

Montana Public Service Commission



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January 17th, 2023

Members of the Section D Appropriations Subcommittee
c/o Representative Bill Mercer, Chairman
Room 110
Capitol Building
Helena, MT 59620

Chairman Mercer, members of the Committee:

On behalf of my fellow Commissioners, I extend a hearty thank you to the Subcommittee for the opportunity provided to the Montana Public Service Commission (PSC) to testify during the agency's budget oversight hearing held on January 13th 2023. The PSC appreciated the frank and informative discussion regarding the agency's operations.

I write now to follow up on and to provide further information on the railroad-related matters discussed during that hearing.

1. Addressing the question of whether railroads pay for a portion of the PSC's budget:

The short answer is yes. Regulated railroads pay rates the Montana Department of Revenue charges Montana's regulated entities. For the fiscal year 2022, six railroads were assessed a PSC fee, resulting in a total of \$148,961.64 in revenue for the PSC.

Those railroad entities assessed were as follows:

1. Butte, Anaconda & Pacific Railway Company;
2. Central Montana Rail Inc.;
3. Dakota Missouri Valley & Western RR;
4. Mission Mountain Railroad LLC;
5. Montana Rail Link Inc.;
6. Burlington Northern Santa Fe; and
7. Union Pacific Railroad Co.

2. What is the PSC's regulatory jurisdiction relating to railroad safety?

As was discussed at the budget hearing, state regulatory agencies, including the Montana PSC, have limited authority to enforce rail safety in the United States, as rail safety is primarily under

federal jurisdiction. However, the PSC participates in the Federal Railroad Administration's (FRA) voluntary rail safety program. At present, the PSC has two state inspectors who enforce FRA Policy.

A. What is the mission of the PSC's Rail Safety Program?

The mission of the Rail Safety Program is to prevent catastrophic accidents, derailments, and injuries to the public as well as railroad personnel. The program consists of two certified inspectors who are responsible for enforcing state and federal rail safety regulations through boots-on-the-ground inspections of railroad equipment. Inspectors also perform onsite audits of railroad employee training records, as well as equipment maintenance records, to ensure up-to-date compliance.

B. What training is required of the PSC's state inspectors and what is their authority?

Certified rail safety inspectors must undergo six months of rigorous on the job training, as well as four weeks of intensive classroom instruction administered by the Federal Railroad Safety Administration. Both of the PSC's inspectors are fully certified through the Federal Railroad Safety Administration to enforce Code of Federal Regulations 215 Freight Car Safety Standards, 229 Locomotive Safety Standards, and 232 Brake System Safety Standards, as well as other CFR sections regulating railroad rolling stock. Both inspectors have the ability to issue defects and violations to railroads under the Code of Federal Regulations.

Operating authority for the state Rail Safety Program resides in Montana Code Annotated Title 69, Chapter 14, which covers a wide variety of subject matters related to railroads including: investigative authority of blocked public road grade crossings, maintenance of fireguards, and vandalism and theft of railroad property. Specifically, Mont. Code Ann. § 69-14-111 authorizes the PSC to:

- Adopt or enforce regulations and orders related to railroad safety or security in accordance with 49 U.S.C. 20106;
- Bring civil action in a district court for violations of federal railroad safety regulations in accordance with 49 U.S.C. 20113; and
- Participate in investigative and surveillance activities in accordance with 49 U.S.C. 20105.

The PSC rail safety program is also a proud participant in Operation Lifesaver, a nonprofit public safety education and awareness organization dedicated to reducing collisions, fatalities, and injuries at highway rail crossings, and trespassing on or near railroad tracks. Operation Lifesaver offers free rail safety education instruction to school groups, professional drivers, and first responders.

3. How many additional inspectors did the 2015 Legislative Audit recommend hiring in order to bring Montana closer to other state rail safety programs?

In 2015, the Legislative Audit Division prepared a performance audit on "railroad safety." Per Commissioner's Fielder's representations to the Subcommittee, the report concludes, on page 24, that the audit work supports the expansion of the state rail safety program in Montana. This conclusion was supported by the findings that:

- "Two state rail safety inspectors currently covering the entire state is not sufficient and the FRA recognizes its inspection staff cannot adequately cover the state."

- “The FRA recommends hiring an additional MP&E Inspector, a Track Inspector, and a Signals and Train Control Inspector.”

The Report estimates that costs for additional inspectors, including benefits, vehicle, and equipment, would be roughly \$60,000-\$80,000 per inspector. These increases could be funded, according to the auditors, through an increase in the rates the Department of Revenue charges Montana’s regulated entities or by using some portion of the funding provided to the General Fund by the State railroad car tax.

The Legislative Audit also noted that Montana appears to be overall low on the total number of inspectors when compared to other state’s rail safety programs that average around 4-5 inspectors. Specific inspection areas where Montana trailed other states with similar rail activity included: Track, Operating Practices, Hazardous Materials, and Signal and Train Control. (Pg. 16)

Montana Inspections- Track (Pg. 18)

The PSC currently has no Signal Inspectors to focus on Montana’s priorities in this area, while other states with similar rail activity to Montana have an average of 1-2 Inspectors.

Montana Inspections- Signal and Train Control (Pg. 19)

The PSC currently has no Track Inspectors to focus on Montana’s priorities in this area, while other states with similar rail activity to Montana have 1-2 inspectors.

4. What are some options for funding two or three new railroad employees?

As noted, the PSC receives income from fees imposed on regulated railroads. However, the funding is not sufficient to cover the cost of the two rail safety inspectors, as well as agency administrative staff support associated with railroads. Thus, an increase in the assessment rate imposed on regulated railroads may be a means of deriving revenue to cover the cost of existing and additional railroad FTE.

Also, as previously discussed with the Subcommittee, another option for FTE funding would involve the diversion of general fund dollars raised from the state railroad car tax. Presently, this tax is assessed on all rail car owners’ revenue in the state, not just the railroad themselves. This source of income is deposited in the state general fund. The Legislative Fiscal Division estimates revenue for this tax to be close to \$4 million per year.

5. What is the data associated with Montana train derailments?

For the time frame running from October 2021 to October 2022, the PSC is aware of 12 total derailments. The total reportable damage amounted to \$2,542,937.00. Human-related factors were the top cause of derailments, with track problems being second.

6 How will the PSC use new Rail Safety Program FTE

At present, the PSC only has two FTE within its Rail Safety Program. PSC requests for additional Rail Safety Program FTE have been brought to the legislature in the past and the PSC Strategic Plan adopted August 30, 2022 formally identified the need for two new FTE to aid in rebuilding and expanding the Rail Safety Program. One of these additional FTE would provide for a MP&E Inspector, and the other would provide for a Track Inspector.

The additional MP&E Inspector would bring the total number of PSC MP&E Inspectors to three, allowing each inspector to cover roughly 1/3 of the State. The Track Inspector would bring a new element to the PSC Rail Safety Program specially designated to audit the integrity of private sector track inspections and related safety compliance activities. Currently the PSC does not have a Track Inspection element.

You will find enclosed herewith a comprehensive assessment conducted by the PSC in October of 2016 on railroad safety in Montana. I think you will find the information set forth in the report to be quite informative and helpful.

Thank you for your time and consideration of the PSC's proposed budget. Please feel free to contact me if you or any committee members have questions; I am at the Subcommittee's disposal.

Sincerely,

James Brown, President
Montana Public Service Commission

Encl: (1)

Cc: PSC Commissioners