



**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 28, 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. Leavenworth's Enchanted Tours, LLC*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TE-130205

Dear Mr. King:

On March 5, 2013, the Washington Utilities and Transportation Commission issued a \$900 Penalty Assessment in Docket TE-130205 against Leavenworth's Enchanted Tours, LLC, (Leavenworth) for 18 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.<sup>1</sup>

On March 14, 2013, Leavenworth responded to the commission, requesting mitigation of the penalty. In its Mitigation Request, Leavenworth does not dispute that the violations occurred. The company states, "This is Brian Parton with Leavenworth's Enchanted Tours LLC (UBI# 602 746 035 and CH062961 [sic] I have no record I received anything else other than our normal notice we received in November with the scale late payment schedule attached to our blank Annual Report forms, which I have filed [sic] out and have sent in today via fax. I run a small fleet that runs mostly inside Leavenworth's immediate area, qualifying for urban transport and outside the commission's dealings, but we still do some work outside and want to do more in the future. This time of year is our "down season", and pushes me outside of my company for employment [sic] make ends meet and even more challenging to stay up on all paperwork [sic] Obviously, I wouldn't knowingly Ignore [sic] such a huge penalty and don't understand how I missed that. Normally important notices that were apparently (according to my violation) sent out in January that represented "new fines being accessed, [sic]" at least I was unaware that these laws [sic] and now are being enforced across the board according to Rae Lynn Carnes whom I spoke to earlier today. I believe that it should require registered mail, in order to, insure

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<sup>1</sup> See Attachment A for a copy of the penalty assessment sent to Leavenworth's Enchanted Tours, LLC.

every company does receive notice of the impending violations due to the severity of the fine. The registered mail with the fine was my first understanding of the violation!"<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

Leavenworth filed its completed 2012 annual safety report on March 14, 2013, and paid its 2013 regulatory fees on March 19, 2013. As of January 31, 2013, Leavenworth failed to file the report and pay the required regulatory fees. That date is 18 business days past the January 7, 2013, notice date when penalties began to accrue, resulting in a potential penalty assessment of \$1,800 (\$100 per day times eighteen days). Leavenworth has not previously missed the deadline for filing its annual report and paying its regulatory fees. The commission therefore mitigated the penalty by 50 percent to a total assessed penalty of \$900. In its mitigation request, Leavenworth admits it received the penalty assessment, which was mailed to PO BOX 342, Leavenworth, WA 98826. The notice sent to Leavenworth on January 7, was also mailed to PO BOX 342, Leavenworth, WA 98826.<sup>5</sup> There were no returned mailings.

Staff does not support mitigating the \$900 penalty assessment further. The penalty was already administratively mitigated by 50 percent, from \$1,800 to \$900. Also, the penalty assessment states that mitigation will not be granted on the basis that a company was unaware a report must be filed. Staff recommends denying the mitigation request.

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2 See Attachment B for a copy of the letter submitted by the company on March 14, 2013.

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.

5 See Attachment E for a copy of the mailing envelope which delivered the Notice of Enforcement January 7, 2013.

UTC Annual Reports  
March 28, 2013  
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If you have questions regarding this recommendation, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1320, or at [mperkinson@utc.wa.gov](mailto:mperkinson@utc.wa.gov).

Sincerely,

Sharon Wallace, Assistant Director  
Consumer Protection and Communications

## Attachment A

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-130205  
PENALTY AMOUNT: \$900

BRIAN T PARTON  
LEAVENWORTH'S ENCHANTED TOURS LLC  
PO BOX 342  
LEAVENWORTH, WA 98826

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 \$900 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 subject to penalties that the Commission uses its discretion to mitigate to \$25 per

PENALTY ASSESSMENT TE-130205

PAGE 2

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.

As of January 31, 2013, Leavenworth's Enchanted Tours LLC, has failed to file its 2012 Annual Safety Report and pay its 2013 Regulatory Fees. That date is 18 business days past the January 7, 2013, notice date when penalties began to accrue, resulting in a potential penalty assessment of \$1,800 (\$100 per day times 18 days). Leavenworth's Enchanted Tours LLC, has not previously missed the deadline for filing its annual report and paying its regulatory fees. The Commission, therefore, exercises its discretion to mitigate the penalty by 50 percent to a total assessed penalty of \$900.

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 5, 2013.

  
\_\_\_\_\_  
GREGORY J. KOPTA  
Administrative Law Judge

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT TE-130205**

**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 \$900 as payment of the penalty.
  - Submitted my payment of \$900 online at [www.utc.wa.gov](http://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

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**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

14-Mar-2013 14:17

From-DAS COPY SHOPPE

5095486150

T-756 P.008/009 F-240

#### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION PENALTY ASSESSMENT TE-130205

**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.

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1. **Payment of penalty.** I admit that the violations occurred. I have:

Enclosed \$900 as payment of the penalty.

Submitted my payment of \$900 online at [www.utc.wa.gov](http://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.

*Please see 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: 3/14/13 [month/day/year], at Lanarua, Wa. [city, state]

Lanarua's Enchanted Tours LLC  
Name of Respondent (company) - please print

*[Signature]*  
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."

This is Brian Parton with Leavenworth's Enchanted Tours LLC (UBI# 602 746 035 and CH062961

I have no record I received anything else other than our normal notice we received in November with the scale late payment schedule attached to our blank Annual Report forms, which I have filed out and have sent in today via fax.

I run a small fleet that runs mostly inside Leavenworth's immediate area, qualifying for urban transport and outside the commissions' dealings, but we still do some work outside and want to do more in the future. This time of year is our "down season", and pushes me outside the my company for employment make ends meet and even more challenging to stay up on all paperwork. Obviously, I wouldn't knowingly ignore such a huge penalty and don't understand how I missed that. Normally important notices that were apparently (according to my violation) sent out in January that represented "new fines being accessed," at least I was unaware that these laws and now are being enforced across the board according to Rae Lynn Carnes whom I spoke to earlier today. I believe that it should require registered mail, in order to, insure every company does receive notice of the impending violations due to the severity of the fine. The registered mail with the fine was my first understanding of the violation!

Thank you for your time

Brian T Parton

3-14-13

*President Leavenworth's Enchanted Tours LLC*



## 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  
Page 2

**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](http://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](http://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

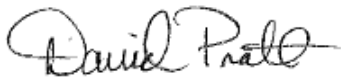
**Where can you obtain an electronic version of the annual safety report?**

Forms are available on our website at [www.utc.wa.gov](http://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](mailto: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](mailto: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

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**Attachment D**

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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](http://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](mailto:rcarnes@utc.wa.gov). If you require additional information, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105 or [mperkinson@utc.wa.gov](mailto: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,

David W. Danner  
Executive Director and Secretary



Attachment E



State of Washington  
WASHINGTON UTILITIES &  
TRANSPORTATION COMMISSION  
1300 S. Evergreen Park Dr. S.W., PO Box 47260  
Olympia, WA 98504-7260

4886 / CH062951  
Leavenworth's Enchanted Tours LLC  
PO Box 342  
Leavenworth, WA 98826