

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASHINGTON & IDAHO RAILWAY
INC.,

Respondent.

DOCKET TR-143978

ORDER 02

ORDER MODIFYING ORDER 01

BACKGROUND

- 1 On May 29, 2015, the Washington Utilities and Transportation Commission (Commission) issued a Complaint for Penalties alleging that Washington & Idaho Railway, Inc. (WIR or Company) violated Washington Administrative Code (WAC) 480-62-300 a total of 1,360 times by failing to file an annual report and pay regulatory fees as required for the 2012 and 2013 reporting years.
- 2 On August 21, 2015, Commission staff (Staff) filed a settlement agreement on behalf of the parties (Settlement Agreement). On September 9, 2015, the Commission issued Order 01, Initial Order Approving Settlement Agreement (Order 01). In Order 01, the Commission ordered the Company to pay past-due regulatory fees totaling \$108,405.77. The Commission also assessed a penalty of \$136,000 for violations of Commission rules, a \$102,000 portion of which was suspended until June 30, 2017, conditioned on the Company meeting its annual reporting and regulatory fee requirements for the 2015 and 2016 reporting years and paying both the remaining \$34,000 penalty and its outstanding regulatory fees according to the agreed payment schedule.
- 3 On October 12, 2016, WIR filed with the Commission a Motion to Reopen Record for Reducing Penalty Amount Owed on Past Due Annual Reports and Regulatory Fees (Motion). The Company requests the Commission reopen the record to allow receipt of evidence that was unavailable and not reasonably discoverable at the time the Settlement Agreement was entered into and approved. In its Motion, the Company explains that it erroneously included both intrastate and interstate revenue on its annual reports filed with the Commission for reporting years 2010 through 2014, which resulted in an incorrect

calculation of \$108,405.77 in regulatory fees owed for that period. The Company requests the Commission reopen the record and modify Order 01 to reflect a corrected past-due regulatory fee amount of \$50,869.81, which was properly calculated using only intrastate revenue.

- 4 On November 2, 2016, Staff filed a Response to WIR's Motion. Staff confirmed that the past-due regulatory fees in both the Settlement Agreement and Order 01 were calculated incorrectly, and that the correct amount is \$50,869.81, as noted in the Company's Petition. Staff further explained that the parties agree that the penalty amount remains \$136,000, a \$102,000 portion of which remains suspended according to the terms of Order 01, and the total amount owed – the \$34,000 portion of the penalty that is not suspended and the \$50,869.81 in past-due regulatory fees – is \$84,869.81. To date, WIR has made payments totaling \$83,905.77. The remaining balance due is \$964.04.

DISCUSSION AND DECISION

- 5 WIR makes its request pursuant to WAC 480-07-830, which allows any party to file a motion to reopen the record to offer newly-discovered evidence after the record closes but prior to the Commission entering its final order. The relief the Company requests, however, is not available through such a motion. Because the Company is effectively petitioning the Commission to rehear this matter, we will construe the Company's Motion as a petition for rehearing.¹
- 6 RCW 81.04.200 provides that any public service company affected by any order of the Commission, if aggrieved, may petition the Commission for rehearing two years after the effective date of the order. The statute further provides that the Commission may, at its discretion, permit the filing of a petition for rehearing at any time. Petitions for rehearing must set forth the grounds and reasons for rehearing, which may include changed conditions since the order was issued. Because the Petition was filed less than two years from the effective date of Order 01, we exercise our discretion to grant the petition.
- 7 We also exercise our discretion to decide this matter on the record before us without rehearing. The parties have sufficiently demonstrated that the Settlement Agreement and Order 01 contained incorrect information about the Company's past-due regulatory fees. WIR's Petition provided corrected information, which Staff subsequently verified.

¹ The Commission liberally construes filings to effect just results. WAC 480-07-395(4).

Accordingly, we modify Order 01 to require WIR to pay a total of \$50,869.81 in past-due regulatory fees, and modify the agreed payment schedule to reflect the corrected amount. One final payment of \$964.04 is due on November 28, 2016. All other terms of Order 01 remain unchanged.

FINDINGS AND CONCLUSIONS

- 8 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate annual reporting requirements for railroad companies.
- 9 (2) The Commission has jurisdiction over the subject matter of and the parties to this proceeding.
- 10 (3) On May 16, 2016, WIR filed a Motion to Reopen the Record requesting the Commission to consider new evidence and modify Order 01. The Motion alleges that the Settlement Agreement approved by Order 01 contained incorrect information related to WIR's past-due regulatory fees.
- 11 (4) The Commission construes WIR's Motion as a petition for rehearing of matters in this docket.
- 12 (5) The Commission exercises its discretion to rehear this matter.
- 13 (6) Order 01 incorrectly requires WIR to pay \$108,405.77 in past-due regulatory fees. The correct amount WIR owes is \$50,869.81.
- 14 (7) The Commission should modify Order 01 to reflect the correct amount of past-due regulatory fees WIR owes and modify the agreed payment schedule to reflect that one final payment of \$964.04 is due on November 28, 2016.

THE COMMISSION ORDERS THAT:

- 15 (1) The Commission grants Washington and Idaho Railway, Inc.'s request to consider newly discovered evidence and modify Order 01.

- 16 (2) The Commission modifies paragraph 11 of Order 01 to reflect an outstanding regulatory fee balance of \$50,869.81.
- 17 (3) The Commission modifies the agreed payment schedule set out in the Settlement Agreement and approved by Order 01 to require one final payment of \$964.04 due by November 28, 2016.
- 18 (4) In all other respects, Order 01 remains unchanged.

DATED at Olympia, Washington, and effective November 9, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE 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) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review 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 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 not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, 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 fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
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