC 480-07-750. If the Commission requires further evidentiary support, the parties will
present one or more witnesses each to testify in support of the Agreement and to answer
questions concerning its terms, costs, and benefits. *See* WAC 480-07-740(2)(b).

III. APPLICABLE LAW

3 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).

IV. AGREED STATEMENT OF THE CASE

4 On March 19, 2015, the Commission, acting through its advocacy Staff, filed a formal complaint against BNSF alleging that the Company committed 700 violations of WAC 480-62-310 in connection with 14 hazardous material releases. A detailed description of Staff's allegations appears in Staff's publicly-docketed investigation report.

5 To calculate the total number of alleged violations, Staff relied on a statute that makes each day's continuance of an uncorrected violation a separate and distinct offense. Staff requested that the Commission penalize the Company up to \$1,000 per violation.

6 The parties engaged in settlement negotiations and informal discovery. During this process, BNSF presented information regarding BNSF's good faith reporting and called attention to additional information that caused Staff to reevaluate certain alleged violations. In light of this information, for settlement purposes, Staff agreed that it lacked sufficient proof and/or an evidentiary basis for several alleged violations and would no longer seek penalties for those allegations. Staff's concessions reduced the Company's exposure from 700 possible violations to 239.

7 With the scope of potential liability narrowed to claims subject to a bona fide dispute, the parties engaged in productive discussions regarding a fair remedy. The parties settled on the terms detailed below.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

8 The parties agreed to the following terms:

- Admission of liability: The Company admits that it violated WAC 480-62-310. However, the Company does not admit that each and every violation claimed in Staff's investigation and the Commission's complaint in Docket TR-150284 is supported by fact or law. This Agreement is entered to avoid the costs of protracted litigation and to focus on the parties' common goal of maximum achievable compliance with WAC 480-62-310 moving forward.
- Monetary penalty. The Commission will impose a total penalty of \$71,700. The Commission will suspend \$40,000 on the condition that the Company complies with WAC 480-62-310 for one year. The Company will pay the remaining \$31,700 within 30 days after the effective date of the Agreement.
- Technical assistance meeting. Staff and Company representatives will meet at a mutually-agreeable time and date to discuss best practices for compliance with WAC 480-62-310.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

9 The parties contend that their Agreement advances the public interest. If the Commission adopts the Agreement, the parties will benefit by avoiding the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. The public will similarly benefit if this dispute concludes without further expenditure of public resources.

10 Both parties were represented by counsel during the settlement process. Negotiations
proceeded in good faith. The end result reflects a compromise of litigation positions.

11 Under the Agreement, the Commission will impose a penalty on the Company by
requiring it to pay a significant portion of the penalty up front while deterring future
violations by allowing Staff to seek imposition of the suspended portion if the Company
violates WAC 480-62-310 in the year following adoption of the Agreement.

12 The parties share a common goal: maximum achievable compliance. To this end,
Staff will meet with Company representatives to discuss best practices for future compliance
with WAC 480-62-310.

13 The Agreement's terms are consistent with the Commission's enforcement policy
adopted in Docket A-120061. Of particular note, the Commission's policy recognizes "the
likelihood of recurrence" as a factor that helps determine an appropriate remedy. In this
case, Staff is satisfied that the likelihood of recurrence is low. BNSF has, to Staff's
knowledge, achieved total compliance with WAC 480-62-310 since the date the
Commission issued its complaint in this docket. The suspended penalty discussed above
gives the Company a strong incentive to maintain its current level of compliance.

14 The Commission has formally expressed its support for negotiated resolutions of
enforcement actions. A Commission 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

15 The parties respectfully request that the Commission approve the Agreement in full.

DATED this 27th day of August, 2015.

BNSF RAILWAY COMPANY

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

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DATED this 27th day of August, 2015.

BNSF RAILWAY COMPANY



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