

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET TV-120947
Against)	
)	ORDER 01
T&S TRANSPORTATION &)	
INSTALLATION, INC.,)	
)	ORDER GRANTING PARTIAL
in the amount of \$2,100.00.)	MITIGATION
.....)	

MEMORANDUM

- 1 **Penalty.** On July 24, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against T&S Transportation & Installation, Inc. (T&S Transportation), for violations of Washington Administrative Code (WAC) 480-15-480. This rule requires household goods carriers 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 household goods carriers as required by WAC 480-15-480. On May 15, 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 \$900. The letter explained that companies that 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 T&S Transportation, however, did not file its 2011 annual report until August 3, 2012. This is 94 days late, making the company liable for a penalty of up to \$9,400 as provided in RCW 80.04.405. The Commission, considering the nature of the offense and other factors, exercised its discretion to assess less than the maximum penalty. The Commission assessed a significant, but not unduly punitive, penalty of \$2,100.

- 4 **Mitigation Request.** On August 3, 2012, T&S Transportation filed a Commission form requesting mitigation (Mitigation Request), and a letter transmitting its annual report and supporting its request for mitigation. T&S Transportation does not dispute that the violation occurred. The company states:

We were not aware of any potential \$2,100.00 penalty for a late report as the annual report form details only the 2% fee and the 1% per month fee. We respectfully request any additional late fee be forgiven as not appropriate to apply to a \$400 tax [sic]. We have had a very difficult year due partly to the economy as well as experiencing two heart attacks and quadruple bypass operation on myself with an additional operation of installing a defibulator unit in my chest at the beginning of the year. While I could have filed the report timelier, cash flow played a roll [sic] in accepting the 2% penalties that I was aware of. Again, I respectfully request the Penalty Assessment be forgiven as not appropriate to the tax or circumstances.

- 5 **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response to the Mitigation Request on August 10, 2012. Staff opposes mitigating the assessed penalty because this is not the company's first offense. T&S Transportation became regulated in February 2007 and has received three penalties for filing a delinquent annual report, in addition to the penalty assessment this year. T&S Transportation received a penalty of \$100 in 2008, a penalty of \$200 in 2009 and a penalty of \$400 in 2010.
- 6 **Commission Determination.** The Commission is hesitant to grant the Mitigation Request because the company's repeated noncompliance since 2008 suggests a lack of regulatory fitness. It is the company's responsibility to ensure that its regulatory fee and annual report are filed by the May 1 deadline each year. Nevertheless, the Commission reminds companies of their obligation each year, as it did in this case by its mailing of an Annual Report form and Regulatory Fee packet to T&S Transportation on February 29, 2012, well ahead of the May 1, 2012, deadline. The company did not respond to this reminder, just as it failed on three previous occasions to respond to Commission communications that have made clear the deadlines by which T&S Transportation must file its annual report.

7 The Commission again contacted T&S Transportation via letter dated May 14, 2012, stating that its annual report was overdue and offering administrative “mitigation” of potential penalties if the company filed by May 25, 2012. Yet, T&S Transportation did not file its report until August 3, 2012.

8 Even so, the Commission acknowledges the severe medical challenges T&S Transportation’s principal faced this year, and grants the Mitigation Request in part by suspending one half of the penalty subject to the condition that T&S Transportation 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. Previous penalty assessments, albeit increasingly higher from year to year, have been ineffective in bringing T&S Transportation into compliance. The Commission’s principal goal in assessing a more significant penalty this year is to gain compliance by T&S Transportation in the future.

ORDER

THE COMMISSION ORDERS THAT:

- 9 (1) The penalty of \$2,100 assessed against T&S Transportation & Installation, Inc., on July 24, 2012, is suspended in the amount of \$1,050 subject to condition that T&S Transportation 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.
- 10 (2) One-half of the penalty of \$2,100 assessed against T&S Transportation & Installation, Inc., on July 24, 2012, (*i.e.*, \$1,050) is due and payable to the Commission within 15 days following the date of this Order.

- 11 (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 August 28, 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.