

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL

DATE: MAY 17, 2007

SUBJECT: BG&CM RAILROAD OBJECTION TO ITS ANNUAL REGULATORY
FEE FOR CALENDAR YEAR 2007, CASE NO. BGR-R-07-01

On May 7, 2007, BG&CM Railroad filed a timely objection to its annual regulatory fee for calendar year 2007. BG&CM operates portions of the previous Camas Prairie Railroad's Grangeville branch line (Cottonwood to Spalding). In its objection, the Railroad stated that it had over-reported its gross intrastate operating revenue for calendar year 2006. Instead of reporting its gross intrastate operating revenue, the Railroad had inadvertently included some intrastate operating revenues from another railroad. Consequently, BG&CM asserts that it had over-reported its gross intrastate revenue by more than \$427,422. Objection at 1.

BACKGROUND

A. The Commission's 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 expense funds necessary to regulate and supervise utilities and railroads. *Idaho Code* §§ 61-1001 and 62-611. *Idaho Code* § 61-1003 provides that on or before April 1 of each year, each railroad corporation shall report its gross operating revenues from its intrastate railroad business in Idaho for the proceeding calendar year. When all the railroads have reported their total intrastate revenues, this cumulative figure is divided by the amount the Commission expends regulating railroads. For example, for fiscal year 2008 (July 1, 2007 through June 30, 2008), the expenditure amount attributed to regulating railroads is \$142,000. Order No. 30304. The railroads reported gross intrastate operating revenues totaling

\$14,071,803 for calendar year 2006. Thus, the proportionate share of each railroad's regulatory fee is calculated by multiplying .7623 percent (.007623) times its gross operating revenues. *Id.* The maximum assessment fee for each railroad shall not exceed one percent (1.00%) of its gross revenues, and the minimum fee shall be no less than \$50. *Idaho Code* § 61-1004.

Once the railroad assessment is determined, the Commission notifies each railroad of its regulatory fee no later than May 1 of each year. The regulatory fee may be paid to the Commission in equal semi-annual installments due May 15 and November 15. *Idaho Code* § 61-1005. Any railroad may object to its regulatory fee "on or before the time specified for payment of the first installment of the assessment made against it." *Idaho Code* § 61-1007.

B. The Railroad's Objection

As mentioned above, BG&CM asserts that it over-reported its gross operating revenue. In its initial certification dated March 5, 2007, the Railroad reported that its Idaho gross intrastate revenue for the calendar year 2006 was \$667,422. In its objection, the Railroad maintains that its actual intrastate gross operating revenue for calendar year 2006 was \$240,000. The Railroad alleges that it inadvertently reported the combined operating revenues from two railroads. Consequently, the cumulative total of intrastate operating revenues for all the railroads was allegedly over-reported by 3.0%.

Calculated at the over-reported amount, BG&CM's 2007 regulatory fee was \$5,087.76. Keeping the assessment at the established rate (.007623) but adjusting for the lower gross operating revenues, would result in a 2007 assessment of \$1,829.52, or about \$3,250 less for railroad operations.

STAFF RECOMMENDATION

The Commission's fee assessment statutes contemplate that a railroad's objection to its regulatory fee "shall proceed" on an expedited basis. *Idaho Code* § 61-1007 requires that the Commission hold a hearing regarding the fee objection within 20 days of the date the objection is filed with the Commission. Moreover, the Commission shall make and issue its findings and Order within 20 days after the hearing. Consequently, the Commission must expeditiously consider the Railroad's objection.

In this case, BG&CM alleges that it misreported its intrastate operating revenues. When a similar objection was made in 2002, the Commission directed that the Staff verify the

correct amount of reported intrastate operating revenue. Consequently, Staff recommends that it follow the same procedures and expeditiously verify the reported revenues of BG&CM.

Staff further recommends that the Commission set this matter for a telephonic hearing on May 29, 2007 at 10:00 a.m. (MST) (before the Moscow abandonment telephonic hearing). Staff also requests that the parties be allowed to offer "live" testimony in lieu of prefiled testimony.

COMMISSION DECISION

1. Does the Commission direct the Staff to verify the reported 2006 operating revenues for BG&CM Railroad?
2. Should this matter be set for a telephonic hearing without prefiled testimony?
3. Anything else?



Don Howell

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