

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. TC-051121
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 02
Complainant,)	
)	
v.)	INITIAL ORDER REVOKING
)	CERTIFICATE
PENNCO TRANSPORTATION, INC.,)	
)	
Respondent.)	
.....)	

1 **Synopsis.** *This Order proposes to revoke Pennco Transportation, Inc.’s certificate of public convenience and necessity.*

2 **Proceedings.** On August 31, 2005, the Commission convened a show cause hearing to determine whether to revoke¹ Pennco Transportation Inc.’s (Pennco) certificate of public convenience and necessity² for failure to formally notify the Commission prior to discontinuing service and to obtain the Commission’s permission for the discontinuance, and for failure to file an annual report of gross operating revenues from intrastate operations and to pay a regulatory fee on an annual basis.

3 **Appearances.** Jonathan Thompson, Assistant Attorney General, represents Washington Utilities and Transportation Commission Staff (Staff).

¹ Although the Complaint and Order to Show Cause in this case refers to the “cancellation” of Pennco’s certificate, the Complaint is brought under RCW 81.68.030 which provides that the Commission may “revoke” a certificate of public convenience and necessity.

² Auto Transportation Certificate No. C-1054.

4 **Hearing.** Pennco did not enter an appearance at the show cause hearing, either in person or via the Commission's conference bridge. Staff presented the testimony of Betty Young, a Compliance Specialist with the Commission's Business Practices Investigation Section. Ms. Young testified that Pennco had failed to file its 2004 annual report form, or to pay its regulatory fees, both due on May 1, 2005, in spite of being notified by the Commission that it was required to do so. *Exhibit Nos. 1 and 2.* In addition, Ms. Young presented evidence that Pennco had failed to formally notify the Commission that the company had suspended certificated transportation service, though the Commission sent Pennco notice that it was required to provide notification. *Exhibits 3, 4, 5, and 6.* Ms. Young further testified that she had attempted to contact Pennco about these violations by calling the telephone numbers listed in its tariff and found that the numbers were no longer in service.

5 **Discussion and decision.** The Commission may, after hearing, revoke any certificate issued under the provisions of Chapter 81.68 RCW, when it is shown that the certificate holder willfully violates or refuses to observe the Commission's rules or regulations. *RCW 81.68.030.* In addition, an Administrative Law Judge may resolve a case without further notice or hearing when a party fails to appear at a hearing, such as the one held in this case, for which proper notice has been provided.³

6 In this case, the evidence presented at the show cause hearing demonstrates that Pennco is a certificated carrier that failed to: 1) formally notify the Commission that the company had suspended its certificated service in violation of WAC 480-30-060; 2) file its annual report in violation of WAC 480-30-120; and 3) pay its annual regulatory fees, in violation of WAC 480-30-110.⁴ Therefore, Pennco's

³ The Notice of Hearing in this case was served on July 29, 2005 and specified that if a party failed to attend or participate in the hearing, it may be held in default in accordance with RCW 34.05.400 and WAC 480-07-450. See also RCW 34.05.440 (Administrative Procedure Act default provision) and WAC 480-07-450 (Failure to Appear).

⁴ WAC 480-30-060(7) requires auto transportation companies to report, in writing, to the Commission, all interruptions of service, if the service interruption will last more than 24 hours;

certificate should be revoked for refusal to observe the Commission's rules and regulations.

FINDINGS OF FACT

- 7 (1) The Commission has the authority to revoke an auto transportation company's certificate of public convenience and necessity if that company refuses to observe Commission rules.
- 8 (2) Pennco is a certificated auto transportation company under the Commission's jurisdiction.
- 9 (3) Pennco failed to appear at a show cause hearing before the Commission for which due and proper notice was provided.
- 10 (4) Pennco failed to formally notify the Commission that it had ceased operating.
- 11 (5) Pennco failed to file its 2004 annual report, or to pay its 2005 regulatory fees, all of which were due on May 1, 2005.

CONCLUSIONS OF LAW

- 12 (1) Pennco violated WAC 480-30-060(7), (8), and (9) requiring auto transportation companies to notify the Commission of interruptions or

WAC 480-30-060(8) provides that discontinuance of service for five days without notice to the Commission is deemed a forfeitures of operating rights secured from the Commission; WAC 480-03-060(9) provides that no auto transportation company can discontinue service under its certificate without obtaining permission from the Commission; WAC 480-30-120(4) and WAC 480-30-110(1) provide that failure of an auto transportation company to pay annual regulatory fees and annual report pursuant to RCW 81.04.080 and RCW 81.24.020, is cause for the Commission to revoke a certificate.

discontinuance of service and to obtain permission to discontinue certificated service.

- 13 (2) Pennco violated WAC 480-30-120(4) and WAC 480-30-110(1) providing that failure to file annual reports or to pay annual regulatory fees is cause for revocation of a certificate.
- 14 (3) Pennco's failure to appear at the show cause hearing convened on August 31, 2005, constitutes a default under RCW 34.05.440 and WAC 480-07-450.
- 15 (4) Pennco's certificate of authority to operate as an auto transportation company should be revoked due to Pennco's refusal to observe the Commission's rules.

ORDER

- 16 THIS ORDER RECOMMENDS That Pennco's certificate of public convenience and necessity be revoked.

DATED at Olympia, Washington and effective this 13th day of September, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a *Petition to Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-07-150(8) and (9). An Original and twelve copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
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