

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF BG & CM RAILROAD,)
INC.'S SPECIAL REGULATORY FEE) CASE NO. BGR-R-19-01
PURSUANT TO IDAHO CODE §§ 61-1001)
THROUGH 61-1005) ORDER TO SHOW CAUSE
)
) NOTICE OF HEARING
)
) ORDER NO. 34367**

BG & CM Railroad, Inc. (“Railroad”) is a short line railroad providing service in Nez Perce, Clearwater and Idaho Counties, Idaho. The Railroad is a “railroad corporation” and a “common carrier” as defined by *Idaho Code* §§ 61-111 and 61-113. As such, the Company is a public utility subject to the jurisdiction of the Commission. *Idaho Code* § 61-129. This matter comes before the Commission due to the Railroad’s failure to pay its regulatory fees for 2018, as required by *Idaho Code* §§ 61-1001 through 61-1005.

BACKGROUND

1. Commission Regulatory Fees

The Commission’s operating funds are derived by assessing regulatory fees upon utilities and railroads subject to the Commission’s jurisdiction. Each year, the Legislature authorizes the Commission to expend funds necessary to regulate and supervise utilities and railroads doing business in Idaho. *Idaho Code* § 61-1001. The maximum annual assessment fee for each railroad shall not exceed one percent (1%) of its gross intrastate operating revenues, and the minimum annual fee shall be no less than \$50. *Idaho Code* § 61-1004(1) and (4).

Idaho Code § 61-1003 requires “[o]n or before April 1st of each year, each public utility and railroad corporation subject to the jurisdiction of the commission, shall file with the commission a return verified by an officer or agent of the public utility or railroad corporation involved, showing its gross operating revenues from its intrastate utility or railroad business in Idaho for the preceding calendar year during which it carried on such intrastate utility or railroad business.” *Idaho Code* § 61-1003.

Idaho Code § 61-1001 requires “each railroad corporation, subject to the jurisdiction of the commission, and subject to the provisions of this act, shall pay to the commission in each year, a special regulatory fee in such amount as the commission shall find and determine to be

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necessary, together with the amount of all other fees paid or payable to the commission by each such public utility and railroad corporation . . . [.]” *Idaho Code* § 61-1001; *see also Idaho Code* § 61-1005.

Once all the railroads operating in Idaho have reported their intrastate operating revenues for the previous calendar year, the Commission calculates the “proportionate assessment that all railroad corporations . . . shall bear . . . in proportion to their respective gross operating revenues derived from intrastate [railroad] business in Idaho for the preceding calendar year . . . [.]” *Idaho Code* § 61-1004. The Commission then notifies each railroad of its assessed regulatory fee by May 1 of each year. *Idaho Code* § 61-1005. The regulatory fee may be paid to the Commission in equal semi-annual installments due May 15 and November 15 of each year. *Id.*; *see also Idaho Code* § 61-1003.

Idaho Code § 61-1004 sets forth the duties of the Commission with regard to the determination of fees. Regarding the year in question, the Commission has fulfilled its statutory requirements, and the rates set by the Commission were below the statutory maximum of one percent (1%) of gross intrastate revenue. *See Order Nos. 34033 & 34032; see also Affidavit of Nancy Ashcraft.*

In a Decision Memorandum dated June 21, 2019, Commission Staff alleged the Railroad failed to pay its assessed fees for 2018. Specifically, on April 20, 2018, the Company was notified through Invoice No. 2018-256 that it owed \$15,411.83 for its annual assessment (the “Assessment”). *See Affidavit of Nancy Ashcraft, Exhibit A.* Furthermore, on multiple occasions, the Commission Staff (“Staff”) attempted to collect the Railroad’s Assessment, sending invoices, demand letters, and notification that failure to comply could result in legal action. *See Exhibit No. 1 to Decision Memorandum*, dated June 21, 2019; *see also Affidavit of Ashcraft.* Nevertheless, the Railroad has failed, refused, or neglected to meet the requirements of the statutes and the Commission Staff’s demands that it pay its Assessment. *Id.*

The Railroad has failed to pay its statutorily required annual regulatory fees to the Commission for 2018. *See Affidavit of Nancy Ashcraft.* Each failure to pay violates *Idaho Code* §§ 61-1003 and 61-1005.

In December of 2018, the Railroad was assessed \$924.71 in interest on its outstanding balance of \$15,411.83 (6%). *See Idaho Code* § 61-1005 (stating that utilities and railroads failing to timely pay shall incur an annual fee of 6% interest on all unpaid balances).

The Railroad's current outstanding balance is \$16,336.54.

JURISDICTIONAL STATEMENT

The Commission has jurisdiction in this matter under *Idaho Code* §§ 61-101, *et seq.*, including *Idaho Code* § 61-501, which vests the Commission with the authority and jurisdiction to supervise and regulate every public utility in the state. More specifically, *Idaho Code* §§ 61-701, *et seq.*, provides direction to the Commission relating to enforcement, penalties, and interpretation of public utilities law. *See also Idaho Code* §§ 61-1001 through 61-1005 (relating to regulatory fees of railroads).

CLAIM

1. Violations of Idaho Code §§ 61-1001 and 61-1005

Idaho Code §§ 61-1001 and 61-1005 require that the Railroad pay to the Commission an annual regulatory fee in a proportional amount based on the Railroad's intrastate gross operating revenues as reported in its annual verified return.

The Railroad has been contacted on several occasions by Commission Staff demanding that it pay its annual regulatory fee for 2018. In May and November 2018, the Railroad failed or refused to pay the annual regulatory fee totaling \$15,411.83¹ to the Commission in violation of *Idaho Code* §§ 61-1001 and 61-1005. *See Affidavit of Ashcraft*. Because of the Railroad's failure to pay its annual regulatory fees, it has incurred \$924.71 in fees.² At the time of the entry of this Order, BG & CM Railroad, Inc. owes the Commission \$16,336.54 in regulatory fees and interest charges. *Id.*

ORDER

Based on the evidence before the Commission, and good cause appearing, IT IS HEREBY ORDERED that BG & CM Railroad, Inc. shall appear before the Commission **AT 10:45 A.M. (MDT) ON JULY 18, 2019, IN THE COMMISSION HEARING ROOM, 472 WEST WASHINGTON STREET, BOISE, IDAHO**, to show cause why the following should not be required of the Railroad by summary order issued by the Commission:

1. Order the Railroad to immediately pay the entire outstanding balance for 2018 annual fees, plus interest, in the amount of \$16,336.54;

¹ This amount represents an outstanding balance for failing to pay its annual regulatory fee for 2018.

² *Idaho Code* § 61-1005 requires that any outstanding balances be charged an annual fee of 6% interest on the balance.

2. Direct the Commission's attorney to seek the imposition of civil penalties under *Idaho Code* § 61-706 of \$2,000 for each and every offense, totaling \$2000.
3. Direct the Commission's attorney to sue in District Court to enforce the determination of the Commission, consistent with *Idaho Code* §§ 61-705, 61-706, and 61-1005.

IT IS FURTHER ORDERED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338 (Telephone)
(208) 334-3762 (FAX)
E-Mail: secretary@puc.idaho.gov

IT IS FURTHER ORDERED that all proceedings in this matter will be conducted pursuant to Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

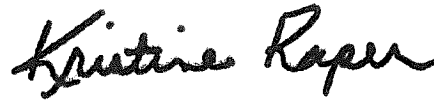
IT IS FURTHER ORDERED that the Commission Secretary serve this Order to Show Cause by Certified Mail (return receipt requested) upon the person designated to receive Notices of Summonses and Complaints (IDAPA 31.01.01.016) and upon the person designated by the utility to receive legal service in Idaho. *Idaho Code* § 61-615.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of July 2019.

9th



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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