

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Reports for the Fiscal Assessment of all Regulated Entities.)
Case No. 16-0001-AU-RPT)
)
)

**MOTION FOR LEAVE TO FILE APPLICATION FOR REHEARING,
APPLICATION FOR REHEARING, AND
MOTION FOR SPECIAL ORDER OF STAY OF
REPUBLIC N&T RAILROAD, INC.**

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), Republic N&T Railroad, Inc. (Republic) hereby moves the Public Utilities Commission of Ohio’s (Commission) for leave to file an application for rehearing of its March 8, 2017 Second Finding and Order¹ issued in the above-captioned matter. Due to an accounting error, Republic inadvertently submitted an erroneous 2015 annual intrastate gross earnings report, and was assessed an annual fiscal assessment based upon the erroneous report 2015 Annual Report. In its Second Finding and Order, the Commission required Republic to pay a 2016 fiscal assessment by April 7, 2017.

Good cause exists to grant Republic’s request to file an application for rehearing as Republic discovered the inadvertent accounting error in its 2015 Annual Report after the November 1, 2016 assessment payment deadline. Upon discovering the error, Republic contacted the Staff of the Commission on December 20, 2016. Nonetheless, the issue was not resolved prior to the Commission’s issuance of its Second Finding and Order. Accordingly, the

¹ *In the Matter of the Annual Reports for the Fiscal Assessment of all Regulated Entities*, Case No. 16-0001-AU-RPT, Second Finding and Order (March 8, 2017) (Second Finding and Order).

interests of Republic were not adequately considered by the Commission. Section 4903.10, Revised Code.

Subsequent to the Commission's Second Finding and Order, Republic formally corrected its 2015 Annual Report to reflect its actual intrastate gross earnings by submitting an amended 2015 annual report through the Commission's web-based reporting system (2015 Amended Annual Report).²

Republic contends that the Second Finding and Order is unlawful, unjust, and unreasonable in the following respects:

The Commission erred in ordering Republic to pay a 2016 fiscal assessment by April 7, 2017 that is based upon an erroneous intrastate gross earnings report.

Further, because the Commission's Second Finding and Order requires Republic to pay the incorrect fiscal assessment by April 7, 2017, Republic respectfully moves for a special order pursuant to Section 4903.10(B), Revised Code, to stay this deadline until such time that the Commission has had an opportunity to consider this Application for Rehearing.

² See Attachment A (Amended Annual Report for the Year ending December 31, 2015 of Republic N&T Railroad Inc., filed on March 16, 2017 using the Commission's web-based reporting system) (2015 Amended Annual Report). Republic's Amended Annual Report was subsequently filed in the Commission's docket in this case.

For these reasons, and as further explained in the attached Memorandum in Support, Republic respectfully requests that the Commission grant its motion for leave to file an application for rehearing for good cause shown and grant its Application for Rehearing. Republic also requests that the Commission issue a special order staying the April 7, 2017 deadline contained in the Second Finding Order, and order that Republic's 2016 fiscal assessment be recalculated based upon its 2015 Amended Annual Report.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

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Counsel for Republic N&T Railroad, Inc.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Reports for the)
Fiscal Assessment of all Regulated Entities.) Case No. 16-0001-AU-RPT
)
)

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND PROCEDURAL HISTORY

Under Ohio law, railroads and public utilities are required to pay an annual assessment based upon their intrastate gross earnings from the previous calendar year.³ Section 4905.14(A), Revised Code, requires that each public utility file an annual report with the Commission in order to calculate annual assessments. On January 20, 2016, the Commission issued an Entry directing each reporting company subject to a fiscal assessment for the 2015 calendar year to submit its annual report using the Commission's web-based reporting system by May 2, 2016.⁴ Pursuant to the Commission's Entry, on January 21, 2016, Republic filed its annual report for fiscal assessment for 2015 and reported its intrastate gross earnings.⁵ However, due to an inadvertent accounting error, this figure was in excess of Republic's actual intrastate gross earnings for 2015. Based on the 2015 annual report filings of each reporting company, the Staff of the Commission calculated the 2016 fiscal assessments and issued invoices with payment due

³ See Section 4905.10(A), Revised Code.

⁴ *In the Matter of the Annual Reports for the Fiscal Assessment of all Regulated Entities*, Case No. 16-0001-AU-RPT, Entry at 2 (January 20, 2016) (Entry).

⁵ See Attachment B (Annual Report for Fiscal Assessment for the Year ending December 31, 2015 of Republic N&T Railroad Inc.) (2015 Annual Report).

by November 1, 2016. Thereafter, Republic became aware of the accounting error and sought to correct the issue by notifying Staff.

On March 8, 2017, the Commission issued its Second Finding and Order identifying each railroad and public utility that failed to pay the 2016 annual assessment.⁶ Republic was identified in the Second Finding and Order as one of the entities that had not yet paid the 2016 annual assessment.⁷ The companies were granted until April 7, 2017 to pay the assessments.⁸ The Commission explained that failure to pay such amounts would result in a civil forfeiture of \$1,000 and that the Commission could rescind the company's certificate or deny an application for certification in the future.⁹

Republic hereby files this Application for Rehearing requesting that the Commission stay its Second Finding and Order requiring Republic to pay its 2016 fiscal assessment by April 7, 2017 until Republic's 2015 Amended Annual Report is reviewed by the Commission and Staff and a new 2016 fiscal assessment is calculated based upon its amended intrastate gross earnings for 2015.

⁶ Second Finding and Order at ¶ 7.

⁷ See Attachment to Second Finding and Order.

⁸ Second Finding and Order at ¶¶ 7, 10.

⁹ Id. at ¶ 7.

II. ARGUMENT

A. The Commission's Second Finding and Order is unlawful, unjust, and unreasonable inasmuch as the Commission erred in ordering Republic to pay a 2016 fiscal assessment by April 7, 2017 that is based upon an erroneous intrastate gross earnings report.

Pursuant to Sections 4905.10 and 4905.14, Revised Code, Republic filed its annual report, reporting its intrastate gross earnings for 2015 on January 21, 2016.¹⁰ However, due to an inadvertent accounting error, this reported amount was inflated from actual 2015 intrastate gross earnings. Nonetheless, the Commission and the Office of the Ohio Consumers' Counsel (OCC),¹¹ utilized the inflated earnings figure to calculate Republic's 2016 fiscal assessments. These calculations resulted in unjust and unreasonable assessments, which were invoiced to Republic.

Upon discovering its accounting error and incorrect 2015 Annual Report, Republic contacted the Staff of the Commission on December 20, 2016. The issue was not resolved prior to the Commission issuing its Second Finding and Order on March 8, 2017, which ordered Republic to pay the Commission its unjust and unreasonable 2016 fiscal assessment.¹² On March 9, 2016, Republic submitted correspondence through the Commission's web-based reporting system explaining that an accounting error had occurred that caused Republic to inadvertently submit an erroneous 2015 annual intrastate gross earnings report that was utilized to calculate Republic's 2016 fiscal assessment.¹³ On March 16, 2016, Republic submitted its 2015 Amended Annual Report through the Commission's web-based reporting system,

¹⁰ See Attachment B (2015 Annual Report).

¹¹ Section 4911.18, Revised Code, requires each public utility to pay an annual assessment toward OCC's operating fund.

¹² Second Finding Order at ¶ 7 and Attachment.

¹³ The correspondence was subsequently filed in the Commission's docket in this case.

indicating the corrected intrastate gross earnings for 2015.¹⁴

Because Staff utilized an incorrect intrastate gross earnings figure to calculate Republic's 2016 fiscal assessment, the amount the Commission ordered Republic to pay in its Second Finding and Order is unjust and unreasonable. Therefore, Republic requests rehearing on Republic's fiscal assessment and requests that the Commission correct the amount owed by Republic based upon the 2015 Amended Annual Report submitted by Republic. Republic also requests that the Commission direct Staff and OCC to recalculate Republic's 2016 fiscal assessments using the corrected intrastate gross earnings figure reflected in its 2015 Amended Annual Report, and reissue new invoices reflecting Republic's revised 2016 fiscal assessments.

B. The Commission Should Issue a Special Order Staying the April 7, 2017 Deadline in its Second Finding and Order.

Under Section 4903.10(B), Revised Code, an application for rehearing does not excuse any person from complying with a Commission order, or operate to stay or postpone the enforcement thereof, without a special order of the Commission. Pursuant to the Commission's Second Finding and Order, Republic is required to pay the Commission's unjust and unreasonable fiscal assessment by April 7, 2017. However, the Commission is not required to issue an entry on rehearing ruling on Republic's Application for Rehearing until after the April 7, 2017 deadline.¹⁵

Given the timing of a rehearing entry and the impending April 7, 2017 deadline, Republic respectfully requests that the Commission issue a special order staying the April 7, 2017 deadline included in its Second Finding and Order until such time as the Commission issues a decision on Republic's Application for Rehearing. If a special order is not granted prior to April 7, 2017,

¹⁴ See Attachment A (2015 Amended Annual Report).

¹⁵ See Section 4903.10(B), Revised Code, "If the commission does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law."

Republic will be required to pay the Commission's unjust and unreasonable fiscal assessment. Republic is not aware of any process or rule that would require the Commission to remit overpayment of Republic's 2016 fiscal assessment once Staff has had an opportunity to recalculate it based upon Republic's 2015 Amended Annual Filing. As a result, Republic would be irreparably harmed. Therefore, for good cause shown, the Commission should issue a special order staying the April 7, 2017 deadline.

III. CONCLUSION

Republic respectfully requests that the Commission grant its request for leave to file an application for rehearing and its Application for Rehearing as set forth herein and modify its Second Finding and Order to correct the amount owed by Republic based upon its 2015 Amended Annual Report. The Commission should also direct Staff and OCC to recalculate Republic's 2016 fiscal assessments using the corrected intrastate gross earnings figure reflected in its 2015 Amended Annual Report so that the revised assessments are just and reasonable. Further, Republic requests a special order staying the April 7, 2017 deadline set forth in the Commission's Second Finding and Order until such time as the Commission has had an opportunity to consider this Application for Rehearing.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

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(willing to accept service by email)

Counsel for Republic N&T Railroad, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following via electronic mail on March 21, 2017.

/s/ James D. Perko, Jr.
James D. Perko, Jr.

Attorney Examiner:
dick.bulgrin@puc.state.oh.us

ATTACHMENT A

ATTACHMENT A



**Annual Report to the Commission
for Intrastate Railroad
Gross Earnings**

**Certification No.
RR-NTRI**

**PUCO ID No.
300560**

**AMENDED
Annual Report for the Year ending December 31, 2015
of
REPUBLIC N & T RAILROAD INC.**

**Address:
2633 8TH STREET NE CANTON, OH 44704**

**Website URL:
N/A**

**Filed by:
BRYAN BOYNAR**

Annual Report filings and instructions are available at:
www.puco.ohio.gov/puco/docketing/

ITEMIZED STATEMENT OF INTRASTATE-GROSS EARNINGS

		Revenues (\$)
	Intrastate RailWay Operating Revenue:	
1	Transportation of property of people, or the receipt, delivery, storage or handling of property, entirely in the State of Ohio.	2,057,217.76
	Other Revenue:	
2	Dividend and Interest Income, Gains from Disposition of Property Operating and Nonoperating, Other Operating or Nonoperating Gains.	-265,731.27
3	Total	1,791,486.49

IN ORDER TO ENSURE THAT PUCO CORRESPONDENCE IS DIRECTED TO THE APPROPRIATE PERSON AT THE CORRECT ADDRESS, PLEASE COMPLETE THE FOLLOWING.

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Ohio

Affidavit for the Filing of the Annual Report of a Regulated Entity

REQUIRED VERIFICATION:

The Annual Report of a Regulated Entity to the Commission must be verified by an authorized officer of the Reporting Entity pursuant to Ohio Revised Code Section 4905.14(A)(1).

State of: OHIO

County of: STARK

Affiant's Name: Bryan Boynar

Affiant's Title: Sr. Financial Analyst

Reporting Entity: Republic Steel

OATH:

The undersigned, being duly sworn, states that s/he is authorized to file the foregoing Annual Report to the Public Utilities Commission of Ohio on behalf of the above-named Reporting Entity, that to the best of her/his knowledge, information, and belief, all statements of fact contained in said Annual Report are true, and that said Annual Report is a correct statement of the business and affairs of the Reporting Entity in respect to each and every matter set forth therein during the reporting period identified therein.

Further, if applicable, the employee, agent, accounting firm or other third party company indicated below is hereby authorized to electronically file said Annual Report on my behalf.

Filer's Name: BRYAN BOYNAR

Filer's Title: SR, FINANCIAL ANALYST

Filer's Company: REPUBLIC STEEL

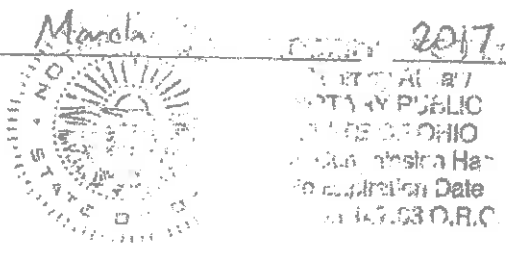
[Handwritten Signature]
(Signature of the Affiant)

Sworn and subscribed before me this 15th day of March, 2017.

Signature of Notary: [Handwritten Signature]

Print Name of Notary: Robert Koury

My Commission expires on: No expiration



DECLARATION OF FILER:

The above indicated Filer, if applicable, hereby verifies that the Annual Report being electronically filed with the Public Utilities Commission of Ohio on behalf of the above-named Reporting Entity accurately reflects all statements of the fact as subscribed by the above-named Affiant.

[Handwritten Signature]
Signature of the Filer

ATTACHMENT B

ATTACHMENT B



Public Utilities Commission Annual Report to the Commission for
RailRoads

Annual Report for Fiscal Assessment
for the Year ending December 31, 2015

of

Republic N & T Railroad Inc.

PUCOID No.: 300560

Certificate No.: RR-NTRI

**2633 8th Street NE
Canton, OH 44704**

Website URL: N/A

**Filed By:
Brad Baird
(330) 438-5965**

Changes in company name(s), principal address, legal status, ownership, or corporate structure during the reporting year, or supplemental data:

Not Applicable

**Annual Report filings and instructions are available at:
<http://www.puco.ohio.gov/puco/index.cfm/docketing/annual-reports/>**

ITEMIZED STATEMENT OF INTRASTATE GROSS EARNINGS

Line No.	Item	Revenues (\$)
1	Intrastate RailWay Operating Revenue: Transportation of property or people, or the receipt, delivery, storage, or handling of property, entirely in the State of Ohio.	\$1,013,558
2	Other Revenue: Dividend and Interest Income, Gains from Disposition of Property Operating and Nonoperating, Other Operating or Nonoperating Gains.	\$9,089,477
TOTAL		\$10,103,035

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Case No(s). 16-0001-AU-RPT

Summary: App for Rehearing Motion for Leave to File Application for Rehearing, Application for Rehearing, and Motion for Special Order of Stay of Republic N&T Railroad, Inc. electronically filed by Ms. Cheryl A Smith on behalf of Republic N&T Railroad, Inc.