



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

June 30, 2014

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: *Washington Utilities and Transportation Commission v. Roche Harbor Water System*

Commission Staff's Response to Application for Mitigation of Penalties UW-140853

Dear Mr. King:

On June 9, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket UW-140853 against Roche Harbor Water System for 10 violations of Washington Administrative Code (WAC) 480-110-505, which requires water companies to furnish annual reports to the commission no later than May 1 each year.¹

On June 16, 2014, Johnson & Shute, P.S. wrote the commission on behalf of Roche Harbor Water Systems requesting mitigation of penalties (Mitigation Request).² In its Mitigation Request, Roche Harbor Water System does not dispute that the violation occurred. The company statement provided information regarding the filing of the extension request being filed on May 1 instead of prior to May 1. Further, the company contacted commission staff on April 29th regarding the extension request deadline as the annual report form referenced April 17 as the extension request filing deadline. The company was told by commission staff, "we could still file the extension if it included the payment...if the payment was received by May 1st, she did not expect that the extension would be denied."

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the May 1 deadline. On February 28, 2014, Annual Report packets were mailed to all regulated water companies. The instructions for annual report completion page of the annual report informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2014, to avoid enforcement action.

¹See attachment A for a copy of the penalty assessment sent on June 9, 2014

²See attachment B for a copy of Roche Harbor's Mitigation Request received on June 16, 2014

UTC Annual Reports
June 30, 2014
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On June 3, 2014, Roche Harbor Water System filed its completed annual report and paid the regulatory fees due on May 1, 2014. There are no prior violations of WAC 480-110-505 with regard to the late filing of the annual report or prior extension requests. Staff supports the company's request for mitigation and recommends the penalty be waived due to conflicting information provided by commission staff which contradicted the commission rule and past filing compliance.

If you have any questions regarding this recommendation, please contact Amy Andrews, Regulatory Analyst, at (360) 664-1157, or aandrews@utc.wa.gov.

Sincerely,

Sondra Walsh, Director
Administrative Services

¹See attachment A for a copy of the penalty assessment sent on June 9, 2014

²See attachment B for a copy of Roche Harbor's Mitigation Request received on June 16, 2014

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UW-140853
PENALTY AMOUNT: \$1,000

Roche Harbor Water System
8484 Roche Harbor Road
Friday Harbor, WA 98250

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

Revised Code of Washington (RCW) 80.04.080 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 has assessed penalties against you in the amount of \$1,000 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all water companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2014. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. WAC 480-110-505(4) states that the Commission may grant an extension of time allowing a company to file its annual report after the May 1 due date if the Commission received a request for extension before May 1. You filed an extension request on May 1. This request was denied per Docket UW-140773 Order 01.

As of May 15, Roche Harbor Water System has not filed its 2013 annual report. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000.

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. The Commission will grant that request only if

¹See attachment A for a copy of the penalty assessment sent on June 9, 2014

²See attachment B for a copy of Roche Harbor's Mitigation Request received on June 16, 2014

material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 80.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will 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, which may file suit in state court to collect the penalty.

DATED at Olympia, Washington, and effective June 9, 2014.

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

¹See attachment A for a copy of the penalty assessment sent on June 9, 2014

²See attachment B for a copy of Roche Harbor's Mitigation Request received on June 16, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UW-140853

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 \$ _____ in payment of the penalty
 - Submitted my payment of \$ _____ 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, for the reasons I describe below, and I request a hearing based on those reasons 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 reasons set out below:
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision
 - OR b) I ask for a Commission decision based solely on the information I provide 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."

¹See attachment A for a copy of the penalty assessment sent on June 9, 2014

²See attachment B for a copy of Roche Harbor's Mitigation Request received on June 16, 2014

ATTACHMENT B

Johnson & Shute, P.S.

CERTIFIED PUBLIC ACCOUNTANTS/CONSULTANTS

11130 NE 33RD PLACE, SUITE 102
BELLEVUE, WASHINGTON 98004
BELLEVUE (425) 827-5755
SEATTLE (206) 284-5001
FAX (425) 827-3322
www.johnsonandshute.com

June 13, 2014

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

RE: Roche Harbor Water System, Inc.
Penalty Assessment: UW-140853

RECEIVED
JUN 16 2014
WASH. UT. & TP. COMM

Dear Madam or Sir:

The purpose of this letter is to respond to your notice assessing a \$1,000 penalty for late filing of the taxpayer's 2013 annual report (see enclosed copy of the notice). The taxpayer respectfully requests you abate the penalty in full based on the following facts.

The taxpayer has consistently filed timely reports. While the taxpayer has not needed to extend the due date for filing for a number of years, an extension was needed for the 2013 annual report. In the past, we have extended the due date for filing by mailing extensions in late April along with the payment of the estimated fee. Such extensions have always been approved. When we were preparing the 2013 extension, we noticed the reference to filing the extension by April 17th. On April 29th, we called the WUTC to find out if the extension would be accepted after April 17th. We talked with Jennifer, who stated that we could still file the extension if it included the payment. She stated that if the payment was received by May 1st, she did not expect that the extension would be denied. While she did not state that the extension had to be received before May 1st, we did not ask that specific question.

We were working on the annual report in May when the taxpayer received an email on May 29th notifying them that the extension was denied. We completed the annual report and mailed it to the taxpayer the day the notice was received. The taxpayer mailed the completed report to you on Monday June 2nd.

We apologize for any inconvenience caused by our filing the extension request a day late. Had we known that it mattered, we could have ensured that you received it on April 30th. Unfortunately, we were ignorant of that fact. We have prepared the taxpayer's annual reports for many years, and have always attempted to prepare and file the annual reports in a timely manner. Further, we are now aware of the due date for extensions and will timely file any future extension requests.

Thank you in advance for your consideration of our request. If you have any questions or need additional information, please contact me.

Sincerely Yours,



Rick D. Parducci
Johnson & Shute, P.S.

MEMBERS: AMERICAN INSTITUTE OF CPAS • PRIVATE COMPANIES PRACTICE SECTION • WASHINGTON SOCIETY OF CPAS

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons 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 reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide 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: JUNE 13, 2014 [month/day/year], at BELLEVUE, WA [city, state].
RICK D. PARDUCCI ON BEHALF
OF ROCHE HARBOR WATER SYSTEM, INC. R D Parducci
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.”

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