

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF BG & CM RAILROAD,) CASE NO. BGR-R-24-01
INC.’S FAILURE TO PAY ITS 2023)
ASSESSMENT FEES AND PROMPLY)
COMPLY WITH STATUTORY MANDATES) ORDER NO. 36216
)

On March 26, 2024, the Idaho Public Utilities Commission (“Commission”) issued Order No. 36121, directing BG & CM Railroad, Inc. (“Railroad” or “Company”) to appear and show cause why it failed to pay its annual assessment fees. Specifically, the Order alleged the Company failed to pay its special regulatory assessment fees (“assessment”) and unpaid interest for 2023 and interest on unpaid regulatory fees for 2022, as required by *Idaho Code* §§ 61-1001 through 61-1005.

On April 11, 2024, the Commission held a Show Cause Hearing (“Hearing”). During the Hearing, Ms. Nancy Ashcraft, a senior financial specialist for the Commission Staff (“Staff”), and the Railroad’s president, Mr. Michael Williams, testified. A copy of a certified letter sent to the Railroad by Staff and a written statement of the Railroad’s unpaid annual assessment were also admitted as exhibits.

Having reviewed the evidence presented at the Hearing, we impose a \$10,000 monetary penalty upon the Railroad. However, this monetary penalty shall be held in abeyance under the terms and conditions described below.

BACKGROUND

1. *Commission Regulatory Fees*

By statute, railroads and public utilities subject to Commission jurisdiction must annually pay an assessment. *Idaho Code* § 61-1001. Each year, the Commission calculates the proportionate assessment that each railroad and public utility shall pay to defray the Commission’s expenses for supervising and regulating these entities during the next fiscal year. *Idaho Code* § 61-1004. At most, a railroad’s annual assessment can be one percent (1%) of its gross intrastate operating revenues, but not less than \$50. *Idaho Code* § 61-1004(1) and (4). After calculating each railroad’s proportionate assessment based on all the railroads reported intrastate operating revenues for the previous year, the Commission notifies each railroad of its assessed regulatory fee by May 1 of

each year. The railroads then must pay the fee in equal, semi-annual installments by May 15th and November 15th of each year. *Idaho Code* §§ 61-1001 through 61-1005.

In this case, Staff alleged that it contacted the Company on several occasions demanding that it pay its annual regulatory fee for 2023. Despite this, the Company failed or otherwise refused to pay either semi-annual installment of its \$14,775.57 annual regulatory fee in violation of *Idaho Code* §§ 61-1001 and 61-1005. In addition to the outstanding 2023 assessment balance, the Company also owed \$308.46 in fees due to interest on the unpaid 2023 assessment balance (through December 5, 2023) and \$49.25 in interest carried forward from its 2022 assessment. In total, Staff alleged that the Company owed the Commission \$15,133.28 in regulatory fees and interest.

THE SHOW CAUSE HEARING

During the Hearing, Ms. Ashcraft testified to the amount of the Company's 2023 assessment, when it was due, and Staff's efforts to collect the 2023 assessment plus interest from 2022 that carried forward. Specifically, Ms. Ashcraft testified that, before May 1st of each year, the Commission sends an invoice to each public utility in Idaho for their annual assessment. The public utilities must then pay half the invoiced amount by May 15th and the remainder by November 15th. According to Ms. Ashcraft, the Company's assessment for 2023 was \$14,775.57.

Regarding Staff's collection efforts, Ms. Ashcraft testified to sending the Company a letter via certified mail on December 5, 2023. The certified letter stated that the Company owed \$14,775.57 in unpaid annual assessment plus \$357.71 of accrued interest (this included the \$308.46 outstanding interest for 2023 and \$49.25 for unpaid interest for its 2022 assessment). The letter further noted the Railroad's "history of failing to pay its yearly assessment on time," provided instructions regarding the potential payment of installments, and warned of the possibility of show cause proceedings for the unpaid balances. Despite the letter, the Railroad's outstanding assessment remained unpaid, resulting in Staff recommending the Commission issue an Order to Show Cause requiring the Railroad to appear and show cause why it had failed to pay its required assessment and accrued interest.

Ms. Ashcraft further testified to the Company's history of untimely annual assessment payments. According to Ms. Ashcraft, the Company paid its annual assessment on time only once since 2016. Ms. Ashcraft also testified that the Company had continued this pattern of late payment by failing to pay its 2023 assessment as of the date of the Hearing.

During the Hearing, Mr. Williams admitted that the Company had established a pattern of tardiness in paying its annual assessment—including its 2023 assessment. Mr. Williams neither disputed the amount the Company owed, nor did he attempt to excuse the Company’s failure to timely pay its 2023 assessment, testifying that it resulted only from an error on his part. Regarding the future assessment, Mr. Williams testified that he would make prompt payments going forward. Notably, Mr. Williams indicated that he had brought payment for the Company’s 2023 assessment with him and could provide it to Staff immediately following the Hearing.

COMMISSION JURISDICTION AND FINDINGS

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 Idaho Code* §§ 61-1001 through 61-1005 (relating to regulatory fees of railroads).

Having reviewed the evidence presented at the Hearing, we find that the Railroad willfully failed to timely pay its annual regulatory assessment for 2023 in violation of *Idaho Code* §§ 61-1001 and 61-1005. We further find that this failure is part of a history of late payment by the Company reaching back to at least 2016. Based on this established pattern of tardiness, we find it necessary to impose a monetary sanction of \$10,000 for the Company’s failure to timely pay either semi-annual installment of its total \$14,775.57 assessment (and any associated interest) by May 15, 2023, and November 15, 2023. Each day these fees remained unpaid constituted a separate violation. *See Idaho Code* § 61-707.

However, considering the Company’s acceptance of responsibility and recent efforts to comply with its payment obligations, we find it fair, just, and reasonable to hold the monetary sanction in abeyance for a period of five years. If the Company timely pays its annual assessment for 2024-2028, the \$10,000 sanction will be waived at the end of that five years. However, should the Company fail to meet its payment obligations at any time after June 1, 2024, the \$10,000 sanction may be reinstated along with an additional sanction of \$500 for each day the Company remains out of compliance with its regulatory obligations.

ORDER

IT IS HEREBY ORDERED that finding that the Company is subject to a penalty of \$10,000 for its failure to pay either semi-annual installment of its total \$14,775.57 annual assessment, and associated interest, in May and November of 2023.

IT IS FURTHER ORDERED that the \$10,000 penalty shall be held in abeyance for a period of five years from the issuance of this Order. If the Company pays its annual assessment on time during that five-year period, the \$10,000 penalty may be waived.

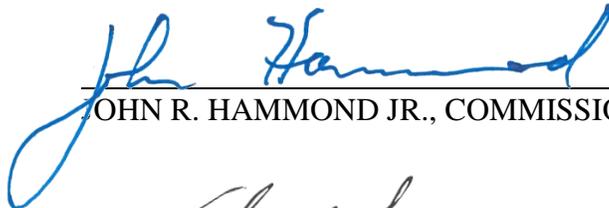
IT IS FURTHER ORDERED that, if the Company fails to meet its payment obligations after June 1, 2024, the \$10,000 sanction may be reinstated along with an additional sanction of \$500 for every day the Company remains out of compliance with its regulatory obligations.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order regarding any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 7th day of June 2024.



ERIC ANDERSON, PRESIDENT



JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Monica Barrios-Sanchez
Commission Secretary