

MONTANA PUBLIC SERVICE COMMISSION
REGULATORY DIVISION
STAFF RESPONSE

DATE: November 30, 2015
TO: Sonja Nowakowski
FROM: Will Rosquist, Interim Regulatory Division Administrator
Nickie Eck, Rail Safety Program Manager
SUBJECT: November 3, 2015, request for information on the PSC's railroad safety program

Background

On November 3, 2015, you requested certain information regarding the Public Service Commission's (PSC) railroad safety program as part of the Energy and Telecommunications Interim Committee's review of the program. This response provides the requested information. It was prepared by the PSC's Regulatory Division staff and reviewed by the PSC's Legal Division and Centralized Services Division staff. Please let us know if you would like us to clarify any of our responses, or provide further information.

Questions and responses

1. How many inspections were conducted by the two PSC inspectors annually in 2010, 2011, 2012, 2013, and 2014? If you want to break them down by the number of inspections by the state car inspector and the state MP&E inspector, that would be great.

Table 1 summarizes inspection activity by the two PSC inspectors for the period 2010 through 2014, as recorded by the FRA. FRA accounting does not appear to credit state inspectors for inspections where the state and FRA inspectors collaborate on an inspection. For example, while FRA records show 175 reports submitted by the PSC's MP&E inspector in 2014, PSC records contain 245 reports. Seventy inspections were performed jointly by the PSC's MP&E inspector and an FRA inspector, with the FRA inspector submitting those reports to FRA.

In Table 1, "report" refers to the written result of inspection activity, which may involve assessing compliance with multiple federal regulations. "Defect" means an item was found not to comply with federal regulations. "Units" are the number of specific items

examined during an inspection. For example, one inspection of power brake systems might involve examining 50 individual brake units. The FRA defines an “observation” as the number of times inspections were performed in an activity area. For example, 100 inspections of power brake systems and 100 inspections related to freight car standards would be reported as 200 total observations. “Inspection days” are the number of days on which observations were made. A violation is a finding that the railroad company willfully violated federal regulations.

During the period 2010 through 2014, the PSC inspectors did not report any violations. The PSC’s inspectors generally consider violation reports to be a last resort for achieving compliance with federal regulations. In 2014 the PSC’s inspectors reported about 1,600 defects. While violations indicate serious compliance issues and involve mandatory fines pursuant to federal regulations, defects can also be punitive and provide powerful incentives for compliance. For example, a defect can result in a railroad company having to remove rail cars from the train, stranding the cars and their payloads until the defect is corrected, which may have cost and revenue implications for the company.

Table 1. Inspection summary

MP&E inspector	2010	2011	2012	2013	2014
Reports	100	40	43	126	175
Defects	462	152	41	458	1023
Units	21683	10568	1338	16750	26610
Observations	555	214	149	584	734
Inspection days	90	34	42	100	118
Car Inspector	2010	2011	2012	2013	2014
Reports	55	52	72	90	103
Defects	452	428	532	521	579
Units	17631	16631	21165	23031	27897
Observations	179	160	216	270	309
Inspection days	55	52	72	90	103
All Inspections	2010	2011	2012	2013	2014
Reports	155	92	115	216	278
Defects	914	580	573	979	1602
Units	39314	27199	22503	39781	54507
Observations	734	374	365	854	1043
Inspection days	145	86	114	190	221

2. The audit references Montana ensuring the minimally mandated number of rail safety inspections a couple different times. Is Montana exceeding the minimum mandate? If so, by how much?

FRA policy requires state inspectors to achieve 50 inspection days per year to qualify for FRA-funded training the following year. As shown in the response to Question 1, both PSC inspectors typically exceed this standard. The PSC's MP&E inspector position did not achieve 50 inspections in 2011 and 2012 due to the retirement of an inspector in May 2011. The PSC hired a new inspector in September 2011. However, the new inspector required training and was not certified to perform inspections until May 2012.

3. Do PSC inspectors and FRA inspectors coordinate efforts to increase statewide coverage?

Yes, PSC and FRA inspectors share information and coordinate inspection activities by maintaining open lines of communication (conference calls, in-person meetings at the FRA office in Billings) and developing team inspection plans.

4. Has the PSC ever (since 1999) employed more than two inspectors?

Since 1999, the PSC has maintained two inspectors, with the exception of the period between May 2011 and May 2012 when the PSC had one certified inspector due to the temporary vacancy described in the answer to Question 2.

5. How much on average is the annual fee that rail companies pay based on the prior year assessment of their gross operating revenue? How many rail companies pay the fee? Is this only intrastate revenue? Why does the PSC not assess gross operating revenue?

As shown in Table 2, the average annual fee levied by the Department of Revenue (DOR) on all railroad companies for the period 2010 through 2014 was \$163,553. The DOR currently assesses the PSC fee on seven railroad companies. We are unsure whether or not DOR applies the fee only to intrastate revenue – the PSC does not assess any fees on regulated companies. Pursuant to 69-1-224 and 69-1-403, MCA, the DOR determines the gross operating revenue generated by regulated activities within the state and determines a fee designed to collect the PSC's budget appropriation. The PSC's involvement in DOR's fee-setting process is limited to providing DOR the PSC's prior year actual expenses and its projected budget for the next fiscal year. Once DOR determines the amount of the fee (i.e., the tax rate), the PSC authorizes the regulated utilities to adjust their rates to recover the fee, pursuant to 69-1-403, MCA.

Table 2. PSC fees paid by railroad companies

Year	Percentage multiplier under 69-1-224, MCA	Total fees DOR assessed railroad cos.	PSC budget appropriation	Railroad fees as % of PSC appropriation
2010	0.4200%	\$142,376	\$3,640,294	3.9%
2011	0.2000%	\$192,678	\$3,695,220	5.2%
2012	0.2300%	\$103,625	\$3,698,391	2.8%
2013	0.4200%	\$150,811	\$3,696,522	4.1%
2014	0.2000%	\$228,274	\$3,834,643	6.0%
Average	0.2940%	\$163,553	\$3,713,014	4.4%

6. In fiscal years 2010, 2011, 2012, 2013, and 2014, how much money did the PSC receive from regulated fees to cover costs for the two rail safety inspectors?

The PSC did not separately receive money from regulated fees to cover the costs of the two railroad safety inspectors. Table 2 shows the PSC’s annual budget appropriations for the period 2010 through 2014. The PSC used these lump sum appropriations to fund all of its regulatory activity, including the cost of the two railroad safety inspectors. In other words, there is not a direct relationship between the fees charged to railroad companies and the PSC’s expenses for rail safety inspectors. If it would be helpful, the PSC could attempt to isolate its expenses related specifically to railroad safety activity for comparison purposes.

7. What is the process (with DOR) that the PSC follows in receiving special revenue authority to fund rail safety work?

The PSC does not follow a process with DOR to receive special revenue authority to fund railroad safety work. The PSC funds railroad safety and all other regulatory functions from the total budget appropriations set by the Legislature. As we understand it, the key elements of the PSC funding process are as follows: The DOR determines the gross revenue from regulated activity in Montana and sets a percentage multiplier designed to collect the PSC’s budget appropriation, accounting for under- or over-recovery in the prior year and projections for the upcoming year. DOR levies the fees on the regulated companies and deposits the revenue in a state special revenue account to cover the PSC’s total budget appropriation. DOR informs the PSC of the multiplier and the PSC authorizes utilities to recover the fees through rates.

8. Does the PSC intend to approach the 2017 Legislature for additional funding for rail safety efforts?

On November 3, 2015, the PSC voted to initiate an investigative docket concerning railroad safety. We anticipate that this docket will inform future PSC decisions regarding the railroad safety program including, but not limited to, whether to approach the 2017 Legislature for additional funding. The details of this docket are currently being formulated.

9. The audit makes a recommendation that perhaps railroad safety functions should be transferred to another agency. Has the full PSC addressed this issue to date? Would the PSC have recommendations to the Legislature on that issue?

The full PSC has not addressed this issue and has no recommendations at this time on whether railroad safety functions should be transferred to another agency. Such recommendations might result from the investigative docket the PSC has initiated.