

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: JOHN R. HAMMOND JR.
DEPUTY ATTORNEY GENERAL

DATE: June 21, 2019

SUBJECT: IN THE MATTER OF ORDER TO SHOW CAUSE FOR BG & CM
RAILROAD, INC.'S FAILURE TO PAY 2018 ANNUAL ASSESSMENT;
CASE NO. BGR-R-19-01

On April 20, 2018, the Commission notified BG & CM Railroad, Inc. (“BG & CM” or the “Company”) through Invoice No. 2018-247 that it owed \$15,411.83 for its annual assessment (the “Assessment”). *See Affidavit of Nancy Ashcraft, Exhibit A.* On October 2, 2018, a demand letter was sent to the Company by certified mail, return receipt requested, demanding it pay its Assessment. *See Exhibit 1.* On December 31, 2018, the Commission notified the Company through Invoice No. INT-2018-04 that the Company owes an additional \$924.71 in interest for failure to pay its Assessment in a timely manner. *Id.* Copies of these invoices are enclosed. On May 15, 2019 a Statement showing the unpaid Assessment and accrued interest was sent to the Company. *Id.*

On January 23, 2019, correspondence was sent to BG & CM by certified mail, return receipt requested, demanding the Company pay its delinquent Assessment in the amount of \$15,411.83, plus accrued interest of \$924.71. *See Exhibit 1.* On June 6, 2019, a second demand letter was sent to the Company by certified mail, return receipt requested, demanding it pay its Assessment plus all accrued interest on or before June 15, 2019. *Id.* The Company to date has failed to rectify this delinquency.

STAFF RECOMMENDATION

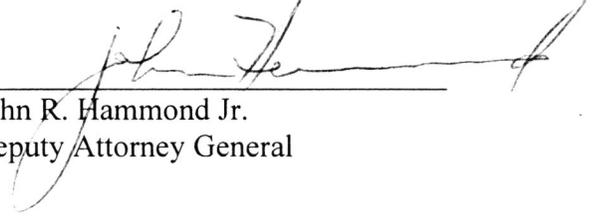
Staff recommends that the Commission issue the attached proposed Notice of Hearing & Order to Show Cause why the Company should not be required by the Commission to:

- immediately pay its past due Assessment plus all accrued interest in the total amount of \$16,336.54; and,
- pay up to a \$2,000.00 penalty per for its continuing failure to pay its Assessment and all accrued interest. *See Idaho Code §§ 61-706 & 61-707.*

The proposed Notice of Hearing and Order to Show Cause further directs the attorney of the Commission to commence an action in District Court should the Company fail to show such cause.

COMMISSION DECISION

Does the Commission wish to set a date for and issue the proposed Notice of Hearing & Order to Show Cause attached hereto as **Exhibit 2**?



John R. Hammond Jr.
Deputy Attorney General

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EXHIBIT 1
True and Correct Copies of Demand Letters
(Attached)

VIA CERTIFIED MAIL

October 2, 2018

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

Re: Gross Intrastate Operating Revenue Report – Notice of Possible Legal Action

Attn: Mr. Colin Shelman,

The Office of the Attorney General has been made aware that BG & CM Railroad has failed to submit its 2018 annual assessment. Idaho Code § 61-1005 states that, "[o]n or before May 1st of each year, the commission shall notify each public utility and railroad corporation subject to the provisions of this act, by mail, of the amount of the fee for the ensuing fiscal year beginning July 1. Upon failure, refusal or neglect of any public utility or railroad corporation to pay such fee the attorney general shall commence an action in the name of the state to collect the same." Commission Staff has notified BG & CM Railroad the amount of the fee on invoice 2018-247 dated April 20, 2018.

Idaho Code§ 61-706 & 61-710 states that, "any public utility or corporation that fails to comply with any of the provisions of this act or which fails to obey, observe, or comply with any order, decision, rule, direction, demand or requirement is subject to a penalty of up to \$2,000."

To avoid further proceedings and court action, BG & CM Railroad must immediately pay its annual assessment. A copy of your original invoice is enclosed. Any questions concerning the assessment may be directed to Maria Barratt-Riley, (208) 334-0337, or by email: maria.barratt-riley@puc.idaho.gov

Sincerely,

Brandon Karpen
Deputy Attorney General

Enclosures

cc: Maria Barratt-Riley
Joe Leckie



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Assessment Invoice

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

Date	Invoice No.
4/20/2018	2018-247

Due Date	5/15/2018
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2017 GIOR	\$1,541,953.57
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Account No.	BGR-R
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Description	Assessment Amount
2017 Railroad Assessment .9995%	15,411.83

The 2018 assessment fee for public utilities is .2179% and .9995% for railroads by Commission Order Number 34033 and 34032 respectively. The minimum assessment fee is \$50.00.

Total	\$15,411.83
Payments/Credits	\$0.00
Balance Due	\$15,411.83

The 2018 assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2018. The second installment is due no later than November 15, 2018. Outstanding balances after November 15, 2018 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:

BG & CM Railroad

Account No. BGR-R Invoice No. 2018-247 Remittance amount: \$ _____

SENDER COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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



9590 9402 1657 6053 3630 45

2. Article Number (Transfer from service label)

7015 0640 0000 1790 9566

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Colin Shelman*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery
10-5-18

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

- Priority Mail Express®
- Registered Mail™
- Mail Restricted

- Collect on Delivery
- Collect on Delivery Restricted
- Signature Confirmation™
- Signature Confirmation Restricted Delivery
- Restricted Delivery

Domestic Return Receipt

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**

Domestic Mail Only

For delivery information, visit our website at www.usps.com™.

OFFICIAL USE

7015 0640 0000 1790 9566

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent To

BG & CM Railroad

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

Postmark
Here

PS Form 3800, April 2015 PSN 7530 02-000-9047

See Reverse for Instructions

USPS TRACKING #



9590 9402 1657 6053 3630 45

United States
Postal Service

IPUC-FISCAL
OCT 10 2018
RECEIVED

T 10 PM 3:30

• Sender: Please print your name, address, and ZIP+4® in this box®

Idaho Public Utilities Commission
 Attn: Nancy Ashcraft
 472 W. Washington St.
 Boise, Id 83704

First-Class Mail®
Postage & Fees Paid
USPS
Permit No. G-10



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

VIA CERTIFIED MAIL

January 23, 2019

BG & CM Railroad
101000 N. Ambassador Dr., Ste 105
Kansas City, MO 64153

Re: Unpaid Annual Assessment Fees – Notice of Possible Legal Action

Dear Mr. Colin Shelman,

The Office of the Attorney General for the State of Idaho has been made aware that BG & CM Railroad (“Company”) has failed to submit its 2017 annual assessment to the Idaho Public Utilities Commission (“Commission”). This failure will result in legal action if not remedied within ten days of receipt of this letter.

Idaho Code § 61-1001 provides that each railroad “shall pay to the commission in each year, a special regulatory fee . . . to defray the amount to be expended . . . for expenses in supervising and regulating . . . railroad corporations[.]” *Idaho Code* § 61-1005 states,

Such fee shall be paid to the commission in equal semiannual installments on or before the 15th days of November and May in each fiscal year. If payment shall not be made on or before said respective dates, the installments so due shall bear interest at the rate of six per cent (6%) per annum until such time as the full amount of the installment shall have been paid. Upon failure, refusal or neglect of any public utility or railroad corporation to pay such fee the attorney general shall commence an action in the name of the state to collect the same.

On April 20, 2018, the Commission notified the Company through Invoice No. 2018-247 that the Company owed \$15,411.83 for its 2017 annual assessment. This amount was calculated pursuant to *Idaho Code* § 61-1004(1) and is equal to 1% of the Company’s gross operating revenues derived from intrastate business during the preceding calendar year. On December 31, 2018, the Commission notified the Company through Invoice No. INT-2018-04 that the Company owes an additional \$924.71 in interest for failure to pay the 2017 annual assessment in a timely manner. Copies of these invoices are enclosed.

Due to the Company's failure to meet its deadlines, if the entire outstanding amount of \$16,336.54 is not paid to the Commission within ten days of receipt of this letter, the Office of the Attorney General of the State of Idaho is empowered to commence an action to collect the total outstanding amount pursuant to *Idaho Code* § 61-1005. The Company may also be subject to a penalty of up to \$2,000 per violation pursuant to *Idaho Code* § 61-706. Furthermore, *Idaho Code* § 61-709 provides for personal liability for officers or agents of public utilities who fail to comply with Commission orders or directions.

Any questions concerning payment of the Company's 2017 annual assessment may be directed to Nancy Ashcroft at (208) 334-0325 or by email at nancy.ashcroft@puc.idaho.gov.

Sincerely,

A handwritten signature in cursive script that reads "E Jewell".

Edward Jewell
Deputy Attorney General

Enclosures

cc: Maria Barrat-Riley
Joe Leckie
Nancy Ashcroft



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Assessment Invoice

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

Date	Invoice No.
4/20/2018	2018-247

Due Date	5/15/2018
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Account No.	BGR-R	2017 GIOR	2017 GIOR Amount
Description		Assessment Amount	
2017 Railroad Assessment .9995%		15,411.83	

The 2018 assessment fee for public utilities is .2179% and .9995% for railroads by Commission Order Number 34033 and 34032 respectively. The minimum assessment fee is \$50.00.

Total	\$15,411.83
Payments/Credits	\$0.00
Balance Due	\$15,411.83

The 2018 assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2018. The second installment is due no later than November 15, 2018. Outstanding balances after November 15, 2018 will be assessed with a 6% 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:

BG & CM Railroad

Account No. BGR-R Invoice No. 2018-247 Remittance amount: \$ _____



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Interest Invoice

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

Date	Invoice No.
12/31/2018	INT-2018-04

Account No.	BGR-R	Due Date	12/31/2018
Description		Assessment Amount	
Interest assessed on account balance after November 15		924.71	
		Total	\$924.71

The second installment of the regulatory fee was due no later than November 15, 2018. Outstanding balances after November 15, 2018 have been assessed with a 6% interest fee.

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:

BG & CM Railroad

Account No. BGR-R Invoice No. INT-2018-04 Remittance amount: \$ _____

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 1657 6053 3633 66

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box*

Idaho Public Utilities Commission
Attn: Nancy Ashcraft
472 W. Washington St
Boise, Idaho 83702



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

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



9590 9402 1657 6053 3633 66

Article Number (Transfer from service label)

7016 0600 0000 5236 3010

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

7-28-19

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Mail Restricted Delivery
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

VIA CERTIFIED MAIL

June 6, 2019

Webb Roberts
BG & CM Railroad, Inc.
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. Roberts,

This office represents the Idaho Public Utilities Commission (the "Commission"). On January 23, 2019, a letter was sent to BG & CM Railroad, Inc. (the "Company") notifying the Company it had failed to pay its 2018 annual assessment ("2018 Assessment"), in the amount of \$15,411.83. Interest charges of \$924.71 have accrued on that unpaid balance. In addition, in April of 2019 the Company was sent a statement from the Commission setting forth its 2019 regulatory fee of \$12,862.10 ("2019 Assessment").¹ Half of the Company's 2019 Assessment in the amount of \$6,431.05 was due on May 15, 2019 and remains unpaid. A copy of the latest Statement from the Commission along with Assessment Invoices showing these amounts are enclosed.

DEMAND IS HEREBY MADE that the Company immediately pay the 2018 Assessment, including all accrued interest and the first half of the 2019 Assessment, in the total amount of **\$22,767.59**, by hand delivering or mailing the payment to the Commission at 472 W. Washington Street, Boise, Idaho 83720 or by U.S. Mail at P.O. Box 83720, Boise, Idaho 83720-0074, Attn: Nancy Ashcraft.

If the Commission does not receive the Company's \$22,767.59 payment by June 15, 2019, the Commission will initiate legal proceedings to compel that payment. Such proceedings may include an administrative proceeding in which the Company is required to appear before the

¹ Annual assessments are calculated using annual gross operating revenues derived from intrastate business as reported by the Company. The Commission Staff is currently auditing the Company to determine if its reported gross operating revenues are accurate. To the extent the Company underreported its gross operating revenues from intrastate business it may owe further amounts for its annual assessments.

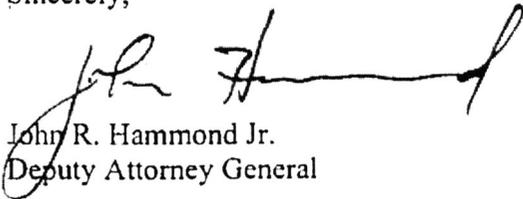
Commission in Boise, Idaho to show cause why the Commission should not order the Company to:

- Immediately pay its 2018 Assessment plus all accrued interest and half of its 2019 Assessment; and,
- Pay up to a \$2,000.00 penalty per day for the Company's continuing failure to pay the 2018 Assessment and all accrued interest and half of its 2019 Assessment. *See Idaho Code §§ 61-706 & 61-707.*

Additionally, the Commission may sue the Company in court to collect the 2018 Assessment and all accrued interest, half of the 2019 Assessment and 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,



John R. Hammond Jr.
Deputy Attorney General

Enclosures

cc: Kerry A. Wagner
Maria Barratt-Riley
Nancy Ashcraft



Idaho Public Utilities Commission

PO Box 83720, Boise, ID 83720-0074

Brad Little, Governor

Paul Kjellander, Commissioner
 Kristine Raper, Commissioner
 Eric Anderson, Commissioner

Statement

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

Date
5/15/2019

		Account #	BGR-R		
Date	Transaction	Amount	Balance		
03/31/2018	Balance forward		0.00		
04/20/2018	INV #2018-247. --- 2018 Railroad Assessment \$15,411.83 --- Tax: State Sales Tax @ 6.0% = 0.00	15,411.83	15,411.83		
12/31/2018	INV #INT-2018-04. --- Assessment Interest \$924.71 --- Tax: State Sales Tax @ 6.0% = 0.00	924.71	16,336.54		
04/16/2019	INV #2019-037. --- 2019 Railroad Assessment \$12,862.10 --- Tax: State Sales Tax @ 6.0% = 0.00	12,862.10	29,198.64		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
12,862.10	0.00	0.00	0.00	16,336.54	\$29,198.64

Outstanding balances after November 15, 2016 will be assessed with a 6% interest fee.

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.



Idaho Public Utilities Commission

PO Box 83720, Boise, ID 83720-0074

Brad Little, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Assessment Invoice

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

Date	Invoice No.
4/16/2019	2019-037

Due Date	5/15 2019
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Account No.	BGR-R	2018 GIOR	\$1,286,725.00
Description		Assessment Amount	
2019 Railroad Assessment .9996%		12,862.10	

The 2019 assessment fee for public utilities is .2529% and .9996% for railroads by Commission Order Number 34310 and 34311 respectively. The minimum assessment fee is \$50.00.

Total	\$12,862.10
Payments/Credits	\$0.00
Balance Due	\$12,862.10

The 2019 assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2019. The second installment is due no later than November 15, 2019. Outstanding balances after November 15, 2019 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:

BG & CM Railroad

Account No. BGR-R Invoice No. 2019-037 Remittance amount: \$ _____



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Interest Invoice

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

Date	Invoice No.
12/31/2018	INT-2018-04

Account No.	BGR-R	Due Date	12/31/2018
Description		Assessment Amount	
Interest assessed on account balance after November 15		924.71	
Total		\$924.71	

The second installment of the regulatory fee was due no later than November 15, 2018. Outstanding balances after November 15, 2018 have been assessed with a 6% interest fee.

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:

BG & CM Railroad

Account No. BGR-R Invoice No. INT-2018-04 Remittance amount: \$ _____



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Assessment Invoice

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

Date	Invoice No.
4/20/2018	2018-247

Due Date	5/15/2018
----------	-----------

Account No.	BGR-R	2017 GIOR	2017 GIOR Amount
Description		Assessment Amount	
2017 Railroad Assessment .9995%			15,411.83

The 2018 assessment fee for public utilities is .2179% and .9995% for railroads by Commission Order Number 34033 and 34032 respectively. The minimum assessment fee is \$50.00.

Total	\$15,411.83
Payments/Credits	\$0.00
Balance Due	\$15,411.83

The 2018 assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2018. The second installment is due no later than November 15, 2018. Outstanding balances after November 15, 2018 will be assessed with a 6% 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:

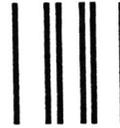
BG & CM Railroad

Account No. BGR-R Invoice No. 2018-247 Remittance amount: \$ _____

USPS TRACKING #



9590 9402 1657 6053 3632 36



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

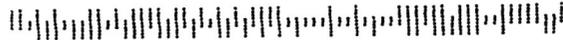
RECEIVED

2019 JUN 13 AM 8:40

• Sender: Please print your name, address, and ZIP+4® in this box •

IDAHO PUBLIC UTILITIES COMMISSION
Idaho Public Utilities Commission
472 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074

3720-0074



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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



9590 9402 1657 6053 3632 36

2. Article Number (Transfer from service label)

7016 0600 0000 5236 3171

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X  Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

6-18-19

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

EXHIBIT 2

**Proposed Notice of Hearing & Order to Show Cause
(Attached)**

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF BG & CM RAILROAD,)
INC.'S SPECIAL REGULATORY FEE) CASE NO. BGR-R-19-01
PURSUANT TO IDAHO CODE §§ 61-1001)
THROUGH 61-1005) ORDER TO SHOW CAUSE
)
) NOTICE OF HEARING
)
) ORDER NO. _____**

BG & CM Railroad, Inc. (“Railroad”) is a short line railroad providing service in Nez Perce and Clearwater Counties, Idaho. The Railroad 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 Railroad’s failure to pay its regulatory fees for 2018, as required by *Idaho Code* §§ 61-1001 through 61-1005.

BACKGROUND

1. Commission 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 expend funds necessary to regulate and supervise utilities and railroads doing business in Idaho. *Idaho Code* § 61-1001. 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) & (4).

Idaho Code § 61-1003 requires that, “[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.

Idaho Code § 61-1001 requires 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

ORDER TO SHOW CAUSE
NOTICE OF HEARING
ORDER NO. _____

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.

Once all the railroads 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 no later than 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.

Idaho Code § 61-1004 sets forth the duties of the Commission with regard to the determination of fees. With regard to the year in question, the Commission has fulfilled its statutory requirements, and the rates set by the Commission were below the statutory maximum of one percent (1%) of gross intrastate revenue. *See* Order Nos. 34033 & 34032; *see also Affidavit of Nancy Ashcraft*.

In the Decision Memorandum, dated June 21, 2019, Commission Staff alleged the Railroad failed to pay its assessed fees for calendar year 2018. Specifically, on April 20, 2018, the Company was notified through Invoice No. 2018-256 that it owed \$15,411.83 for its annual assessment (the “Assessment”). *See Affidavit of Nancy Ashcraft*, **Exhibit A**. Furthermore, on multiple occasions, the Commission Staff attempted to collect the Railroad’s annual fees, sending invoices, demand letters, and notification that failure to comply may result in legal action. *See Exhibit No. 1 to Decision Memorandum* and *Affidavit of Ashcraft*. Nevertheless, the Railroad has failed, refused, or neglected to meet the requirements of the statutes and the Commission Staff’s demands it pay its outstanding regulatory fee. *Id.*

The Railroad has failed to pay its statutorily required annual regulatory fees to the Commission for 2018. *See Affidavit of Nancy Ashcraft*. Each failure to pay violates *Idaho Code* §§ 61-1003 & 61-1005.

In December of 2018, the Railroad was assessed \$924.71 in interest on its outstanding balance of \$15,411.83 (6%). *See Idaho Code* § 61-1005 (stating that utilities and railroads failing to timely pay shall incur an annual fee of 6% interest on all unpaid balances).

The Railroad's current outstanding balance is \$16,336.54.

JURISDICTIONAL STATEMENT

The Commission has jurisdiction in this matter pursuant to *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).

CLAIM

1. Violations of Idaho Code §§ 61-1001 and 61-1005

Idaho Code §§ 61-1001 and 61-1005 require that the Railroad pay to the Commission an annual regulatory fee in a proportional amount based on the Railroad's intrastate gross operating revenues as reported in its annual verified return.

The Railroad has been contacted on several occasions by Commission Staff demanding that it pay its annual regulatory fee for 2018. In May and November 2018, the Railroad failed or refused to pay the annual regulatory fee totaling \$15,411.83¹ to the Commission in violation of *Idaho Code* §§ 61-1001 and 61-1005. *See Affidavit of Ashcraft.* Because of the Railroad's failure to pay its annual regulatory fees, it has incurred \$924.71 in fees.² At the time of the entry of this Order, BG & CM Railroad, Inc. owes the Commission \$16,336.54 in regulatory fees and interest charges. *Id.*

ORDER

Accordingly, based on the evidence before the Commission, and good cause appearing, IT IS HEREBY ORDERED that BG & CM Railroad, Inc. shall appear before the Commission AT _____ A.M./P.M. (MDT) ON _____, _____, IN THE COMMISSION HEARING ROOM, 472 WEST WASHINGTON STREET, BOISE, IDAHO, to show cause why the following relief should not be granted by summary order of the Commission:

¹ This amount represents an outstanding balance for failing to pay its annual regulatory fee for 2018.

² *Idaho Code* § 61-1005 requires that any outstanding balances be charged an annual fee of 6% interest on the balance.

1. Order the Railroad to immediately pay the current entire outstanding balance for 2018 annual fees, plus interest, in the amount of \$16,336.54;
2. Direct the Commission's attorney to seek the imposition of civil penalties pursuant to *Idaho Code* § 61-706 of \$2,000 for each and every offense, totaling \$_____.
3. Direct the Commission's attorney to initiate an action in District Court to enforce the determination of the Commission, consistent with *Idaho Code* §§ 61-705, 61-706, and 61-1005.

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 in order 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 at 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
PO 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 utility to receive legal service in Idaho. *Idaho Code* § 61-615.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of June 2019.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Diane M. Hanian
Commission Secretary

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ORDER TO SHOW CAUSE
NOTICE OF HEARING
ORDER NO. _____

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF BG & CM RAILROAD,)
INC.'S FAILURE TO PAY SPECIAL) CASE NO. BGR-R-19-01
REGULATORY FEE PURSUANT TO IDAHO)
CODE §§ 61-1001 THROUGH 61-1005) 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 and November 2018, BG & CM Railroad, Inc. ("BG & CM" or the "Company") failed or refused to pay its annual regulatory fee of \$15,411.83 ("Assessment").

4. In December of 2018, the Company was assessed \$924.70 in interest on the outstanding balance of its Assessment of \$15,411.83 at the rate of six percent (6%).

5. Currently, BG & CM owes the Commission \$16,336.54 in fees and interest charges.

6. Staff has attempted to collect the Company's past due Assessment by sending invoices to it. Additionally, demand letters have also been sent to BG & CM notifying it that failure to pay its Assessment plus all accrued interest would result in legal action. True and correct copies of the invoices are attached hereto and incorporated by reference herein as **Exhibit A**.

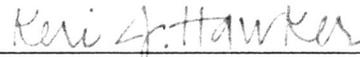
7. Despite such actions by Staff, BG & CM still has failed to pay its Assessment and interest owed to the Commission remains unpaid and past due.

Dated this 21 day of June 2019.



Nancy Ashcraft
Financial Specialist, Senior
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 21st day of June 2019.



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

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EXHIBIT A

True and correct copies of Invoices sent to the Company

(Attached)



Idaho Public Utilities Commission

PO Box 83720, Boise, ID 83720-0074

Brad Little, Governor

**Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner**

Statement

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

Date
5/15/2019

		Account #	BGR-R		
Date	Transaction	Amount	Balance		
03/31/2018	Balance forward		0.00		
04/20/2018	INV #2018-247. --- 2018 Railroad Assessment \$15,411.83 --- Tax: State Sales Tax @ 6.0% = 0.00	15,411.83	15,411.83		
12/31/2018	INV #INT-2018-04. --- Assessment Interest \$924.71 --- Tax: State Sales Tax @ 6.0% = 0.00	924.71	16,336.54		
04/16/2019	INV #2019-037. --- 2019 Railroad Assessment \$12,862.10 --- Tax: State Sales Tax @ 6.0% = 0.00	12,862.10	29,198.64		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
12,862.10	0.00	0.00	0.00	16,336.54	\$29,198.64

Outstanding balances after November 15, 2016 will be assessed with a 6% interest fee.

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.



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Interest Invoice

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

Date	Invoice No.
12/31/2018	INT-2018-04

Account No.	BGR-R	Due Date	12/31/2018
Description		Assessment Amount	
Interest assessed on account balance after November 15		924.71	
Total		\$924.71	

The second installment of the regulatory fee was due no later than November 15, 2018. Outstanding balances after November 15, 2018 have been assessed with a 6% interest fee.

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:

BG & CM Railroad

Account No. BGR-R Invoice No. INT-2018-04 Remittance amount: \$ _____



Idaho Public Utilities Commission

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

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner
Kristine Raper, Commissioner
Eric Anderson, Commissioner

Assessment Invoice

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

Date	Invoice No.
4/20/2018	2018-247

Due Date	5/15/2018
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Account No.	BGR-R	2017 GIOR	2017 GIOR Amount
Description		Assessment Amount	
2017 Railroad Assessment .9995%		15,411.83	

The 2018 assessment fee for public utilities is .2179% and .9995% for railroads by Commission Order Number 34033 and 34032 respectively. The minimum assessment fee is \$50.00.

Total	\$15,411.83
Payments/Credits	\$0.00
Balance Due	\$15,411.83

The 2018 assessment fee may be paid in equal semi-annual installments. The first installment of the regulatory fee is due no later than May 15, 2018. The second installment is due no later than November 15, 2018. Outstanding balances after November 15, 2018 will be assessed with a 6% 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:

BG & CM Railroad

Account No. BGR-R Invoice No. 2018-247 Remittance amount: \$ _____