



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 • TTY (360) 586-8203

July 13, 2016

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. ATS Trans, LLC*

Commission Staff's Response to Application for Mitigation of Penalties TE-160681

Dear Mr. King:

On June 20, 2016, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket TE-160681 against ATS Trans, LLC for ten violations of Washington Administrative Code (WAC 480-30-071 and 480-30-076), which requires charter and excursion carrier companies to furnish annual reports, supporting documentation and the regulatory fee to the commission no later than May 1 each year, or in this case, May 2 as May 1 was a Sunday.

On June 28, 2016, ATS Trans, LLC wrote the commission requesting a review and consideration of penalties. ATS Trans, LLC is not admitting violation of any rules. The company states, "...The annual report and payment were submitted and accepted by the WUTC before May 2, 2016 as required. It does not state that the document cannot have an error when submitted. The annual report is a critical aspect of preparing the billing document (regulatory fee schedule) to coincide with the annual report. While it was incomplete, the report was submitted and was accepted by the WUTC and it is documented that payment was received and the check was cashed, by bank records. At no point was the report identified as not complete. It was reported that a UTC staff person attempted to contact me via the phone on May 3rd. I contend that one phone call that may or may not have been sent to my extension is the only notification I was issued, stating that the report was incomplete, however when I submitted payment the employee was able to see that I had submitted the report, when she accepted and processed the payment via my credit card, I was led to believe all was correct. I never received such a phone call nor do I have a record of this phone call and it is quite possible that the voice mail was sent to another employee, who may have erased the phone message, as it had nothing to do with his/her job. It is difficult to know if I was notified that the annual report was not properly completed. The data was readily available from the hand written draft report that is maintained in my WUTC 2016 working file and was the basis for preparing the billing report that was submitted to the WUTC. I

contend that a single phone call is not a satisfactory method to inform me that the annual report was not complete. Had I known the annual report was not complete, I would have responded within minutes after I was informed.

When I look at the report, I see the section Recordable Accidents actually shows the two vehicles were in zero recorded accidents for the 65,000 intrastate miles these two vehicles operated. We did not perform any interstate trips and thus it was left blank, instructions do not indicate a method to record trips you never performed. The data was complete; I know contend that the report was submitted in a timely manner as required.

ATS Trans LLC has shown no history of other indiscretions either late payments, or non-submittal of data the entire time ATS Trans LLC has been a provider under the authority of the WUTC. I am sure I am in full compliance and have been proud of this record.

We are an honest company with the desire to be fully compliant at all times. The history of ATS and our proven level of performance and responsiveness should be the basis of not fining ATS Trans, LLC. The WUTC could have quickly resolved the indiscretion by properly reading the report and properly contacting us during the review process and further reaching out in a manner that documents the attempt(s) to obtain the correct interpretation of the report, by following accepted methods of communication, basically using emails, especially since the report was submitted electronically, would have quickly resolved the issue. WUTC have the feeling that it is the submitters responsibility to submit an accurate report, while I agree, I also believe the WUTC had the responsibility to inform the submitter of a lapse, making one phone call was not enough effort by the WUTC to ensure the submitter knew an issue existed. Using email to clearly document communications attempts would provide a complete audit trail and is a better method to reach out to a regulated company. I also believe "mistakes happen" and depending on the mistake and the submitter's intent, the proper discipline may not be a huge fine but a simple letter stating a greater attention to detail is needed. On June 27, I resubmitted the annual report."

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 29, 2016, Annual Report packets were mailed to all regulated charter and excursion carrier companies. The instruction page informs the regulated company that it must complete the annual report form and pay the regulatory fees, and return the materials by May 2, 2016, to avoid enforcement action.

The instruction page further states "that all charter and excursion companies regulated by the UTC are required to complete this form, including all schedules. Failure to complete all schedules will result in the report being considered incomplete and subject to penalties.". The company faxed an incomplete annual report on May 2. Payment of the regulatory fee was made on May 2. The incomplete sections include interstate recordable accident information along with the interstate operating mileage. These two sections were blank. Commission staff cannot assume that blank areas are indicative of "n/a", "zero", or "none" response on behalf of the company. An incomplete area or section could be an oversight. Commission staff called the company phone number provided on the annual report and left a voice mail regarding the

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incomplete information listed above. A response was not immediately received. ATS Trans, LLC provided a complete and accurate annual report on June 27.

ATS Trans, LLC has been active since 2008 and does not have any violations of WAC 480-30-071 and 480-30-076. The company previously filed on time and is not likely to have ongoing violations based on their history and penalty assessment response. As such, it is staff's recommendation that the penalty be waived.

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

Sincerely,

A handwritten signature in blue ink that reads "McKoy for SW".

Sondra Walsh, Director
Administrative Services