



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

March 21, 2013

Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Dillard-Lewis, LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-130195

Dear Mr. King:

On March 4, 2013, the Washington Utilities and Transportation Commission issued a \$225 Penalty Assessment in Docket TE-130195 against Dillard-Lewis, LLC (Dillard-Lewis) for nine violations of WAC 480-30-071, which requires Charter and Excursion companies to file annual safety reports with the Commission by December 31 each year; and WAC 480-30-076, which requires such companies to pay regulatory fees annually on that date.¹

On March 18, 2013, Dillard-Lewis responded to the commission, requesting mitigation of the penalty. In its Mitigation Request, Dillard-Lewis does not dispute that the violations occurred. The company states, "It is impossible to accurately complete your Safety Report and have it postmarked on December 31st. Our Company operates in 35 different states and in Puerto Rico. It takes our drivers up to two weeks to compile and submit their mileage reports and some of our vans are still on the road at 4:30pm [sic] on December 31 when the post office closes. I have called the Transportation Commission in the past with my concerns but no one was able to tell me how to file an accurate report on December 31st. I was told to do the best I could and then pay the 2% penalty and 1% interest, which I did. This year our computer system was infected by a work which caused our report to be a little later than usual. Please explain how this report and [sic] be accurately completed and mailed on December 31st."²

¹ See Attachment A for a copy of the penalty assessment sent to Dillard-Lewis, LLC.

² See Attachment B for a copy of the letter submitted by the company on March 18, 2013.

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the December 31 deadline. On November 15, 2012, the commission mailed 2012 Annual Safety Report forms and 2013 regulatory fee packets to Charter and Excursion companies registered in Washington state. A letter from the commission's Assistant Director for Transportation Safety, David Pratt, instructed these companies to file annual reports and pay regulatory fees by December 31, 2012. The letter stated failure to file the annual report by December 31 would result in a penalty and possible cancellation of the company's permit to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to December 31, providing a reason for the requested extension. No extension was requested.³

On January 7, 2013, the commission issued a notice to companies that had not yet filed their annual report and paid regulatory fees, informing these companies that they were subject to enforcement action, including the assessment of penalties beginning to accrue on that date. Companies that filed their annual reports and paid regulatory fees after January 7, 2013, but on or before January 18, 2013, are subject to penalties that the commission uses its discretion to mitigate to \$25 per day if the company had not made these filings late in prior years. Companies that were late in prior years are subject to an additional \$25 per day for each year in which they were late up to a total of \$100 per day. For first time late-filers who filed their report after January 18, the commission will mitigate the penalties to 50 percent of the maximum permissible amount. No further mitigation will be granted unless the company provides new information that is unrelated to these factors. Mitigation will not be granted on the basis that a company was unaware a report must be filed.⁴

Dillard-Lewis filed its 2012 annual safety report and paid its 2013 regulatory fee on January 18, 2013. That date is nine business days past the January 7, 2013, notice date when penalties began to accrue, resulting in a potential penalty assessment of \$900 (\$100 per day times nine days). Dillard-Lewis is a first time late-filer and, therefore, received a mitigated penalty of \$25 per day for the nine days to \$225. The commission could have begun assessing penalties of \$100 per business day, beginning January 2, which would have made the company responsible for a penalty of \$1,300. The commission did not begin assessing penalties until January 7, 2013, so that companies would have time to complete their annual safety reports and pay regulatory fees without incurring a penalty. Companies that needed extra time to file their report were instructed to do so by requesting an extension. Dillard-Lewis did not request an extension.

Staff does not support mitigating the \$225 penalty assessment further. The penalty was already administratively mitigated by 75 percent, from \$900 to \$225 and Dillard-Lewis provided no new information related to the factors above. Staff recommends denying the mitigation request.

If you have questions regarding this recommendation, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1320, or at mperkinson@utc.wa.gov.

Sincerely,



Sharon Wallace, Assistant Director
Consumer Protection and Communications

³ See Attachment C for a copy of the letter sent to all regulated companies on November 15, 2012.

⁴ See Attachment D for a copy of the Enforcement letter sent to all delinquent companies on January 7, 2013.

Attachment A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-130195
PENALTY AMOUNT: \$225

JUDY DILLARD
DILLARD-LEWIS, INC.
PO BOX 40686
RALEIGH, NC 27629

According to the Washington Utilities and Transportation Commission (Commission) records, you have committed violations of two Commission rules: (1) Washington Administrative Code (WAC) 480-30-071, which requires Charter and Excursion companies to file annual safety reports with the Commission by December 31 each year; and (2) WAC 480-30-076, which requires such companies to pay regulatory fees annually on that date. You are classified as a Charter and Excursion company. Commission records show that you did not file an annual safety report or pay annual regulatory fees by December 31, 2012.

Revised Code of Washington (RCW) 81.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each and every such violation shall be a separate and distinct offense and, in the case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. The Commission interprets noncompliance with WAC 480-30-071 and WAC 480-30-076 as continuing violations, giving rise to penalties of \$100 for each day a company fails to make each requisite filing after the date on which it was due.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$225 on the following basis:

On November 15, 2012, the Commission mailed 2012 Annual Safety Report forms and 2013 Regulatory Fee packets to Charter and Excursion companies registered in Washington state. A letter from the Commission's Assistant Director for Transportation Safety, David Pratt, instructed these companies to file annual reports and pay regulatory fees by December 31, 2012. The letter stated failure to file the annual report by December 31 would result in a penalty and possible cancellation of the company's permit to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to December 31, providing a reason for the requested extension. No extension was requested.

On January 7, 2013, the Commission issued a notice to companies that had not yet filed their annual report and paid regulatory fees, informing these companies that they were subject to enforcement action, including the assessment of penalties beginning to accrue on that date. Companies that filed their annual reports and paid regulatory fees after January 7, 2013, but on or before January 18, 2013, are

PENALTY ASSESSMENT TE-130195

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subject to penalties that the Commission uses its discretion to mitigate to \$25 per day if the company had not made these filings late in prior years. Companies that were late in prior years are subject to an additional \$25 per day for each year in which they were late up to a total of \$100 per day. For first time late-filers who filed their report after January 18, the Commission will mitigate the penalties to 50 percent of the maximum permissible amount. No further mitigation will be granted unless the company provides new information that is unrelated to these factors. Mitigation will not be granted on the basis that a company was unaware a report must be filed.

Dillard-Lewis, Inc. filed its 2012 Annual Safety Report and paid its 2013 Regulatory Fee on January 18, 2013. That date is nine business days past the January 7, 2013, notice date when penalties began to accrue, resulting in a potential penalty assessment of \$900 (\$100 per day times nine days). Dillard-Lewis, Inc., is a first time late-filer and, therefore, is subject to a mitigated penalty of \$25 per day for nine days for a total penalty assessment of \$225.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due;
- Request a hearing to contest the occurrence of the violations; or
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission will then sue you to collect the penalty.

DATED at Olympia, Washington, and effective March 4, 2013.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-130195

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred. I have:
- Enclosed \$225 as payment of the penalty.
 - Submitted my payment of \$225 online at www.utc.wa.gov. My confirmation number is _____.
2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.
- a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
- OR b) I waive a hearing and ask for an administrative decision on the information I present directly above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

Attachment B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: TE-130195

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PENALTY ASSESSMENT TE-130195

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You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

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Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, within **FIFTEEN (15) days** after you receive this notice.

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DATED at Olympia, Washington, and effective March 4, 2013.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-130195

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2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.

See Statement attached

a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.

OR b) I waive a hearing and ask for an administrative decision on the information I present directly above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 03/13/2013 [month/day/year], at Newton Grove, NC [city, state]

Dillard-Lewis, Inc.
Name of Respondent (company) - please print

Valerie Lewis CFO
Signature of Applicant

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

DILLARD-LEWIS, INC.

PENALTY ASSESSMENT: TE-130195

APPLICATION FOR MITIGATION

It is impossible to accurately complete your Safety Report and have it postmarked on December 31st. Our Company operates in 35 different states and in Puerto Rico. It takes our drivers up to two weeks to compile and submit their mileage reports and some of our vans are still on the road at 4:30pm on December 31 when the post office closes. I have called the Transportation Commission in the past with my concerns but no one was able to tell me how to file an accurate report on December 31st. I was told to do the best I could and then pay the 2% penalty and 1% interest, which I did. This year our computer system was infected by a worm which caused our report to be a little later than usual. Please explain how this report can be accurately completed and mailed on December 31st.

Attachment C



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

November 15, 2012

Subject: Your Charter and Excursion Annual Safety Report and Regulatory Fees are Due December 31, 2012

You are required to file an annual safety report and pay regulatory fees if you operate as a charter or excursion company.

What is required?

By December 31, you must:

- Complete and file the enclosed 2012 annual safety report form.
- Pay your 2013 regulatory fees.

If you are using U.S. postal mail to send your annual safety report and pay your regulatory fee, the envelope must be postmarked by Monday, December 31, 2012. If you are planning on using another delivery method, the company must ensure that it arrives at the commission by 5:00 p.m. Monday, December 31, 2012.

Failure to file or mail your annual safety report or pay regulatory fees by December 31, 2012 will result in a penalty and possible cancellation of your permit to operate in Washington. This is the only notice you will receive from the commission.

What happens if you do not pay your regulatory fees by December 31?

If regulatory fees are not paid by December 31, you will incur:

- a 2 percent penalty on the amount due; and
- a 1 percent monthly interest charge on the unpaid balance.

Can you request an extension of time if you are unable to file the annual safety report by December 31?

Yes, you must provide the request in writing, including a valid reason for the extension by December 31. We will notify you when your request is approved or denied. You will still be liable for penalty and interest payments if you fail to pay your regulatory fees by December 31. If you are late filing your annual safety report or fail to file, you could incur additional penalties up to \$100 a day.



November 15, 2012

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May you perform some of these tasks online?

Yes. You may complete the following tasks from the annual reports page at the UTC website www.utc.wa.gov/annualreports:

- Obtain electronic versions of annual report forms
- Pay regulatory fees
- File your report electronically
- Cancel your permit if your company ceased operations in 2012.

What if you didn't operate during the year?

You must indicate this on the report and regulatory fee sheet that you've had no operations, include the minimum \$25 fee and return both forms to the commission. If you are no longer using your charter or excursion authority and wish to cancel it, go to our website at www.utc.wa.gov and locate the, "voluntary permit cancellation form" or call us at (360) 664-1222 and we'll mail you the form.

Where do you mail the completed annual safety report form and regulatory fee payment?

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

Where can you obtain an electronic version of the annual safety report?

Forms are available on our website at www.utc.wa.gov. Locate "Quick Links" then select "2012 annual safety report".

Who do you contact if you have questions?

You may call Tom McVaugh at (360) 664-1237 or e-mail him at tmcvaugh@utc.wa.gov for questions related to the annual safety report. If you have questions calculating your regulatory fee, penalties or interest, call Rae Lynn Carnes at (360) 664-1152 or e-mail her at rcarnes@utc.wa.gov. If you need this information in an alternate format, please call (360) 664-1133. TTY Toll Free phone number is (800) 416-5289 or (360) 586-8203.

Sincerely,



David Pratt
Assistant Director, Transportation Safety

Enclosures

Attachment D



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

January 7, 2013

NOTICE OF ENFORCEMENT ACTION

Attention!

Your 2012 annual safety report and regulatory fees to the Utilities and Transportation Commission (commission) were due December 31, as required by law. **Financial penalties of \$100 per day begin accruing today, January 7.** The penalty will increase by \$100 per day for each additional day you fail to comply.

How do you mitigate your penalty?

If the commission receives your report postmarked no later than January 18, commission staff will mitigate your penalty to \$25 per day. Additional penalties of \$25 per day will be added for each year you have filed a delinquent annual safety report in the past five years, up to a maximum of \$100 per day.

Where do you mail or fax the completed annual safety report form?

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250
Fax: (360) 664-1289

Annual safety report forms are available on the commission's website at www.utc.wa.gov. If you have questions calculating your regulatory fee, penalties or interest, contact Rae Lynn Carnes at (360) 664-1152 or rcarnes@utc.wa.gov. If you require additional information, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105 or mperkinson@utc.wa.gov. If you need this information in an alternate format, please call (360) 664-1133. TTY Toll Free phone number is (800) 416-5289 or (360) 586-8203.

Sincerely,

A handwritten signature in cursive script, appearing to read "David W. Danner".

David W. Danner
Executive Director and Secretary

