



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

November 7, 2013

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

RE: Commission Staff's Response to Application for Mitigation of Penalties
Docket UW-130892

Dear Mr. King:

On July 30, 2013, the Utilities and Transportation Commission issued a Penalty Assessment for \$1,800 in Docket UW-130892 against Green Mountain H2O for 18 violations of Washington Administrative Code (WAC) 480-110-505, which requires water companies to furnish annual reports and pay regulatory fees by May 1 each year.¹

On July 13, 2012, Green Mountain H2O was assessed a \$2,100 penalty in Docket UW-120865 for failing to timely file its 2011 annual report. In Order 01, dated Dec. 4, 2012,² the commission suspended \$600 of the \$2,100 penalty on the condition that Green Mountain H2O timely file its 2012 annual report. Green Mountain H2O was sent a Notice of Intent to Send to Collections on March 6, 2013, for non-payment of the \$1,500 portion of the penalty that was imposed in Order 01.

On Aug. 16, 2013, the Commission notified all parties that Green Mountain H2O failed to timely file its 2012 annual report and therefore failed to comply with the conditions of the order in Docket UW-120865.³ The \$600 suspended portion of the penalty became immediately due and payable.

On Oct. 27, 2013, Mr. Dan Class, owner of Green Mountain H2O, wrote the commission requesting a waiver (mitigation) of the penalty in this docket for failing to timely file a 2012

¹ See attachment A for a copy of the penalty assessment sent on July 30, 2013

² See attachment B for a copy of Order 01, dated Dec. 4, 2012

³ See attachment C for a copy of the letter to all parties re Order Partially Suspending Penalty, dated Aug. 16, 2013

annual report. Mr. Class disputed the violation and wrote, "I am asking for a waiver in regards to the assessed late filing penalty for my 2012 Annual Report. The 2012 Annual Report was timely filed. Additional information was provided after the filing due date. I feel the penalty is excessive as the original return was timely filed. I appreciate you reviewing my assessment and hopefully you can waive the penalty. Due to the economic climate it would be very difficult to pay this penalty."⁴

Mr. Class included a copy of Invoice 1846-2 with his waiver request.⁵ The invoice, dated Oct. 2, 2013, is the second issued statement for the \$600 reinstated suspended penalty in Docket UW-120865.

It is the company's responsibility to ensure that the annual report is filed by the May 1 deadline. On Mar. 1, 2013, Annual Report forms and Regulatory Fee packets were mailed to all regulated water companies.⁶ The cover letter informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2013, to avoid enforcement action.

On May 10, 2013, the commission mailed a letter to those companies that had not yet filed an annual report notifying them that, to date, they had incurred a penalty of \$700.⁷ The letter went on to explain that companies that filed their annual reports no later than May 24, 2013, would receive mitigated penalties of \$25 per day. An additional penalty of \$25 per day would be assessed for each instance in the previous five years that the company received a penalty for filing a late report, up to a maximum of \$100 per day.

Green Mountain H2O filed an incomplete 2012 annual report and paid its 2013 regulatory fee on April 4, 2013. Green Mountain H2O did not submit a complete annual report until May 28, 2013. Because the company also missed the May 24 deadline, the maximum penalty of \$1,800 was imposed. Because Green Mountain H2O's filings were also delinquent in 2012, the commission declined to exercise its discretion to grant any mitigation.

Because the company has not presented any new or compelling information, and because it submitted its Mitigation Request after the deadline, staff does not support further mitigation.

If you have any questions regarding this recommendation, please contact Susie Paul, Compliance Investigator, at (360) 664-1105, or spaul@utc.wa.gov.

Sincerely,

Sharon Wallace, Assistant Director
Consumer Protection and Communications

⁴ See attachment D for a copy of the request for waiver, dated Oct. 27, 2013

⁵ See attachment E for a copy of Invoice 1846-2, dated Oct. 2, 2013

⁶ See attachment F for a copy of the letter sent to all regulated companies dated Feb. 28, 2013

⁷ See attachment G for a copy of the enforcement letter sent to the company on May 10, 2013

ATTACHMENT A
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UW-130892
PENALTY AMOUNT: \$1,800

Green Mountain H2O
10013 NW Hazel Dell Ave., #240
Vancouver, WA 98665

According to the Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-110-505, which requires water companies to file annual reports and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2013.

Revised Code of Washington (RCW) 80.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-110-505 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$1,800 on the following basis:

On March 1, 2013, the Commission mailed 2012 annual report forms and 2013 regulatory fee packets to all water companies registered in Washington state. A letter from the Commission's Acting Executive Director Steven V. King instructed these companies to file annual reports and pay regulatory fees by May 1, 2013. The letter stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 24. You did not request an extension.

On May 10, the Commission issued a notice to companies that had not yet filed their annual report or paid regulatory fees, informing these companies that they were subject to enforcement action, including penalties that began accruing on May 2. Companies that filed their annual reports and paid regulatory fees after May 1, but on or before May 24, 2013, are subject to penalties that the Commission uses its discretion to mitigate to \$25 per day if the company had not filed late in prior years. Companies that were late in prior years are subject to an additional \$25 per day for each year they were late, up to a total of \$100 per day. For first-time late filers who filed their report after May 24, the Commission will

PENALTY ASSESSMENT UW-130892

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mitigate the penalties to 50 percent of the maximum 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 that a report must be filed.

On May 28, 2013, Green Mountain H2O filed its 2012 annual report and paid its 2013 regulatory fee, but failed to file by the May 24 deadline. It is eighteen business days between May 1 and May 24, for a total penalty of \$1,800. Because Green Mountain H2O's filings were also delinquent in 2012, the Commission declines to exercise its discretion to grant any mitigation.

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 think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 80.04.405.

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.
- 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 July 30, 2013.

GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UW-130892

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 \$1,800 in payment of the penalty
 - Submitted my payment of \$1,800 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 presented 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

[Service Date December 4, 2012]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment) DOCKET UW-120865
Against)
) ORDER 01
GREEN MOUNTAIN H2O,)
) ORDER PARTIALLY
in the amount of \$2,100.00.) SUSPENDING PENALTY,
) SUBJECT TO CONDITION
.....)

MEMORANDUM

- 1 **Penalty.** On July 13, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against Green Mountain H2O (Green Mountain), for violations of Washington Administrative Code (WAC) 480-110-505. This rule requires water companies to file annual reports with the Commission by May 1 each year.
- 2 On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated water companies as required by WAC 480-110-505. On May 14, 2012, the Commission mailed a letter to companies that had not yet filed an annual report notifying them that they had incurred, as of that date, a penalty of \$800. The letter explained that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per day, with an additional \$25 per day assessed for each instance in the previous five years that the company received a penalty for filing a late report.
- 3 Green Mountain filed its 2011 annual report on June 27, 2012. This is 57 days late, making the company liable for a penalty of up to \$5,700, as provided in RCW 80.04.405. Green Mountain became regulated in April 2009 and this is the first instance of the Company filing a delinquent annual report. The Commission exercised its discretion to impose less than the maximum penalty and assessed a penalty of \$2,100.

DOCKET UW-120865
ORDER 01

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- 4 **Mitigation Request.** On October 18, 2012, the company filed a letter requesting that the penalty be waived. In its letter, Green Mountain does not dispute that the violation occurred. Instead, the company states that it is working with its accountant “to make sure this will not happen again.”
- 5 **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response to the Green Mountain’s request on November 8, 2012. Staff opposes waiving or mitigating the assessed penalty because the company failed to establish any mitigating circumstances to explain or excuse its failure to timely file its annual report.
- 6 **Commission Determination.** The Commission determines that it will not waive the penalty but will mitigate the penalty to the extent of suspending \$600 of the \$2,100 penalty amount, subject to the condition that Green Mountain files its 2012 annual report by May 1, 2013. If the company fails to timely file its 2012 annual report, the suspended penalty of \$600 will become due without further action by the Commission. An additional penalty may be assessed for any late filing of the 2012 annual report.
- 7 This decision is based on Green Mountain’s pledge to make sure that its annual reports are timely filed in the future. The Commission’s primary goal in reaching its determination is to promote future compliance. Both the assessed penalty now due and the suspended penalty support this goal.

ORDER

THE COMMISSION ORDERS THAT:

- 8 (1) The penalty of \$2,100 assessed against Green Mountain, Inc., on July 13, 2012, is suspended in the amount of \$600 subject to the condition that Green Mountain files its 2012 annual report by May 1, 2013. If the company fails to timely file its 2012 annual report, the suspended penalty will become due without further action by the Commission.

DOCKET UW-120865
ORDER 01

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- 9 (2) The unsuspended portion of the penalty amount of \$2,100 assessed against Green Mountain H2O on July 13, 2012, (*i.e.*, \$1,500), is due and payable to the Commission within 30 days following the date of this Order.
- 10 (3) The Commission delegates to its Secretary authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective December 4, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. Under WAC 480-07-904(3), you may seek Commission review of this decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision under WAC 480-07-904(1). You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

ATTACHMENT C

[Service Date August 16, 2013]



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

August 16, 2013

RE: *In the Matter of a Penalty Assessment Against Green Mountain H2O,*
Docket UW-120865

TO ALL PARTIES:

On July 13, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against Green Mountain H2O (Green Mountain or Company), for violation of WAC 480-110-505. This rule requires water companies to file annual reports with the Commission by May 1 each year.

On October 18, 2012, Green Mountain filed a letter with the Commission requesting that the penalty be waived.

On December 4, 2012, the Commission entered Order 01, Order Partially Suspending Penalty, Subject to Condition (Order 01). Order 01 suspended the penalty of \$2,100 assessed against Green Mountain in the amount of \$600 subject to the condition that Green Mountain files its 2012 annual report by May 1, 2013. Order 01 further states that if the Company fails to timely file its 2012 annual report, the suspended penalty will become due without further action by the Commission.

Commission records indicate that Green Mountain did not timely file its 2012 annual report by May 1, 2013. Accordingly, Green Mountain H2O has not complied with the conditions under which the Commission suspended \$600 of the \$2,100 penalty assessment. The suspended penalty amount of \$600, therefore, is now due and payable.

STEVEN V. KING
Executive Director and Secretary

ATTACHMENT D

Docket # 130892

RECEIVED

OCT 31 2013

WASH. UT. & TP. COMM

October 27, 2013

Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250


RE: Green Mountain H2O
10013 NW Hazel Dell Avenue, PMB #240
Vancouver, WA 98665

Dear Ms. Andrews:

I am asking for a waiver in regards to the assessed late filing penalty for my 2012 Annual Report. The 2012 Annual Report was timely filed. Additional information was requested which was provided but due to bookkeeping issues the additional information was provided after the filing due date. I feel the penalty excessive as the original return was timely filed.

I appreciate you reviewing my assessment and hopefully you can waive the penalty. Due to the economic climate it would be very difficult to pay this penalty. Thank you!

Sincerely,



Dan Class

ATTACHMENT F



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

February 28, 2013

Dear Regulated Company:

Reference: Your 2012 Annual Report and 2013 Regulatory Fees are Due May 1

State law requires you to file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission (commission).

What is required of you?

By May 1, you must:

- Complete and file one paper copy or electronic version of the enclosed 2012 annual report form
- Pay your 2013 regulatory fees

What happens if you do not file a completed annual report and pay regulatory fees on time?

If you do not file your company's completed annual report and pay the regulatory fees by May 1, the commission will assess a financial penalty of \$100 for each business day after May 1 that the report is not filed and/or the fees are unpaid. You may seek mitigation of the penalties in response to the assessment you receive after you have filed a completed annual report and paid your regulatory fees. Any potential mitigation of the penalty, if any, will depend on the reason it is late and whether you have filed late in prior years. Staff may also initiate proceedings to request the commission revoke your authority to operate in Washington.

What happens if you do not pay the regulatory fees by May 1?

If the commission does not receive your company's regulatory fees by May 1, you will incur a 2 percent penalty on the amount due and a 1 percent monthly interest charge on the unpaid balance. These amounts apply in addition to the assessment of a penalty of \$100 per business day after May 1 that the fees are unpaid.

May you request an extension of time if you are unable to file the annual report or pay your regulatory fees on time?

You may file a written request for an extension to file your completed annual report; however, the commission will not extend the deadline for paying regulatory fees. Any extension request must be filed with the commission by April 24, 2013, and must state a valid reason for why you

UTC Annual Reports and Fees
February 28, 2013
Page 2

need an extension and identify a specific date by which you will file your completed annual report. The commission will notify you by May 1 whether your request is approved or denied. Even if your request is approved, you will still be liable for penalties and interest payments if you fail to pay your regulatory fees by May 1.

What should you do if your company is no longer operating in Washington?

You may cancel your registration or permit by using the cancellation forms available on the commission's website at www.utc.wa.gov; however, if your company operated in Washington at any time during the 2012 calendar year, you must pay regulatory fees and file a closing annual report based on the months of operation during 2012 even if you cancel your registration or permit.

May you designate any information in your annual report as confidential?

Only if you satisfy two conditions:

(1) You are eligible to request confidential treatment only if your company is regulated under Title 80 RCW, that is, if you operate an electric, natural gas, telecommunications, or water company. Transportation companies, regulated under Title 81 RCW, may **not** request confidential treatment of documents because the authority for such treatment is found only in RCW 80.04.095. If a Title 81 company files its annual report or fee sheet as confidential, the commission will **not** treat it as confidential.

(2) You must follow the steps for filing confidential documents in WAC 480-07-160. You may find this rule on the commission website, www.utc.wa.gov/annualreports.

Please note: The regulatory fee sheet portion of your report is not a confidential document and will not be accorded confidential treatment under the rule. The commission will not, however, disclose credit card information you list on the fee sheet.

May you perform some of these tasks online?

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

- Obtain electronic versions of annual report forms;
- Pay regulatory fees;

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

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

The commission must **receive** your annual report form and regulatory fee payment on or before May 1, without regard to when you mail them. The commission will no longer consider this filing to be timely if it is postmarked on that date. If you mail the completed form and payment, therefore, you must do so sufficiently in advance for them to be delivered to the commission on or before May 1. Forms and payment the commission

UTC Annual Reports and Fees
February 28, 2013
Page 3

receives after that date will be considered late and subject to the penalties described in this notice without regard to when you mailed them.

Is there any additional information you should file?


- If you are a gas distribution company, please remember to also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 2.
- If you are an electric company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 1.
- If you are a class 1 Railroad, please also file a copy of your Surface Transportation Board Form R-1 - including statistics specific to the state of Washington.

If you have questions about any aspect of your report or regulatory fee, please contact the following staff:

Rae Lynn Carnes at (360) 664-1152 or rcarnes@utc.wa.gov
Kim Anderson at (360) 664-1253 or kanderso@utc.wa.gov

If you need this letter or an annual report form in an alternate format, please call (360) 664-1243. The TTY Toll-Free phone number is 1-800-416-5289.

Sincerely,


Steven V. King
Acting Executive Director and Secretary

Enclosures

ATTACHMENT G



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

May 10, 2013

NOTICE OF ENFORCEMENT ACTION

Attention!

Your 2012 annual report and/or regulatory fees to the Utilities and Transportation Commission were due May 1, as required by law. **Financial penalties of \$100 per day began accruing on May 2.** As of the date of this letter, you have accrued a penalty of \$700. That penalty will increase by \$100 per day for each subsequent day you fail to comply.

This letter tells you what you can do to mitigate your penalty.

If the commission receives your report postmarked no later than May 24, 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 late in the past five years, up to a maximum of \$100 per day.

Annual report forms are available on the commission's website at www.utc.wa.gov. If you have questions or require additional information, please contact Kali Wraspir, Consumer Program Assistant, at (360) 664-1214 or kwraspir@utc.wa.gov.

Sincerely,

Steven V. King
Acting Executive Director and Secretary