

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET TR-143978
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	COMPLAINT FOR PENALTIES;
v.)	NOTICE OF BRIEF
)	ADJUDICATIVE PROCEEDING
WASHINGTON & IDAHO RAILWAY)	(Set for July 28, 2015, at 9:30 a.m.)
INC.,)	
)	
Respondent.)	
)	

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its Staff, alleges as follows:

I. BACKGROUND

2 According to Commission records, Washington & Idaho Railway Inc. (WIR or Company) has not filed an annual report or paid regulatory fees, as required by WAC 480-62-300, for the 2012 and 2013 reporting years. In 2013 and 2014, the Commission assessed a penalty against the Company for violating the filing and regulatory fee requirements. The Company paid both penalty assessments, but did not file its annual report or pay its regulatory fees for either the 2012 or 2013 reporting years.

3 On October 15, 2014, the Commission mailed a Notice of Noncompliance to the Company detailing WIR’s failure to comply with WAC 480-62-300. The notice stated that the Company had until November 15, 2014, to file its delinquent reports and pay its delinquent regulatory fees to avoid enforcement action. The Commission has not received the delinquent filings, fees, or any other response to the notice. Commission staff (Staff) alleges that WIR violated multiple state laws and Commission rules, as described below.

II. PARTIES

4 The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including railroad companies, under Title 81 RCW.

5 WIR is a railroad company subject to regulation by the Commission under Title 81 RCW.

III. JURISDICTION

6 The Commission has jurisdiction over this matter pursuant to RCW 81.01.010, RCW 80.01.040, RCW 81.04.110, RCW 81.04.380, Title 81.24 RCW, Chapter 480-07 WAC, and Chapter 480-62 WAC.

IV. FIRST CAUSE OF ACTION

(680 Violations of 480-62-300 for Failing to File Annual Reports)

7 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-6 above.

8 Under RCW 81.04.080, public service companies, including railroad companies, are required to file an annual report with the Commission.

9 WAC 480-62-300(2) provides, in part: “One copy of the completed annual report, along with the regulatory fee, must be submitted to the commission no later than May 1 of each year.”

10 RCW 81.04.380 provides, in part: “Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of [Title 81 RCW], so long as the same shall be and remain in force.”

- 11 RCW 81.04.380 further provides that every violation of state laws and Commission rules is a separate and distinct offense, and in the case of a continuing violation, every day's continuance is a separate and distinct violation.
- 12 WIR violated WAC 480-62-300 by failing to file its annual report for the 2012 reporting year. Noncompliance with WAC 480-62-300 beyond May 1 is a continuing violation. Thus, each business day after May 1, 2013, in which WIR failed to file its annual report is a separate and distinct violation.
- 13 WIR further violated WAC 480-62-300 by failing to file its annual report for the 2013 reporting year. Noncompliance with WAC 480-62-300 beyond May 1 is a continuing violation. Thus, each business day after May 1, 2014, in which WIR failed to file its annual report is a separate and distinct violation.
- 14 Staff alleges that WIR committed 680 violations of WAC 480-62-300 by failing to file its annual report for the 2012 and 2013 reporting years.

V. SECOND CAUSE OF ACTION
(680 Violations of 480-62-300 for Failing to Pay Annual Regulatory Fees)

- 15 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-14 above.
- 16 Under RCW 81.24.010, public service companies, including railroad companies, are required to pay regulatory fees annually on or before the date specified by the Commission for filing annual reports.
- 17 WAC 480-62-300(2) provides, in part: "One copy of the completed annual report, along with the regulatory fee, must be submitted to the commission no later than May 1 of each year."
- 18 WIR violated WAC 480-62-300 by failing to pay its regulatory fee for the 2012 reporting year. Noncompliance with WAC 480-62-300 beyond May 1 is a continuing violation. Thus, each business day after May 1, 2013, in which WIR failed to pay its regulatory fee is a separate and distinct violation.

19 WIR further violated WAC 480-62-300 by failing to pay its regulatory fee for the 2013 reporting year. Noncompliance with WAC 480-62-300 beyond May 1 is a continuing violation. Thus, each business day after May 1, 2014, in which WIR failed to pay its regulatory fee is a separate and distinct violation.

20 Staff alleges that WIR committed 680 violations of WAC 480-62-300 by failing to pay its regulatory fees for the 2012 and 2013 reporting years.

VI. APPLICABLE LAW

21 Under RCW 81.04.380, the Commission may penalize a public service company that violates any provision of Title 81 RCW or any rule of the Commission up to \$1,000 for each and every offense. Under the statute, every violation is considered a separate and distinct offense, and, in the case of a continuing violation, every day's continued violation is deemed to be a separate and distinct offense.

VII. REQUEST FOR RELIEF

22 Staff requests that the Commission find that WIR committed a total of 1,360 violations of state laws and Commission rules as set forth in the allegations above.

23 Staff requests that the Commission impose monetary penalties on WIR under RCW 81.04.380 of up to \$1,000 for each violation.

24 Staff further requests that the Commission order such other or further relief as appropriate under the circumstances.

VIII. PROBABLE CAUSE

25 Based on a review of Commission records, and consistent with, RCW 81.01.010, RCW 80.01.060, and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

IX. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

26 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that
a brief adjudicative proceeding is appropriate for determining whether the alleged
violations occurred and, if so, the appropriate remedy for those violations.

27 **THE COMMISSION GIVES NOTICE that it will hold a brief adjudicative
proceeding in this matter at 9:30 a.m., July 28, 2015, in Room 206, Second Floor,
Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia,
Washington.**

28 The record in this case will consist of any documents regarding the matter that are
considered by or prepared for the presiding officer for the brief adjudicative
proceeding and a transcript of any oral statements given at the hearing, which
statements will be given under oath.

29 Written notice of any other stage in the proceeding or other formal proceedings that
the Commission may deem appropriate will be given during the course of this case.
The Commission will provide at its offices in Olympia, Washington, copies of
documents in the current record for use by the parties or others who may want to
review them.

30 Parties wishing to submit any other documents for consideration at the brief
adjudicative proceeding must file with the Commission a list enumerating and
describing any such documents by **5:00 p.m., July 21, 2015**, and bring an original
and three (3) copies to the hearing. Filing shall be in accordance with WAC 480-07-
140 and – 145.

31 **THE COMMISSION GIVES NOTICE that any party who fails to attend or
participate in the brief adjudicative proceeding set by this Notice, or any other
stage of this proceeding, may be held in default under RCW 34.05.440 and WAC
480-07-450.**

32 The names and mailing addresses of all parties and their known representatives are as
follows:

Complainant: Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Christopher Casey
Assistant Attorney General
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1189
ccasey@utc.wa.gov

Respondent: Washington & Idaho Railway Inc.
P.O. Box 275
417 S. Park Ave
Rosalia, WA 99170
509-523-4445

33 Administrative Law Judge Rayne Pearson, from the Commission's Administrative Law Division, will preside during this proceeding

34 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Olympia, Washington, and effective May 28, 2015.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge
Director, Administrative Law Division

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: Hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Steven V. King, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION.)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____