



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 26, 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. Ride the Ducks of Seattle, LLC*

Commission Staff's Response to Application for Mitigation of Penalties TE-141074

Dear Mr. King:

On May 27, 2014, the Utilities and Transportation Commission issued a \$700 Penalty Assessment in Docket TE-141074 against Ride the Ducks of Seattle, LLC for 7 violations of Washington Administrative Code (WAC) 480-30-071, which requires charter and excursion carriers to furnish annual reports to the commission no later than May 1 each year.¹

On June 12, 2014, Ride the Ducks of Seattle, LLC wrote the commission requesting mitigation of penalties (Mitigation Request).² In its Mitigation Request, Ride the Ducks of Seattle, LLC does not dispute that the violation occurred. The company provided a statement as to the reasons for the request being the changes to the annual report form for the charter and excursion industry and transitioning roles of staff within the company. The company requested the penalty be waived.

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 charter and excursion 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.

On May 12, 2014, Ride the Ducks of Seattle, LLC filed the 2013 annual report and timely paid the required regulatory fees on December 26, 2013. The company has been active since October 21, 1999. No previous violations of WAC 480-30-071 are on commission record. The UTC also

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ride the Ducks' Mitigation Request received on June 12, 2014

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recently adopted new rules requiring the annual report to be filed by May 1 while the regulatory fees remained due on December 31. Despite the commission communication regarding these filing changes to all regulated charter and excursion companies, commission staff supports the company's request for mitigation. Staff recommends a reduced penalty assessment of \$200.

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 May 27, 2014

²See attachment B for a copy of Ride the Ducks' Mitigation Request received on June 12, 2014

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-141074
PENALTY AMOUNT: \$700

Ride the Ducks of Seattle, LLC
516 Broad St., Suite 210
Seattle, WA 98109

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-30-071, which requires charter and excursion carriers to file their annual reports. You did not file an annual report 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 480-30-071 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report after that date.

As a result, the Commission has assessed penalties against you in the amount of \$700 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all charter and excursion carriers registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports 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.

On May 12, 2014, Ride the Ducks of Seattle, LLC filed its 2013 annual report and paid its 2014 regulatory fee. May 12 is 7 business days from May 1, resulting in a total penalty of \$700.

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. Failure to provide such a statement will result in denial of the request. If there is a reason for the

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ride the Ducks' Mitigation Request received on June 12, 2014

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 81.04.405.

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 480-30-171 to cancel your certificate to operate as a charter and excursion carrier in Washington.

DATED at Olympia, Washington, and effective May 27, 2014.

GREGORY J. KOPTA
Administrative Law Judge

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ride the Ducks' Mitigation Request received on June 12, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TE-141074

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 May 27, 2014

²See attachment B for a copy of Ride the Ducks’ Mitigation Request received on June 12, 2014

ATTACHMENT B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TE-141074

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.

2014 JUN 12 PM 2:28

[] 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:

[] 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 attached

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: 6/7/14 [month/day/year], at Seattle, WA [city, state]

Ride the Ducks of Seattle
Name of Respondent (company) - please print

Tusha Fudell
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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June 6, 2014

Dear Gregory Kopta and the Washington Utilities and Transportation Commission:

We received your letter dated May 27, 2014 and would like to make an application for mitigation. Ride the Ducks of Seattle admits the violation of submitting our 2013 Annual Report Form on May 12, 2014, seven business days after the deadline of May 1, 2014.

There were a number of changes to the annual report forms this year. In prior years, we have submitted our annual report with our fees at the end of the year – as we did in December 2013. Thus, it was surprising to see a second request this spring. The new form included a number of new pages which requested information that had previously not been required. As a small, privately-held company, we are protective of our financial reports and it took longer than we expected to research the RCWs to eventually determine that the WUTC needed only the same information we had submitted in prior years (updated for 2013) and that we were not required to submit all of the requested financial information.

To compound matters, I am transitioning out of my role at Ride the Ducks and going back to school. I have handled our DOT files and WUTC audits for the past ten years and as we move forward with new employees, we have found that it is more difficult than we expected for a small business like ours.

I sincerely hope that you will waive our \$700 penalty assessment and trust that we will submit our paperwork on time in the future. I appreciate your consideration and look forward to hearing back from you.

Sincerely,

Trisha Fridrich
Director of Finance and Marketing
Ride the Ducks of Seattle
206-441-4687

2014 JUN 12 PM 2:27

516 Broad Street, Seattle, WA 98109 / Phone 206.441.4687 / Fax 206.441.4697
www.ridetheducksofseattle.com

¹See attachment A for a copy of the penalty assessment sent on May 27, 2014

²See attachment B for a copy of Ride the Ducks' Mitigation Request received on June 12, 2014