



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](http://www.utc.wa.gov)

June 13, 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. Puget Sound Express, Inc.*

Commission Staff's Response to Application for Mitigation of Penalties TS-141008

Dear Mr. King:

On May 22, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket TS-141008 against Puget Sound Express, Inc. for 10 violations of Washington Administrative Code (WAC) 480-51-100, which requires commercial ferry companies to furnish annual reports to the commission no later than May 1 each year.<sup>1</sup>

On June 2, 2014, Puget Sound Express, Inc. wrote the commission requesting mitigation of penalties (Mitigation Request).<sup>2</sup> In its Mitigation Request, Puget Sound Express, Inc. does not dispute that the violation occurred. The company states, "On May 1<sup>st</sup> I called into the UTC to ask if the report needed to be post marked by May 1 or received by the 1<sup>st</sup>...I was told it needed to be received by May 1. I asked if a fax was acceptable and was given 360-664-1289. I sent the report in by fax and paid the fee over the phone the same morning."

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 commercial ferry 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.

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<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Puget Express, Inc's Mitigation Request received on June 2, 2014

<sup>3</sup>See attachment C for a copy of the partial fax received on May 1, 2014

UTC Annual Reports  
June 13, 2014  
Page 2

On May 28, 2014, Puget Sound Express, Inc. filed the 2013 annual report and timely paid the required regulatory fees on May 1, 2014. The company permit was issued on March 22, 1994. The company has one previous violations of WAC 480-30-071 for the 2005 annual report. Upon being contacted by the company regarding the penalty assessment and attempted fax submission, commission staff was able to determine an unidentified partial fax which was received on May 1, 2014 was in fact that of Puget Sound Express, Inc.<sup>3</sup> Staff recommends the penalty be waived as evidenced by the company's good faith effort to submit the annual report via fax on May 1, 2014 and prior filing history.

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

Sincerely,

Sondra Walsh, Director  
Administrative Services

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<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Puget Express, Inc's Mitigation Request received on June 2, 2014

<sup>3</sup>See attachment C for a copy of the partial fax received on May 1, 2014

## ATTACHMENT A

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TS-141008  
PENALTY AMOUNT: \$1,000

Puget Sound Express, Inc.  
227 Jackson St  
Port Townsend, WA 98368

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-51-100, which requires commercial ferry companies to file their annual report and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2014.

Revised Code of Washington (RCW) 81.04.080 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 480-51-100 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 commercial ferry 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. The deadline for requesting an extension to file your annual report was April 17. You did not request an extension.

As of May 15, 2014, Puget Sound Express, Inc., 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 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.

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<sup>2</sup>See attachment B for a copy of Puget Express, Inc's Mitigation Request received on June 2, 2014

<sup>3</sup>See attachment C for a copy of the partial fax received on May 1, 2014

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 RCW81.04.405.

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. The Commission may also initiate proceedings under WAC 480-51-150 to revoke your authority to operate as a commercial ferry in Washington.

DATED at Olympia, Washington, and effective May 22, 2014.

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GREGORY J. KOPTA  
Administrative Law Judge

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<sup>3</sup>See attachment C for a copy of the partial fax received on May 1, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TS-141008

**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](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, 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.”

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Puget Express, Inc’s Mitigation Request received on June 2, 2014

<sup>3</sup>See attachment C for a copy of the partial fax received on May 1, 2014

ATTACHMENT B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TS-141008

2014 JUN -2 AM 8:43

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:

X 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

Please see letter

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

OR X 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: 5-28-14 [month/day/year], at Port Townsend WA [city, state]

Puget Sound Express Name of Respondent (company) - please print

Sherrill Hanks 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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To the Commission:

5-27-2014

On May 1<sup>st</sup> I called into the UTC<sup>2</sup> to ask if the report needed to be post marked by May 1 or received by the 1<sup>st</sup>. I had a vague memory of this being clarified in years past but I couldn't recall the answer. I was told it needed to be received by May 1. I asked if a fax was acceptable and was given 360-664-1289. I sent the report in by fax and paid the fee over the phone the same morning. So I was surprised by the certified letter stating no report was filed and a penalty had been assessed.

We have been doing this for many years. The May 1<sup>st</sup> date is well known as the deadline for WUTC reporting. I cannot recall being late previously.

Thank you  
Steve Henke

227 Jackson St.  
Port Townsend, WA 98368

360-385-5288  
www.PugetSoundExpress.com

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

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ATTACHMENT C

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SCHEDULE 1 INCOME STATEMENT		
<b>OPERATING REVENUES</b>		
1	Passenger	
2	Freight	
3	Other	
4	Total Revenue (Add Lines 1 through 3)	363,625.70
<b>OPERATING EXPENSES</b>		
<b>Direct Payroll</b>		
5	Officers & Owners	45,000
6	Crew (Full & Part Time)	120,106
7	Other	
8	Total Payroll (Add Lines 5 through 7)	165,106
<b>Fringe Benefits</b>		
9	Employee Benefits (Health & Welfare, Pensions, etc.)	9,961
10	Payroll Taxes (Federal + State)	22,675
11	Other	
12	Total Fringe Benefits (Add Lines 9 through 11)	32,636
<b>Transportation</b>		
13	Vessel Repair & Maintenance	52,522
14	Fuel & Oil	145,806
15	Stores, Supplies & Equipment	16,848
16	Port, Wharfage & Dockage	36,581
17	Charter Rentals/Leases	
18	Vessel Insurance	27,585
19	Vessel Depreciation	
20	Other	
21	Total Transportation (Add Lines 13 through 20)	279,432
<b>General</b>		
22	Office Supplies & Postage	3527.
23	Legal & Accounting	2081
24	Utilities & Communication	1099
25	Traffic & Advertising	63,253
26	Agency Fees & Commissions	28,069
27	Operating Rents (Other than Vessel)	11,637
28	Insurance (Other than Vessel)	
29	Depreciation (Other than Vessel)	
30	Real Estate & Personal Property Taxes	
31	Business Taxes	41,544
32	Other	5,135
33	Total General (Add Lines 22 through 32)	169,165
34	Total Operating Expenses (Add Lines 8, 12, 21 and 33)	
35	Net Operating Income (Line 4 minus Line 34)	
<b>OTHER INCOME AND DEDUCTIONS</b>		
36	Other Income	9583
37	Interest Expense	
38	Other Deduction	
39	Federal Income Taxes	
40	Net Income (Line 35 plus Line 36, minus Lines 37 through 39)	

Received Time May. 1. 2014 8:50AM No. 0758

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**SCHEDULE 1A  
BALANCE SHEET - TOTAL COMPANY**

Line No.	Account Names (a)	Balance End of Year (c)
<b>Current Assets:</b>		
1	Cash and Working Funds	
2	Accounts Receivable	
3	Materials and Supplies	
4	Other Current Assets	
5	Total Current Assets	
<b>Tangible Property:</b>		
6	Operating Property	
7	Less: Accumulated Depreciation	
8	Net Operating Property	
9	Non-Operating Property	
10	Less: Accumulated Depreciation	
11	Net Non-Operating Property	
12	Total Net Tangible Property	
<b>Intangible Property:</b>		
13	Organization, Franchises, and Permits	
14	Accumulated Amortization-Credit	
15	Total Net Intangible Property	
16	<b>Total Assets (Add Lines 5, 12 and 15)</b>	
<b>Current Liabilities:</b>		
17	Notes Payable	
18	Accounts Payable	
19	Current Portion of Long Term Debt (Equip. and Other)	
20	Other Current Liabilities	
21	Total Current Liabilities	
<b>Long Term Debt After 1 Year:</b>		
22	Equipment Obligations	
23	Other Long Term Debt	
24	Total Long Term Debt Due After 1 year	
25	Total Liabilities (Add Lines 21 and 24)	
<b>Shareholder's and Proprietor's Equity:</b>		
26	Capital Stock	
27	Capital Stock	
28	Paid in Capital in Excess of Par	
29	Other Capital	
30	Total Capital Stock	
31	Retained Earnings	
32	Total Equity (Add Lines 30 and 31)	
33	<b>Total Liabilities and Equity (Add Lines 25 and 32)</b>	

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**SCHEDULE 1A  
BALANCE SHEET - TOTAL COMPANY**

Line No.	Account Names (a)	Balance End of Year (c)
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3	Materials and Supplies	
4	Other Current Assets	
5	Total Current Assets	
	<b>Tangible Property:</b>	
6	Operating Property	
7	Less: Accumulated Depreciation	
8	Net Operating Property	
9	Non-Operating Property	
10	Less: Accumulated Depreciation	
11	Net Non-Operating Property	
12	Total Net Tangible Property	
	<b>Intangible Property:</b>	
13	Organization, Franchises, and Permits	
14	Accumulated Amortization-Credit	
15	Total Net Intangible Property	
16	<b>Total Assets (Add Lines 5, 12 and 15)</b>	
	<b>Current Liabilities:</b>	
17	Notes Payable	
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20	Other Current Liabilities	
21	Total Current Liabilities	
	<b>Long Term Debt After 1 Year:</b>	
22	Equipment Obligations	
23	Other Long Term Debt	
24	Total Long Term Debt Due After 1 year	
25	Total Liabilities (Add Lines 21 and 24)	
	<b>Shareholder's and Proprietor's Equity:</b>	
26	Capital Stock	
27	Capital Stock	
28	Paid in Capital in Excess of Par	
29	Other Capital	
30	Total Capital Stock	
31	Retained Earnings	
32	Total Equity (Add Lines 30 and 31)	
33	<b>Total Liabilities and Equity (Add Lines 25 and 32)</b>	

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