

Montana Public Service Commission



James Brown, Chairman

September 17, 2021

Bill Mercer
Chairman, Subcommittee Section D
PO Box 2118
Billings, MT 59103-2118

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 oversight hearing held on September 15th, 2021. 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 matters discussed during that hearing.

1) Outside litigation expenses:

As the Subcommittee will recall, during my testimony, I raised the PSC’s concern about the amount of agency ‘discretionary’ funding authority that is dedicated to retaining outside legal counsel to defend against legal cases brought against the agency in state and federal courts and proceedings. I touched on this topic to alert the Subcommittee to the agency’s need for a dedicated legal expenses budget line item and associated appropriation authority.

In response to Representative Kerr-Carpenter’s question as to the amount spent by the agency on outside legal counsel, I provide the following numbers:

In FY 2017, the agency spent roughly \$49,100 on outside legal counsel.

In FY 2018, the agency spent roughly \$18,200.00 on outside legal counsel.

In FY 2019, the agency spent roughly \$110,900.00 on outside legal counsel.

In FY 2020, the agency spent roughly 123,400 on outside legal counsel.

In FY 2021, the agency spent \$25,450.00 on outside legal counsel

In FY 2022, the agency has, to date spent roughly \$37,900 to defend against the FERC declaratory ruling action which I referenced during my testimony.

2) The need for an additional railroad inspector FTE:

As the Subcommittee will also recollect, Commissioner Fielder addressed the legislative auditor’s finding as to the need for the PSC to have an additional railroad inspector. By way of background, State regulatory agencies 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 with two state inspectors who enforce FRA Policy.

In 2015, the Legislative Audit Division prepared a performance audit on 'railroad safety.'. The PSC was one of three state agencies analyzed during the performance audit, the Department of Military Affairs and the Department of Transportation being the other two agencies. This report is dated October of 2015 and is listed as 14P-13#.

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 by the state railroad car tax.

Other key points made in the Auditor Report are as follows:

A Snapshot of Montana Rail Accidents (Pg. 11)

For the period 2010 to 2014 Montana ranked 21st in the nation in train accidents by state with 177 accidents for the reporting period. For that same period, Montana ranked 4th highest in the nation for damage cost per accident. Total damage costs for 2010 to 2014 were \$43,559,966 and the cost per accident was \$246,100 using railroad company provided data. Note these do not include damage to public or private property; the economic impact to local communities; or any costs not covered by the railroad company insurance.... In 2014 Montana had 31 total accidents with over \$10 million in reportable damages.

Inspection Capabilities (Pg. 13)

We looked at PSC rail safety inspection activity to determine if it was adequate given the steady increase in rail traffic in the state. We determined the PSC does not have rail safety inspector coverage to cover the entire state.

Other States Safety Programs (Pg. 14)

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 tradecraft areas Montana is behind when compared to 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 Track 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.

Funding (Pg. 23)

In fiscal year 2014, the PSC received \$228,274 from regulated fees, which is likely sufficient to cover costs for two 80 percent FTE rail safety inspectors, the 15 percent FTE Operations Manager, and any other administrative staff support associated with railroads. The process the PSC follows for its biennial budget is not the same as the majority of state agencies....

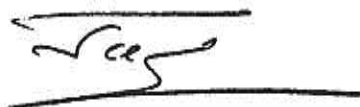
Another option for funding would be the diversion of general fund dollars from the state railroad car tax. Currently this tax is assessed on all rail car owners' revenue in the state, not just the railroad themselves, and is deposited in the state general fund. The Legislative Fiscal Division estimates revenue for this tax to be close to \$4 million in the coming years.

3) How the Railroad Inspectors are funded:

The Railroad inspectors are funded entirely from the PSC budget with no Federal funds for Personnel. Some Federal funds are received to be used for training and equipment only. Finally, in compliance with Chair Mercer's request, a copy of the aforementioned 2015 Legislative Audit Division Railroad Safety report is appended hereto for the Subcommittee's review and consideration.

Thank you for your time and consideration. I trust you will find the above information both informative and responsive. Please feel free to contact me if you or any committee members have questions, I am at the Subcommittee's disposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'James', is written over a horizontal line. The signature is stylized and cursive.

James Brown, Chairman
Montana Public Service Commission

Cc: PSC Commissioners