

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TR-121921
Against)	
)	ORDER 01
BNSF RAILWAY CO.)	
)	ORDER GRANTING
in the amount of \$105,000)	MITIGATION
.....)	

- 1 **Penalty.** On February 25, 2013, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in Docket TR-121921 in the amount of \$105,000 against BNSF Railway Company. (BNSF or Company), for multiple violations of Washington Administrative Code (WAC) 480-62-225, which requires railroad companies to maintain and keep crossing surfaces in repair.

- 2 The Commission alleged that BNSF violated the rule in January 2013 by failing to respond to a December 21, 2012, letter from Commission Staff (Staff) identifying seven crossings that Staff had previously noted to the Company as defective and requiring repairs. Staff’s letter required BSNF to provide a written response no later than January 21, 2013, describing how the defects were remedied or to provide a detailed plan on how the Company would carry out the needed repairs, including a specific completion date. Staff re-inspected each crossing on January 29, 2013, and observed that the crossing defects remained uncorrected.

- 3 RCW 81.04.405 authorizes the Commission to impose a penalty of \$100 per violation and continue to penalize a company each day that a violation is ongoing. Staff calculated that due to BNSF’s failure to repair the crossing surfaces at these seven crossings over a lengthy period of time, the maximum authorized penalty would be \$457,500.¹ However, after weighing a series of factors fully detailed in the original Penalty Assessment, Staff determined that it would be more appropriate to penalize BNSF \$15,000 for each defective crossing, for a total penalty of \$105,000.

¹ The Penalty Assessment alleged that the Commission originally notified BNSF of one of the defects at one crossing as early as March 21, 2009, and that four of the seven defective crossings had gone more than two years without corrective repairs.

4 **Mitigation Request.** On March 14, 2013, BNSF timely filed a response to the Penalty Assessment, disputing the alleged violations and asking for a hearing if the Commission would not remit the penalties. Alternatively, BNSF requested a settlement conference with Staff “well in advance of the hearing to determine whether the parties can come to a mutually agreeable resolution.”

5 **Staff Support for Settlement Negotiations.** Staff filed a reply on March 22, 2013, agreeing with the Company’s proposal to enter into negotiations toward a mutually agreeable settlement of the matter.

6 **Settlement.** On March 27, 2013, the Commission determined that the most productive means of resolving the issues in this docket would be to hold in abeyance enforcement of the Penalty Assessment and BNSF’s hearing request pending the outcome of settlement negotiations between Staff and the Company. The Commission set a deadline of May 31, 2013, for the parties to file a joint letter explaining their agreed resolution of the matter or for the Commission to initiate a Brief Adjudicative Proceeding.

7 On May 30, 2013, BNSF and Staff filed a Settlement Agreement that would require the Company to immediately pay a penalty of \$55,000, with the remaining \$50,000 suspended for one year on condition that BNSF:

- Respond within thirty days to any notice from the Commission regarding routine grade crossing defects;
- Respond within seven days to any notice from the Commission regarding serious grade crossing defects, unless the Company and Staff agree upon a different date; and
- Submit photographic evidence to the Commission showing grade crossing defect repairs upon their completion.

If BNSF does not comply with these conditions in Whatcom, Skagit, and Snohomish counties (the regions where the defective crossings identified in the Penalty Assessment are located), then Staff will recommend to the Commission that the suspended \$50,000 portion of the penalty be imposed on BNSF. If the Company

complies with these conditions, Staff will recommend to the Commission that the Company has met the conditions and that the suspended portion of the Penalty Assessment be dismissed.

- 8 **Commission Decision.** Regulated companies are responsible for complying with all of the Commission's rules and regulations. WAC 480-62-225 requires railroad companies to maintain and keep crossing surfaces in repair. We observe that BNSF violated this rule in Whatcom, Skagit, and Snohomish counties on a long-term basis, resulting in potentially unsafe conditions persisting at multiple grade crossings for lengthy periods of time.
- 9 The Commission grants BNSF's request for mitigation in accordance with the settlement reached with Staff. Public safety is the Commission's highest priority. The proposed settlement promotes this interest by emphasizing the need for BNSF to timely respond to Commission notices. The settlement also requires BNSF to promptly complete and document repairs to defective crossings. Finally, the settlement imposes a significant financial penalty on the Company for its past failure to comply with WAC 480-62-225 and maintain an effective and open line of communication with the Commission.
- 10 The original \$105,000 penalty will be mitigated, on the conditions set out above and further detailed in the proposed settlement agreement.

ORDER

THE COMMISSION ORDERS THAT:

- 11 (1) The penalty of \$105,000 assessed against BNSF Railway Company on February 25, 2013, is suspended in the amount of \$50,000 subject to the condition that BNSF timely respond to any and all notices from the Commission regarding crossing defects and document repairs to defective crossings as required by the terms of the Settlement Agreement.

- 12 (2) The unsuspended portion of the penalty amount of \$105,000 assessed against BNSF Railway Company on February 25, 2013 (\$55,000), is due and payable to the Commission on the service date of this Order.

DATED at Olympia, Washington, and effective June 7, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.