

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TR-150955
Against)	
)	ORDER 01
BALLARD TERMINAL RAILROAD)	
COMPANY LLC)	ORDER DENYING REQUEST FOR
)	HEARING; DENYING CONTEST
in the amount of \$200)	OF VIOLATION; DENYING
)	MITIGATION
.....)	

BACKGROUND

- 1 Washington law requires railroad companies to file annual reports and pay regulatory fees by May 1 of each year. WAC 480-62-300. On February 27, 2015, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee packets to all regulated railroad companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by May 1, 2015, or face penalties of \$100 for each violation of Commission rules. In the case of continuing violations, each day’s continuance is a separate violation. RCW 80.04.405.
- 2 Ballard Terminal Railroad Company LLC (Ballard Terminal Railroad or Company) did not file its annual report until May 5, 2015. On May 21, 2015, the Commission assessed a penalty of \$200 against Ballard Terminal Railroad, calculated as \$100 per business day from May 1 to May 5, 2015.
- 3 On May 29, 2015, Ballard Terminal Railroad responded to the Commission’s penalty assessment contesting the violations and requesting a hearing based on the written information provided. The Company explained that it mailed its annual report via certified mail on April 30, 2015. An annual report for another of its companies, also mailed on April 30, was received by the Commission on May 1, 2015. The Company requests a hearing to address the discrepancy.

DISCUSSION

- 4 WAC 480-62-300 requires regulated railroad companies to file annual reports and pay regulatory fees by May 1 of each year. Ballard Terminal Railroad was responsible for complying with this requirement, including ensuring that the Commission receive the Company's filing by the due date. Ballard Terminal Railroad apparently believes it complied with this obligation by mailing its annual report and regulatory fee on April 30. We disagree.
- 5 As a preliminary matter, we deny the Company's request for a hearing. The Commission's penalty assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. The Company admits it mailed its annual report on April 30, 2015, and provided proof the Commission received that filing on May 5, 2015. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.
- 6 The Commission also denies the Company's contest of the violations. The undisputed facts demonstrate that the Commission received Ballard Terminal Railroad's annual report on May 5, 2015, two business days after the May 1, 2015, deadline. Even if the Commission timely received another filing mailed on April 30, the discrepancy in delivery dates not only is attributable to the United States Postal Service, it is irrelevant. Ballard Terminal Railroad, not the postal service, bears the ultimate responsibility to ensure that the Commission receives the Company's annual report by the due date. The Company failed to do so and thus violated the law.
- 7 Nor is mitigation of the penalty appropriate under these circumstances. The Commission may consider a number of factors when entertaining mitigation, including a company's history of compliance and the likelihood the violation will recur.¹ Ballard Terminal Railroad received and paid a reduced penalty for failing to timely file its annual report in 2014. The Company apparently attempted to avoid another violation this year, but should have known that mailing its annual report on April 30 would not guarantee delivery by May 1. We find the \$200 penalty is an appropriate incentive for the Company to ensure timely filings in the future.

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

ORDER

THE COMMISSION ORDERS:

- 8 (1) Ballard Terminal Railroad Company LLC's request for a hearing is DENIED.
- 9 (2) Ballard Terminal Railroad Company LLC's contest of the violations is DENIED.
- 10 (3) Ballard Terminal Railroad Company LLC's request for mitigation is DENIED.
- 11 (4) The \$200 penalty is due and payable no later than June 18, 2015.
- 12 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective June 4, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.