

DECISION MEMORANDUM

TO: COMMISSIONER ANDERSON
COMMISSIONER HAMMOND
COMMISSIONER LODGE
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: MICHAEL DUVAL
DEPUTY ATTORNEY GENERAL

DATE: MARCH 19, 2024

SUBJECT: IN THE MATTER OF BG & CM RAILROAD, INC.'S FAILURE TO PAY ITS 2023 ASSESSMENT FEES AND PROMPTLY COMPLY WITH COMPLY WITH STATUTORY MANDATES; CASE NO. BGR-R-24-01.

BG & CM Railroad, Inc. (“Company”) is a short line railroad providing service in Nez Perce, Clearwater and Idaho Counties, Idaho. The Company 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 Company’s failure to pay its regulatory fees for 2023, as required by *Idaho Code* §§ 61-1001 through 61-1005. According to Commission Staff (“Staff”), delays in the Company paying its statutory assessment fees have become an unacceptable norm. *See* Exhibit A attached to Affidavit Nancy Ashcraft, **Exhibit 1**. Staff requests that the Commission order the Company to appear at a show cause hearing and explain its conduct regarding these delays. Staff also requests that the Commission order the Company to pay its 2023 assessment fees.

On December 5, 2023, Staff sent a letter via Certified Mail that stated the Company owed a 2023 Assessment Amount of \$14,775.57 plus \$357.71 of accrued interest as of that date. The letter also noted that the Company had “a history of failing to pay its yearly assessment on time” and provided instructions regarding the potential payment of installments. *See* Exhibit A attached to Affidavit Nancy of Ashcraft, **Exhibit 1**. Staff has not received any payment from the Company.

STAFF RECOMMENDATION

Staff recommends that the Commission issue a Notice of Hearing and Order to Show Cause why the Company should not be required by the Commission to:

1. Immediately pay its past due Assessment or semi-annual installment, plus all accrued interest;
2. Pay up to a \$2,000.00 penalty per day for its continuing failure to abide by Commission mandates including the payment of its 2023 Assessment or semi-annual installment and all accrued interest. *See Idaho Code §§ 61-706 & 61-707*; and
3. Appear before the Commission at a Show Cause Hearing in April, at a date and time to be set by the Commission in its order, to explain its history of late payment.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Hearing and Order to Show Cause why the Company should not be required by the Commission to:

1. Immediately pay its past due Assessment or semi-annual installment, plus all accrued interest;
2. Pay up to a \$2,000.00 penalty per day for its continuing failure to abide by Commission mandates including the payment of its 2023 Assessment or semi-annual installment and all accrued interest. *See Idaho Code §§ 61-706 & 61-707*; and
3. Appear before the Commission at a Show Cause Hearing Scheduled Hearing in April, at a date and time to be set by the Commission in its order, to explain its history of late payment?



Michael Duval
Deputy Attorney General

EXHIBIT 1
Nancy Ashcraft Affidavit
(Attached)

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

2024 MAR 15 PM 2:28

**IN THE MATTER BG & CM RAILROAD,)
 INC.'S FAILURE TO PAY SPECIAL)
 REGULATORY FEE PURSUANT TO)
 IDAHO CODE §§ 61-1001 THROUGH 61-)
 1005)**

**CASE NO. BGR-R-24-01)
 AFFIDAVIT OF NANCY ASHCRAFT)**

IDAHO PUBLIC
 UTILITIES COMMISSION

STATE OF IDAHO)
) ss.
 County of Ada)

I, Nancy Ashcraft, being first duly sworn under oath, depose and state as follows:

1. My name is Nancy Ashcraft. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated herein.
2. The information contained herein is true and correct to the best of my knowledge and belief.
3. I am a Financial Specialist, Senior at the Idaho Public Utilities Commission (“Commission”). I started working in this position in 2016. I am responsible for the billing and collection of annual fees assessed on public utilities and railroads as described in *Idaho Code* §§ 61-1001 through 61-1005.
4. In my position I am aware that BG & CM Railroad, Inc. (“Company”) has a history of being slow or unresponsive in the payment of its annual assessment fees (“Assessment”). For example, the Company has not paid its 2023 Assessment despite requests by Staff for it to do so.
5. In May and November 2023, the Company failed or refused to pay its annual regulatory fees.
6. As of December of 2023, the Company was assessed \$357.71 in interest on the outstanding balance of its Assessment of \$14,775.57 at the rate of six percent (6%).
7. Staff sent the Company a Demand Letter via certified mail outlining the amounts owed by the Company. The Demand Letter also provided the Company with notice of the potential for the Commission to take legal action against it—including the Commission ordering the Company to Show Cause for its failures to comply with Commission

mandates. This Demand Letter was delivered to the Company on December 13, 2023. A true and correct copy of the Demand Letter is attached hereto and incorporated by reference herein as **Exhibit A**.

8. Despite such action by Staff, the Company has failed to pay its Assessment, and the applicable interest owed to the Commission remains unpaid and past due.


Dated this 15 day of March 2024.



Nancy Ashcraft
Financial Specialist, Senior
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 15th day of March 2024.





Notary Public for Idaho
Residing at: Ada County, Idaho
Commission expires: March 15, 2025



Idaho Public Utilities Commission

P.O. Box 83720, Boise, ID 83720-0074

Brad Little, Governor

Eric Anderson, President
John R. Hammond, Jr., Commissioner
Edward Lodge, Commissioner

VIA CERTIFIED MAIL

December 5, 2023

Michael Williams, President
BG & CM Railroad
10100 N Ambassador Dr., Ste 105
Kansas City, MO 64153

Re: Unpaid Annual Assessment Fees – Notice of Possible Order to Show Cause and Legal Action

Dear Mr. Williams,

This correspondence is sent to you regarding BG & CM Railroad's (the "Company") failure to pay its 2023 annual assessment ("Assessment"), in the amount of \$14,775.57 plus the accrued interest in the amount of \$357.71. The Company has a history of failing to pay its yearly assessment on time. A copy of the latest Statement showing the amount of the unpaid 2023 Assessment and accrued interest is enclosed. *Idaho Code* § 61-1005 provides that such assessment may be paid to the commission in equal semi-annual installments on the 15th day of May and November each year.

DEMAND IS HEREBY MADE that the Company immediately pay the outstanding balance due by hand delivering payment to:

Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Suite 201-A
Boise, Idaho 83714

or by U.S. Mail at:

P.O. Box 83720
Boise, Idaho 83720-0074
Attn: Nancy Ashcraft.

Exhibit "A"

If the Commission does not receive the Company's **full payment by December 20, 2023**, the Commission will initiate formal proceedings to compel that payment. Such proceedings may include an administrative proceeding in which the Company is required to appear before the Commission in Boise, Idaho to show cause why the Commission should not order the Company to:

- Immediately pay its unpaid 2023 Assessment plus any accrued interest; and,
- Pay up to a \$2,000.00 penalty per day for the Company's continuing failure to pay the 2023 Assessment and all accrued interest. *See Idaho Code §§ 61-706 & 61-707.*

Additionally, the Commission may seek a court order to collect the 2023 Assessment and all accrued interest, plus any penalties it may assess. *See Idaho Code §§ 61-1005 & 61-712.* In both administrative and court proceedings, the Commission would ask the tribunal to order the Company to pay the Commission's attorney's fees and costs to prosecute the case. *See Idaho Code §§ 12-117, -120, -121 and Idaho Rule of Civil Procedure 54.*

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MRB', with a long horizontal line extending to the right.

Maria Barratt-Riley
Executive Director

Enclosures

cc: Nancy Ashcraft



Idaho Public Utilities Commission

Brad Little, Governor

Eric Anderson, President

John R. Hammond, Jr., Commissioner

Edward Lodge, Commissioner

Statement

BG & CM Railroad
 10100 N Ambassador Dr., Ste 105
 Kansas City, MO 64153

Date
12/5/2023

		Account #	BGR-R		
Date	Transaction	Amount	Balance		
12/31/2020	Balance forward		-0.01		
04/19/2021	INV #2021-010. --- 2023 Railroad Assessment \$11,082.12 --- Tax: State Sales Tax @ 6.0% = 0.00	11,082.12	11,082.11		
05/13/2021	PMT #5200. REC21058	-11,082.12	-0.01		
04/21/2022	INV #2022-010. --- 2023 Railroad Assessment \$11,240.90 --- Tax: State Sales Tax @ 6.0% = 0.00	11,240.90	11,240.89		
07/05/2022	PMT #5290. REC23001	-11,240.89	0.00		
07/05/2022	INV #INT-22-014. --- Interest Charge \$49.25 --- Tax: State Sales Tax @ 6.0% = 0.00	49.25	49.25		
04/18/2023	INV #2023-010. --- 2023 Railroad Assessment \$14,775.57 --- Tax: State Sales Tax @ 6.0% = 0.00	14,775.57	14,824.82		
12/05/2023	INV #INT-23-002. --- Interest Charge \$308.46 --- Tax: State Sales Tax @ 6.0% = 0.00	308.46	15,133.28		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
308.46	0.00	0.00	0.00	14,824.82	\$15,133.28

Please contact Nancy Ashcraft at (208) 334-0325 or by email at nancy.ashcraft@puc.idaho.gov if you have any questions or need additional information.