

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant v. WASHINGTON & IDAHO RAILWAY INC. Respondent.	DOCKET TR-143978 ORDER 03 SUSPENDING PENALTY
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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 entered 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). In its Motion, the Company explained 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 requested 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 9, 2016, the Commission entered Order 02, Order Modifying Order 01 (Order 02). In Order 02, the Commission modified Order 01 to reflect a corrected past due regulatory fee amount of \$50,869.81, and modified the agreed payment schedule to require one final payment of \$964.04 due by November 28, 2016.
- 5 The Company satisfied most of the conditions imposed in Orders 01 and 02. The Company timely paid the regulatory fees and the unsuspended portion of the penalty. In addition, the Company timely filed its 2015 annual report and paid its regulatory fee by May 1, 2016.
- 6 The Company failed, however, to file its annual report for 2016 or pay its regulatory fee by May 1, 2016, as required by Orders 01/ 02 to prevent imposition of the suspended penalty. On June 20, 2017, the Company filed its annual report and paid its regulatory fee with interest. The Company received a \$1,000 penalty assessment in Docket TR-170562 for failing to file the report by May 1, 2017. The Company paid the penalty on November 2, 2017, and did not apply for mitigation.
- 7 On December 14, 2017, Commission staff (Staff) filed a letter with the Commission recommending that the \$102,000 suspended portion of the penalty be further suspended on the condition that the Company files its complete 2017 annual report and pays its required regulatory fees no later than May 1, 2018. Staff reasons that although not all conditions of the settlement in Orders 01/02 were met, the Company ultimately paid the outstanding penalty and regulatory fees, filed its annual reports, and plans to meet its reporting and financial obligations in the future.
- 8 Staff further states that it spoke with a Company representative who explained that WIR experienced cash-flow issues around the May 1, 2017, annual report deadline, and that the Company filed the report as soon as it was able to pay the regulatory fee. Staff advised WIR that it is the Company's responsibility to ensure it pays the fee and files the annual report by May 1 of each year. The Company apologized for the delay and assured Staff that the Company will meet its reporting and financial obligations in the future.

DISCUSSION AND DECISION

- 9 Orders 01/02 imposed a penalty and suspended a portion of the penalty conditioned on: 1) the Company paying its past due regulatory fees; 2) the Company paying the portion

of the penalty that was not suspended according to the agreed payment schedule; and 3) the Company filing its complete annual report and paying its required regulatory fees for the 2015 and 2016 reporting years by the May 1 due date. Orders 01/02 provided that if the Company failed to satisfy any of these conditions, the suspended portion of the penalty would become immediately due and payable without further Commission action.

- 10 Here, the Company failed to file its annual report for the 2016 reporting year and pay the required regulatory fee by the due date of May 1, 2017. Instead, WIR filed its annual report and paid its required regulatory fee on June 20, 2017. The Company's late filing triggered the imposition of the suspended portion of the penalty.
- 11 Nevertheless, Staff recommends the Commission continue to suspend the \$102,000 penalty, and then waive it, on the condition that the Company file its complete 2017 annual report and pay its required regulatory fees no later than May 1, 2018. Staff reasons that the penalty should continue to be suspended because the Company paid its penalty and outstanding regulatory fees in full, filed complete annual reports, and plans to meet its reporting and financial obligations in the future. Staff also believes that continuing to suspend the penalty will help ensure ongoing compliance.
- 12 We agree with Staff that suspending the penalty is appropriate in the circumstances presented here. First, the Company corrected the violations prior to receiving the \$1,000 penalty, which was issued on July 6, 2017. Second, in addition to paying the substantial portion of the penalty that was not suspended, WIR is now current with its reporting and financial obligations. Finally, a \$102,000 penalty is disproportionately punitive in light of the nature and limited extent of the Company's conduct. Rather than impose additional penalties, we find that continuing to suspend the penalty is a more appropriate response relative to the violation, and will also create a significant incentive for future compliance.

FINDINGS AND CONCLUSIONS

- 13 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including railroad companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 14 (2) Order 01, initial order approving settlement agreement, and Order 02, Modifying Order 01, imposed and suspended, in part, a \$136,000 penalty with conditions, including that the Company timely file annual reports and pay regulatory fees for the 2015 and 2016 years.

- 15 (3) WIR failed to satisfy a condition of Orders 01/02 when it failed to file its 2016 annual report by the May 1, 2017, due date. Failure to file by the due date resulted in the penalty becoming immediately due and payable.
- 16 (4) The Commission concludes that the suspended penalty should remain suspended and then should be waived, subject to the condition that WIR file its complete 2017 annual report and pay its required regulatory fees no later than May 1, 2018. If WIR fails to file its complete annual report and pay its required regulatory fees by May 1, 2018, the entire suspended penalty will become immediately due and payable without further Commission order.

ORDER

THE COMMISSION ORDERS THAT

- 17 (1) The Commission further suspends, and then waives, the \$102,000 penalty imposed by Order 01 subject to the condition that Washington and Idaho Railroad Inc. files its complete 2017 annual report and pays its regulatory fees by May 1, 2018.
- 18 (2) If Washington and Idaho Railroad Inc. fails to file its complete annual report and pay its required regulatory fees by May 1, 2018, the entire suspended penalty of \$102,000 will become immediately due and payable without further Commission order.

DATED at Olympia, Washington, and effective January 29, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO 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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).