

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

UNION PACIFIC RAILROAD
COMPANY,

Respondent.

DOCKET TR-180854

COMPLAINT

and

NOTICE OF PREHEARING
CONFERENCE
**(Set for January 8, 2018,
at 9:30 a.m.)**

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

I. JURISDICTION

2 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.010, RCW 81.04.110, RCW 81.04.380, and WAC 480-62.

II. PARTIES

3 The Commission is an agency of the state of Washington.

4 Union Pacific Railroad Company (UPRR) is a “public service company” within the meaning of RCW 81.04.380.

5 UPRR is a “railroad company” within the meaning of WAC 480-62-310.

III. BACKGROUND

6 The following allegations are based on the Staff Investigation Report filed in this docket.

7 WAC 480-62-310 requires railroad companies to report certain events, including accidents involving the release of a hazardous material. To comply with WAC 480- 62-310, a railroad company must, within 30 minutes of learning that an event

occurred, report it to the Washington State Emergency Operations Center (EOC). The report required by WAC 480-62-310 allows the EOC to identify the critical response and remediation resources necessary to respond to the event.

8 On August 17, 2018, the Commission received an incident report notification from the EOC.

9 According to the notification, UPRR reported to EOC that an incident involving an “[u]nknown amount and unknown material” was released from an intermodal container and leaked onto the cement at 1738 Milwaukee Way, Tacoma on August 6, 2018 (the incident).

10 On October 8, 2018, Staff received a copy of the U.S. Department of Transportation (USDOT) Hazardous Material Incident Report for the incident from UPRR.

11 According to the USDOT report, UPRR specified that the material released from the railcar was ten gallons of nitric acid.

12 On October 16, 2018, Staff received a copy of an internal incident report from UPRR.

13 The UPRR incident report specified that the material released was from railcar UMXU 936118 at the TacSim Yard at 1:01 p.m. (Central Standard Time) on August 6, 2018.

IV. CAUSE OF ACTION

14 The nitric acid release was an “event connected to the operation of the railroad company” that resulted in the “[r]elease of any hazardous material.” WAC 480-62-310(1).

15 The nitric acid was a “hazardous material” within the meaning of WAC 480-62-310(1)(a).

16 UPRR failed to report the nitric acid release to EOC within 30 minutes after learning of the incident, as required by WAC 480-62-310(2)(a).

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

18 UPRR committed 11 violations of WAC 480-62-310 (as provided by RCW 81.04.380) because UPRR failed to report the nitric acid release to the EOC for 11 days after it learned that the incident had occurred.

V. REQUEST FOR RELIEF

- 19 Staff requests that the Commission impose a penalty of up to \$11,000 for the violations of WAC 480-62-310 alleged above.
- 20 Staff further requests that the Commission order such other relief as is appropriate under the circumstances.

VI. PROBABLE CAUSE

- 21 Based on a review of Staff's investigation report and all supporting documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

VII. NOTICE OF PREHEARING CONFERENCE

- 22 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to, RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

- 23 **THE COMMISSION GIVES NOTICE That it will hold a prehearing conference in this matter at 9:30 a.m. on January 8, 2019, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

- 24 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, to identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

- 25 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference. See WAC 480-07-355(a). The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. See WAC 480-07-345(2). Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

26 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference 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.**

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

Complainant: Washington Utilities
and Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504

Representative: Joe Dallas
Office of the Attorney General
Utilities and Transportation Division
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250
joe.dallas@utc.wa.gov

Respondent: Union Pacific Railroad Company
1400 Douglas St., Mailstop 1720
Omaha, NE 68179
BJsokoli@up.com

28 The Administrative Law Judge Nelli Doroshkin, from the Commission's Administrative Law Division, will preside during this proceeding.

29 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 November 19, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Director, Administrative Law Division

NOTICE

PLEASE NOTE: Hearing facilities are accessible to interested people with disabilities. Smoking is prohibited. 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: Mark Johnson, 1300 S. Evergreen nhPark 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.: (____) _____