

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ST. MARIES RIVER) CASE NO. SMR-R-22-01
RAILROAD COMPANY’S FAILURE TO)
MAINTAIN THE 396298J CROSSING AND) ORDER TO SHOW CAUSE
TO PAY ASSESSMENT FEES)
) NOTICE OF HEARING
)
) ORDER NO. 35439

St. Maries River Railroad Company (“Railroad” or “Company”) is a short line railroad providing freight service between Plummer and Bovill, in the State of Idaho. The Railroad is a “railroad corporation” and a “common carrier” as defined by *Idaho Code* §§ 61-111 and 61-113. As such, the Railroad 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 maintain the 396298J, 10th Street railroad crossing (“Crossing”) in St. Maries, Idaho, as required by *Idaho Code* 62-306, and to pay its regulatory fees for 2022, as required by *Idaho Code* §§ 61-1001 through 61-1005.

The Commission has further 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).

CLAIMS

A. The 396298j Crossing

On March 22, 2022, Commission Staff (“Staff”) conducted a physical inspection of the Crossing. *See* Affidavit of Wayne Andrews, **Exhibit 1**. During that inspection, Staff spoke with the Maintenance of Way Supervisor/Bridge Inspector (“Maintenance Supervisor”) for the Railroad. *Id.* Staff informed the Maintenance Supervision that the asphalt at the Crossing had deteriorated and was causing a rough crossing that required maintenance. *Id.* *Idaho Code* § 62-306 provides:

Whenever a state or county highway crosses or shall hereafter cross a railroad at grade, the railroad company shall at its own expense construct and maintain that

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portion of such highway between the rails and for a distance of not less than two (2) feet outside the outer rails. The crossing shall be planked or surfaced with other suitable material for the full width of the traveled way, including shoulders, and shall be maintained at all times in a smooth and firm condition.

On March 24, 2022, Staff sent a letter to the Railroad via certified mail informing the Railroad that the Crossing was in violation of *Idaho Code* § 62-306. **Exhibit A.** The letter provided thirty (30) days to resolve the issue, or to provide notice of a detailed plan and timeline for resolving the issue. *Id.* On May 3, 2022, Staff conducted a follow up inspection of the Crossing and determined that no maintenance had been performed. *Id.* Staff has not received any response from the Railroad.

B. Annual Assessment

Idaho Code § 61-1001 provides that: “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 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. 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.

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.

On April 21, 2022, Staff notified the Railroad through Invoice No. 2022-019 that the Railroad owed a 2022 Assessment Amount of \$6,890.18. *See* Affidavit of Nancy Ashcraft, **Exhibit 2**. The Invoice provided that “assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2022. The second installment is due no later than November 15, 2022. Outstanding balances will be assessed with a 6% annual interest fee.” **Exhibit B**. To date, Staff has not received any response or payment from the Railroad.

C. Potential Civil Penalties

Idaho Code provides for civil penalties with respect to violations of, among other things, statutes, or Commission orders; specifically, *Idaho Code* § 61-706 provides:

Any public utility which violates or fails to comply with any provisions of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, under this act, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject to a penalty of not more than \$2,000 for each and every offense.

Further, *Idaho Code* § 61-707 states:

Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand, or requirement of the commission, under the provisions of this act, or any part or portion thereof, by any public utility, corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be and be deemed to be a separate and distinct offense.

In this case the Railroad faces a potential civil penalty of up to \$2,000 for its failure to maintain the Crossing, as well as potential civil penalties of up to \$2,000 per day for its continued failure to perform maintenance on the Crossing. *See Idaho Code* §§ 61-706 & 61-707. Further, the Railroad faces a potential civil penalty of up to \$2,000 for its failure to pay its past due Assessment or semi-annual installment, plus all accrued interest, as well as potential civil penalties of up to \$2,000 per day for its continuing failure to pay its 2022 Assessment or semi-annual installment and all accrued interest. *See Idaho Code* §§ 61-706 and 61-707.

ORDER

Based on the evidence before the Commission, and good cause appearing, IT IS HEREBY ORDERED that St. Maries River Railroad Company shall appear before the Commission **AT 3:00 P.M. (MDT) ON JULY 12, 2022, IN THE COMMISSION HEARING ROOM, 11331 W.**

CHINDEN BLVD., BLDG. #8, SUITE 201-A, BOISE, IDAHO, 83714 to show cause why the following should not be required of the Railroad by summary order issued by the Commission:

1. Immediately perform maintenance on the Crossing;
2. Pay up to a \$2,000 penalty per day for its failure to perform maintenance on the Crossing. *See Idaho Code §§ 61-706 and 61-707.*
3. Immediately pay its past due Assessment or semi-annual installment, plus all accrued interest; and
4. Pay up to a \$2,000 penalty per day for its continuing failure to pay its 2022 Assessment or semi-annual installment and all accrued interest. *See Idaho Code §§ 61-706 and 61-707.*

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 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 for 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
P.O. 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 public utility to receive legal service in Idaho. *Idaho Code § 61-615.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 22nd day of June 2022.



ERIC ANDERSON, PRESIDENT

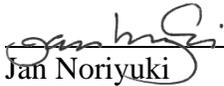


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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Affidavit of Wayne Andrews
EXHIBIT 1

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ST. MARIES RIVER)
RAILROAD COMPANY’S FAILURE TO) CASE NO. SMR-R-22-1
MAINTAIN THE 396298J CROSSING AND)
TO PAY ASSESSMENT FEES) AFFIDAVIT OF WAYNE
ANDREWS)

WAYNE ANDREWS, being duly sworn, stated:

1. My name is Wayne Andrews. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated herein.

2. I am a Safety Inspector Regulated Utilities for Railroads at the Idaho Public Utilities Commission. I started working in this position in December of 2016. I am responsible for the safety and inspection of railroad operations as described in *Idaho Code* §§ 62-101 through 62-424, and Public Utilities Rules.

3. On March 22, 2022, I met with Paul Riemann, the Maintenance of Way Supervisor/Bridge Inspector for St. Maries River Railroad (“Company”) concerning 396298J, the crossing at 10th Street, St. Maries, Idaho (“10th Street Crossing”).

4. On that date I informed the Company that the asphalt at the 10th Street Crossing had deteriorated and was causing a rough crossing.

5. On March 24, 2022, I sent a follow up email, and a physical letter via certified mail informing the Company that the 10th Street Crossing was in violation of Idaho Code § 62-306. The letter provided thirty (30) days to resolve the issue, or to provide notice of a detailed plan and timeline for resolution. **Exhibit A.**

6. On May 3, 2022, I conducted a follow up inspection of the 10th Street Crossing and determined that no maintenance had been performed.

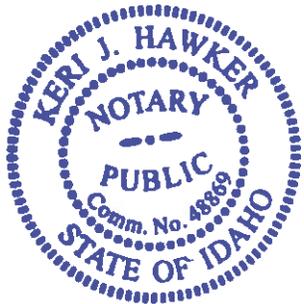
7. As of May 17, 2022, I have not received any response from the Company.

Dated this 17 day of May 2022.



Wayne Andrews
Safety Inspector Regulated Utilities-Railroads
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 17th day of May 2022.



Notary Public for Idaho
My commission expires on 3/15/2025

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EXHIBIT A

True and correct copy of Letter sent to the Company

(Attached)



Idaho Public Utilities Commission

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

Brad Little, Governor

Eric Anderson, President

John Chatburn, Commissioner

John R. Hammond, Jr., Commissioner

March 24, 2022

Paul Riemann
Maintenance of Way Supervisor / Bridge Inspector
St. Maries River Railroad
318 N. 10th Street
St. Maries, ID 83861

Mr. Riemann,

I am writing you on behalf of the Rail Safety Inspection Program for the Idaho Public Utilities Commission. After receiving a complaint about a rough crossing, I inspected the railroad grade crossings on the St. Maries River Railroad (STMA) line, this grade crossing deficiency was documented:

1. 396298J,
10th Street, St. Maries, Idaho: Asphalt is deteriorating causing a rough crossing.

The Idaho statute pertaining to the requirement reads as follows:

62-306. CONSTRUCTION AND MAINTENANCE OF RAILROAD GRADE CROSSINGS. Whenever a state or county highway crosses or shall hereafter cross a railroad at grade, the railroad company shall at its own expense construct and maintain that portion of such highway between the rails and for a distance of not less than two (2) feet outside the outer rails. The crossing shall be planked or surfaced with other suitable material for the full width of the traveled way, including shoulders, and shall be maintained at all times in a smooth and firm condition.

Please resolve the above issue within thirty days and provide notice to me or provide a detailed plan and timeline for deficiency resolution. If you have any question regarding these findings, feel free to contact me at 208-334-0317 or by email wayne.andrews@puc.idaho.gov.

Very Respectfully,

Wayne Andrews
IPUC Railroad Safety Inspector

Affidavit of Nancy Ashcraft
EXHIBIT 2

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ST. MARIES RIVER)
RAILROAD COMPANY’S FAILURE TO) **CASE NO. SMR-R-22-01**
MAINTAIN THE 396298J CROSSING AND)
TO PAY ASSESSMENT FEES) **AFFIDAVIT OF NANCY**
) **ASHCRAFT**

NANCY ASHCRAFT, being duly sworn, stated:

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. I am a Financial Specialist, Senior at the Idaho Public Utilities Commission. I started working in this position in 2016. I am responsible for the billing and collection of annual fees assessed on public utilities as described in *Idaho Code* §§ 61-1001 through 61-1005.

3. In May 2022, St. Maries River Railroad Company (“St. Maries” or the “Company”) failed or refused to pay the first installment of the 2021 total assessment fee of \$6,890.18 (“Assessment”).

6. Staff has attempted to collect the Company’s past due Assessment by sending an invoice on April 21, 2022, stating the due date for the first installment of May 15, 2022. A true and correct copy of the invoice is attached hereto and incorporated by reference herein as **Exhibit B**.

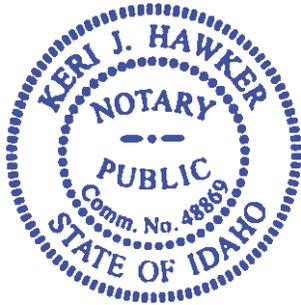
7. Despite such action by Staff, St. Maries has failed to pay its Assessment, and any applicable interest owed to the Commission remains unpaid and past due.

Dated this 24th day of May 2022.



Nancy Ashcraft
Financial Specialist, Senior
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 24th day of May 2022.





Notary Public for Idaho
My commission expires on 3/15/2025

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EXHIBIT B

**True and correct copy of Invoice sent to the Company
(Attached)**



Idaho Public Utilities Commission

Brad Little, Governor

Eric Anderson, President

John Chatburn, Commissioner

John R. Hammond, Jr., Commissioner

St. Maries River Railroad Company
10100 N Ambassador Dr., Ste. 105
Kansas City, MO 64153

Assessment Invoice

Date	Invoice No.
4/21/2022	2022-019

Due Date	5/15/2022
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Account No.	SMR-R	\$1,050,973.50	2021 GIOR Amount
Description		Assessment Amount	
2022 Railroad Assessment .6556%		6,890.18	

The 2022 assessment fee for railroads is .6556% and .1995% for public utilities by Commission Order Number 35371 and 35372 respectively. The minimum assessment fee is \$50.00.

Total	\$6,890.18
Payments/Credits	\$0.00
Balance Due	\$6,890.18

The 2022 assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2022. The second installment is due no later than November 15, 2022. Outstanding balances will be assessed with a 6% annual interest fee. Per Idaho code 67-2026, assessment fees over \$100,000 must be paid by an electronic funds transfer.

ANY UTILITY OR RAILROAD OBJECTING TO THE ASSESSMENT STATED ABOVE MAY FILE AN OBJECTION WITH THE COMMISSION PURSUANT TO IDAHO CODE 61-1007.

Please make checks or money orders payable to:
Idaho Public Utilities Commission
PO BOX 83720
BOISE ID 83720-0074

Please contact Nancy Ashcraft with questions or comments: (208) 334-0325 or nancy.ashcraft@puc.idaho.gov

Remittance advice for:

St. Maries River Railroad Company

Account No. SMR-R Invoice No. 2022-019 Remittance amount: \$ _____