



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

August 9, 2012

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TR-120876

Dear Mr. Danner:

On July 11, 2012, the Washington Utilities and Transportation Commission issued a \$1,900 Penalty Assessment in Docket TR-120876 against Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association for 19 violations of Washington Administrative Code (WAC) 480-62-300, which requires regulated railroad companies to furnish annual reports to the commission no later than May 1 each year.

On August 3, 2012¹, Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association wrote the commission requesting mitigation of penalties (Mitigation Request). In its Mitigation Request, Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association does not dispute that the violation occurred. The company states, "1. The only copy of the required forms was received via electronic means on the day notification of violation occurred and I called your office. 2. The State of Washington Utilities and Transportation Commission was remiss in their duties to notify us within a reasonable length of time (19 business days) We should have been notified within 5 days. 3. The penalty should be reduced to an amount that reflects filling out the forms on the same the day as notified by the commission of delinquent, that time should have been no more than five days. There we request that the fine be reduced to \$500.00."

It is the company's responsibility to ensure that the regulatory fee and the annual report are filed by the May 1 deadline. On February 29, 2012², Annual Report forms and Regulatory Fee packets were mailed to all regulated regulated railroad companies. In addition to other information, the cover letter informed the regulated company it must complete the annual report form, pay any regulatory fees and return the material by May 1, 2012 to avoid enforcement action. On May 14, 2012³, the commission mailed a letter to those companies that had not yet filed an annual report

1 See attachment A for a copy of Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association's Mitigation Request.

2 See attachment B for a copy of the letter sent to all regulated companies on February 29, 2012.

3 See attachment C for a copy of the enforcement letter sent to the company on May 14, 2012.



incurred a penalty of \$800. The letter went on to explain that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per day, with an additional \$25 per day for each instance in the previous five years that the company received a penalty for filing a late report.

Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association filed its annual report on May 29, 2012, which is 19 business days past the deadline of May 1, 2012. The penalty is \$100 per day for a total of \$1,900. Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association became regulated in 2001 and received a penalty of \$100, in 2009 for filing a delinquent annual report.

Based on the company's delinquent annual report filling in the past, staff does not support mitigating the assessed penalty and recommends the request be denied.

If you have any questions, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105, or at Mperkinson@utc.wa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Wallace for".

Sharon Wallace, Assistant Director
Consumer Protection and Communications

Attachment A

SERVICE DATE

JUL 11 2012

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

Received by
Bycx Railroad on
July 22, 2012

RECEIVED
JUL 11 2012
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT: TR-120876
PENALTY AMOUNT: \$1,900

BATTLE GROUND, YACOLT, & CHELATCHIE
PRAIRIE RAILROAD ASSOCIATION
PO BOX 1271
BATTLE GROUND, WA 98604

According to the Commission's records, you have committed a violation of Commission rule: Washington Administrative Code (WAC) 480-62-300, which requires railroad companies to file annual reports with the Commission by May 1 each year and pay regulatory fees annually that date. You are classified as a railroad company. Commission records show that you did not file an annual report or pay annual regulatory fees by May 1, 2012.

Revised Code of Washington (RCW) 81.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each and every such violation shall be a separate and distinct offense and, in the case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. The Commission interprets noncompliance with WAC 480-62-300 as continuing violations, giving rise to penalties of \$100 for each day a company fails to make each requisite filing after the date on which it was due.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$1,900 on the following basis:

On February 29, 2012, the Commission mailed 2011 Annual Report forms and 2012 Regulatory Fee packets to all railroad companies registered in Washington state. A letter from the commission's Executive Secretary David W. Danner, instructed these companies to file annual reports and pay regulatory fees by May 1, 2012. The letter stated failure to file the annual report by May 1 would result in a penalty and possible cancellation of the company's permit to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to April 24, providing a reason for the requested extension. You did not request an extension.

Battle Ground, Yacolt, & Chelatchie Prairie Railroad Association filed its annual report on May 29, 2012, which is 19 business days past the deadline of May 1. The penalty is \$100 per day for a total of \$1,900.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violation that you think

RECEIVED
JUL 11 2012
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
MANAGEMENT

should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission will then sue you to collect the penalty.

DATED at Olympia, Washington, and effective July 11, 2012.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TR-120876

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

RECEIVED
PEOPLE'S MANAGEMENT
2012 AUG -6 AM 11:10
STATE OF WA
UTIL. AND TR.
COMMISSION

1. Payment of penalty. I admit that the violations occurred. I have:

Enclosed \$1,900 in payment of the penalty

Submitted my payment of \$1,900 online at www.utc.wa.gov. My confirmation number is _____.

2. Request for a hearing. I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:

3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.

1) The only copy of the required forms was received via electronic means on the day notification of violation occurred and I called your office. 2) The State of Washington Utilities and Transportation Commission was remiss in their duty to notify me within a reasonable length of time (14 business days) We should have been notified within 5 days. I respectfully

a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.

OR b) I waive a hearing and ask for an administrative decision on the information I present directly above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: Aug 1, 2012 [month/day/year], at Battle Ground, WA [city, state]

Battle Ground, Yacolt & Chehalis Priors & Co
Name of Respondent (company) - please print

Jamara K. Auburg
Signature of Applicant

Notification of the payment amount was received July 23, 2012

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

Should be reduced to an amount that reflects filing out the forms on the day notification of violation. The Commission of administering this section should have been no more than 5 days. I respectfully request that the penalty be reduced to \$500.00.

Attachment B



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

February 29, 2012

Dear Regulated Company:

Reference: Your 2011 Annual Report and 2012 Regulatory Fees are due May 1

State law requires you to file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission (UTC).

What is required of you?

By May 1, you must:

- Complete and file one paper copy or electronic version of the enclosed 2011 annual report form
- Pay your 2012 regulatory fees

What happens if you do not file a completed annual report and pay regulatory fees on time?

If you do not file your company's completed annual report and pay the regulatory fees by May 1, the UTC will assess a financial penalty of \$100 for each business day after May 1 that the report is not filed and \$100 for each business day after May 1 the fees are unpaid. You may seek mitigation of the penalties in response to the assessment you receive, after you have filed a completed annual report and paid your regulatory fees. The amount of the penalties the UTC mitigates, if any, will depend on the reasons you were late and whether you have filed late in prior years. If you have not filed your completed annual report or paid your regulatory fees by June 1, 2012, Staff will initiate proceedings to have the UTC revoke your authority to operate in Washington.

What happens if you do not pay the regulatory fees by May 1?

If you do not pay your company's regulatory fees by May 1, you will incur a 2 percent penalty on the amount due and a 1 percent monthly interest charge on the unpaid balance. These amounts apply in addition to the assessment of a penalty of \$100 per business day after May 1 that the fees are unpaid.

May you request an extension of time if you are unable to file the annual report or pay your regulatory fees on time?

You may file a written request for an extension to file your completed annual report, but the UTC will not extend the deadline for paying regulatory fees. Any extension request must be filed with the UTC by April 24, 2012, and must state a valid reason for why you need an extension and identify a specific date by which you will file your completed annual report. The UTC will notify you by May 1 whether your request is approved or denied. Even if your request



is approved, you will still be liable for penalties and interest payments if you fail to pay your regulatory fees by May 1.

What should you do if your company is no longer operating in Washington?

You may cancel your registration or permit by using the cancellation forms available on our website (see below), but if your company operated in Washington at any time during the 2011 calendar year, you must pay regulatory fees and file a closing annual report based on the months of operation during 2011 even if you cancel your registration or permit.

May you designate any information in your annual report as confidential?

Yes, but if you satisfy two conditions:

- (1) You are eligible to request confidential treatment only if your company is regulated under Title 80 RCW, that is, if you operate an electric, natural gas, telecommunications or water company. Transportation companies, regulated under Title 81 RCW, may not request confidential treatment of documents because the authority for such treatment is found only in RCW 80.04.095. If a Title 81 company files its annual report or fee sheet as confidential, the UTC will not treat it as confidential.
- (2) You must follow the steps for filing confidential documents in WAC 480-07-160. You may find this rule at the UTC website, www.utc.wa.gov/annual_reports.

Please note: The regulatory fee sheet portion of your report is not a confidential document and will not be accorded confidential treatment under the rule. The UTC will not, however, disclose credit card information you list on the fee sheet.

May you perform some of these tasks online?

Yes. You may complete the following tasks from the annual reports page at the UTC website www.utc.wa.gov/annualreports:

- Obtain electronic versions of annual report forms
- Pay regulatory fees
- File your report electronically
- Cancel your registration (telecommunications companies) or permit (transportation companies) if your company ceased operations in 2011.

Where do you mail the completed annual report form and regulatory fee payment?

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

Is there any additional information you should file?

- If you are a gas distribution company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 2.

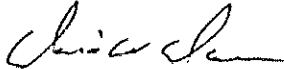
UTC Annual Reports and Fees
February 29, 2012
Page 3

- If you are an electric company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 1.
- If you are a class 1 Railroad, please also file a copy of your Surface Transportation Board Form R-1 - including statistics specific to the state of Washington.

If you have questions about any aspect of your report or regulatory fee, please contact Rae Lynn Carnes at (360) 664-1152 or rcarnes@utc.wa.gov.

If you need this letter or an annual report form in an alternate format, please call 360-664-1243. The TTY Toll-Free phone number is 1-800-416-5289.

Sincerely,



David W. Danner
Executive Director and Secretary

Enclosures

Attachment C



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
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May 14, 2012

NOTICE OF ENFORCEMENT ACTION

Attention:

Your 2011 annual report to the Utilities and Transportation Commission (commission) was due on May 1, as required by law. Financial penalties of \$100 per day began accruing on May 2. As of the date of this letter, you have accrued a penalty of \$800. That penalty will increase by \$100 per day for each subsequent day you fail to comply.

This letter tells you what you can do to mitigate your penalty.

If the commission receives your report postmarked no later than May 25, commission staff will mitigate your penalty to \$25 per day. Additional penalties of \$25 per day will be added for each year you have filed late in the past five years, up to a maximum of \$100 per day.

Annual report forms are available on the commission's website at www.utc.wa.gov. If you have questions or require additional information, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105 or mperkinson@utc.wa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "David W. Danner".

David W. Danner
Executive Director and Secretary