

DECISION MEMORANDUM

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

FROM: CHRIS BURDIN
DEPUTY ATTORNEY GENERAL

DATE: JUNE 1, 2022

SUBJECT: IN THE MATTER OF ST. MARIES RIVER RAILROAD COMPANY'S
FAILURE TO MAINTAIN THE 396298J CROSSING AND TO PAY
ASSESSMENT FEES; CASE NO. SMR-R-22-01.

St. Maries River Railroad Company ("Railroad" or "Company") is a short line railroad providing freight service between Plummer and Bovill, 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.

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 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.

I.C. § 62-306.

On March 24, 2022, Staff sent 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

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.** Staff has not received any response or payment from the Railroad.

STAFF RECOMMENDATION

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

1. Immediately perform maintenance on the Crossing;
2. Pay up to a \$2,000.00 penalty per day for its failure to perform maintenance on the Crossing. *See* Idaho Code §§ 61-706 & 61-707.
3. Immediately pay its past due Assessment or semi-annual installment, plus all accrued interest; and
4. Pay up to a \$2,000.00 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 & 61-707.

COMMISSION DECISION

Does the Commission wish to set a date for and issue a Notice of Hearing & Order to Show Cause?



Chris Burdin
Deputy Attorney General

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.

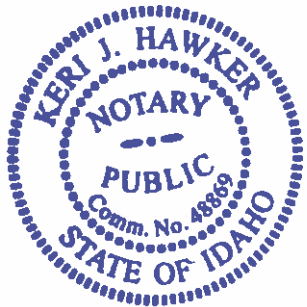
7. As of May 17, 2022, I have not received any response from the Company.

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**.

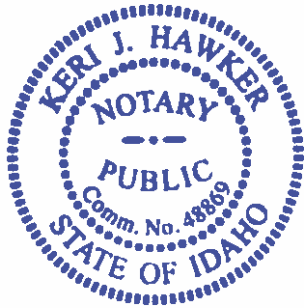
7. Despite such action by Staff, St. Maries has failed to pay its Assessment, and any applicable interest owed to the Commission remains unpaid and past due.


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: \$ _____