

[Service Date January 7, 2013]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the)	DOCKET A-120061
)	
Enforcement Policy of the)	
Washington Utilities and)	ENFORCEMENT POLICY OF THE
Transportation Commission)	WASHINGTON UTILITIES AND
)	TRANSPORTATION COMMISSION
)	
.....)	

I. INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission) is charged by statute, in RCW Titles 80 and 81, to regulate certain utility and transportation companies.¹ It is responsible for ensuring that regulated companies meet their statutory obligations to provide service that is safe, adequate and efficient at prices to consumers that are just and reasonable.² The Commission meets its responsibility by issuing orders and establishing rules governing company operations, and establishing tariffs that contain the rates and charges those companies must assess for services rendered. The Commission is authorized to enforce these orders, statutes, rules, and tariffs through various means and procedures.
- 2 In order to articulate to the public the Commission's policies relating to its enforcement authority, the Commission issues this policy statement pursuant to RCW 34.05.230 and WAC 480-07-920.³

¹ Companies subject to the Commission's jurisdiction include any corporation, association, partnership, individual, trustee or receiver that provides regulated utility or transportation service. The policy statement issued by the Commission in this docket applies equally to all such entities.

² RCW 80.28.010 and RCW 81.28.010.

³ RCW 34.05.230 states, in part, "An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements."

II. PROCESS FOR DEVELOPMENT OF STATEMENT OF POLICY

3 On February 28, 2012, the Commission issued a notice in this docket indicating its intent to consider issuing a policy statement relating to its enforcement efforts. In response to that notice, the Commission received eight comments, including comments from regulated companies or industry group representatives,⁴ the Office of Public Counsel of the Office of the Attorney General, and a private citizen.⁵ Based on these comments and on prior Commission orders that addressed enforcement policies,⁶ the Commission issues this policy statement.

4 This document conveys the Commission's current view of its enforcement policies. As a policy statement adopted under the Administrative Procedure Act, it is not intended to be binding as a formally adopted rule.⁷ Entities subject to enforcement by the Commission retain the right to make any arguments they wish to contest any Commission enforcement actions. The Commission retains discretion to apply and adapt its enforcement efforts in individual cases to implement its overall duty under the public service laws to regulate "in the public interest."⁸

III. STATUTORY PROVISIONS RELATING TO ENFORCEMENT OF COMMISSION STATUTES

5 By statute, the Commission and Commission Staff (Staff) are authorized to "at any and all times ... inspect the accounts, books, papers and documents of any public service company" (RCW 80.04.070 and RCW 81.04.070). The Commission or Staff initiates an investigation when it has reason to suspect a company has violated a Commission statute, rule, order or tariff. The Legislature has provided for enforcement of Commission statutes, rules, orders and tariffs in both civil and criminal contexts. These provisions include:

⁴ The Commission received comments from Puget Sound Energy, Avista Corporation, CenturyLink, Pacific Power, Washington Movers Conference, and Washington Refuse and Recycling Association.

⁵ The Commission received comments from David and Luann Young.

⁶ E.g., Docket UT-971063, Commission Decision and Final Order ¶¶ 154-58; Docket UG-001116, Order Accepting Settlement ¶¶ 34-38; Docket UG-020230, 2nd Supp. Order ¶¶ 24-25; *id.*, 3rd Supp. Order ¶¶ 24, 25, and 33.

⁷ RCW 34.05.230.

⁸ RCW 80.01.040.

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A. Civil penalties imposed by the Commission administratively before a hearing:

- (1) The Commission may issue a penalty of one hundred dollars against a regulated utility or transportation company for each violation and for each day the violation continues to occur (RCW 80.04.405 and RCW 81.04.405).
- (2) The Commission may issue a penalty of one hundred dollars for every instance a motor freight carrier offers a rebate, charges less than tariff rates, or fraudulently seeks to evade regulation (RCW 81.80.230).
- (3) The Commission may issue a penalty up to \$10,000 for each violation when an excavator does not notify the one-number locator service before excavating and causes damage to hazardous liquid or gas pipeline (RCW 19.122.055 and RCW 19.122.150).

B. Civil penalties imposed by the commission after a hearing:⁹

- (1) The Commission may issue a penalty against a regulated utility or transportation company up to one thousand dollars for each violation and for each day the violation continues to occur (RCW 80.04.380 and RCW 81.04.380).
- (2) The Commission may issue a penalty against corporations other than a regulated utility or transportation company of up to one thousand dollars for each offense (RCW 80.04.387 and RCW 81.04.387).
- (3) The Commission may issue a penalty up to five thousand dollars to any household goods moving company operating without a permit (RCW 81.80.075(4)).
- (4) The Commission may issue a penalty up to ten thousand dollars per violation for any person who engages in business as a household goods

⁹ The Commission typically initiates actions described under items B through E, below, by filing a complaint against a regulated utility or transportation company and holding a hearing as provided by RCW 80.04.110 or RCW 81.04.110.

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moving company in violation of a cease and desist order (RCW 81.80.075(5)).

- (5) The Commission may issue a penalty up to five hundred dollars for each violation when a household goods moving company does not include its permit number, physical address, and telephone number in its advertisements (RCW 81.80.357).
- (6) The Commission may set penalty amounts for violations by regulated gas and hazardous liquid pipeline companies, not to exceed federal penalty amounts (RCW 81.88.040). In WAC 480-93-223 and WAC 480-95-250, the Commission set such penalties not to exceed \$100,000 per violation and not to exceed a total penalty for related violations of one million dollars.
- (7) The Commission may issue a penalty up to \$1,000 for each violation of underground utility locator requirements in RCW 19.122, other than violations of RCW 19.122.150 as described above (RCW 19.122.140).

C. Refunds and reparation ordered by the Commission:

- (1) The Commission may order refunds if it finds that a regulated utility or transportation company has charged in excess of the rates set by tariff (RCW 80.04.230 and RCW 81.04.230).

D. Authority to revoke permit or certificate:

- (1) The Commission may cancel, suspend, alter, or amend a transportation company permit or certificate for violations of federal or state law, or Commission rule (RCW 81.80.280, RCW 81.68.030, RCW 81.70.250 and RCW 81.77.030).

E. Authority to order an unpermitted company to cease operations:

- (1) The Commission may issue a cease and desist order against a transportation company operating without authority issued by the Commission (RCW 81.04.510).

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F. Criminal penalties imposed by a prosecutor:

- (1) The Commission may pursue action with local prosecutors to charge officers, agents, or employees of a regulated utility or transportation company with a gross misdemeanor for violations (RCW 80.04.385 and RCW 81.04.385).
- (2) The Commission may pursue action with local prosecutors to charge officers, agents, or employees of a company other than a regulated utility or transportation company with a gross misdemeanor for violations (RCW 80.04.390 and RCW 81.04.390).
- (3) The Commission may pursue action with local prosecutors to charge a transportation company that operates or advertises without authority issued by the Commission with a gross misdemeanor for violations (RCW 81.80.355).

G. Injunction relief imposed by the court:

- (1) Through the Office of the Attorney General, the Commission may file in court for appropriate relief through mandamus or injunction for violations by a regulated utility or transportation company (RCW 80.04.260 and RCW 81.04.260).

IV. COMPANY RESPONSIBILITIES

- 6 The Commission expects companies subject to the public service laws in RCW Titles 80 and 81 to comply with all statutory and regulatory requirements.
- 7 When the Commission or Staff finds a violation, the company has an obligation to correct the particular violation. The company has the further obligation to correct the underlying system or program problems that caused the violation to occur. It is not sufficient to correct only the instant violation.
- 8 In order to facilitate compliance, the Commission expects companies to have a compliance program in place. A compliance program should include personnel whose stated job responsibilities include understanding and implementing Commission statutory and regulatory requirements. The program also should designate personnel responsible for interacting with the Commission on enforcement matters and should also include systems and programs to detect and correct violations and to report those violations to company management.

V. COMMISSION ENFORCEMENT POLICY

A. Objectives of the Commission's Enforcement Program

- 9 The Commission's objective when enforcing statutes, rules, orders, and tariffs is to ensure services within the Commission's jurisdiction are delivered safely, adequately, efficiently, and at rates and charges that are just and reasonable. The Commission will use the authorized means it deems most appropriate under the circumstances to accomplish this objective.

B. Technical Assistance

- 10 The Commission attempts to ensure compliance with statutes, rules, orders and tariffs by encouraging voluntary compliance by the companies it regulates.
- 11 Consistent with state law,¹⁰ the Commission has a program to provide technical assistance as an important tool for gaining compliance.
- 12 Technical assistance is only one aspect of the Commission's comprehensive compliance and enforcement program and is not required before other enforcement action is undertaken. In some cases, Commission requirements are so fundamental to safe operations and consumer protection that the Commission may issue penalties for a first-time violation, even if Staff has not previously provided technical assistance on the specific issues.
- 13 The Commission's technical assistance program includes:
- (1) Staff site visits for the purpose of providing companies with information about or clarification of Commission compliance requirements.
 - (2) Compliance information provided through other methods including but not limited to, informing companies of Commission requirements by

¹⁰ RCW 43.05.020 states:

All regulatory agencies shall develop programs to encourage voluntary compliance by providing technical assistance consistent with statutory requirements. The programs shall include but are not limited to technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods to provide technical assistance. In addition, all regulatory agencies shall provide upon request a list of organizations, including private companies that provide technical assistance. This list shall be compiled by the agencies from information submitted by the organizations and shall not constitute an endorsement by an agency of any organization.

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telephone, in writing, or through electronic means, for example in the context of resolving customers' informal complaints.

- (3) In-person individual and group regulatory training opportunities, both ad-hoc and regularly scheduled, such as periodic training for newly permitted household goods carriers.
- (4) Written notice provided directly to a company or companies of new or amended rules, processes, or procedures. An example is a letter to an industry group that informs the group of new rule requirements and actions companies need to take to be in compliance with the new rules.
- (5) Participation in rulemakings conducted by the Commission.
- (6) Participation in stakeholder meetings concerning the establishment or revision of programs, processes, or rules.
- (7) Participation in open meetings convened by the Commission.

14 In addition to such technical assistance, regulated companies, or those seeking to operate as a regulated company, may contact the Commission or its Staff directly if they wish technical assistance in any area of regulation. Companies seeking such assistance should call the main Commission telephone number – (360) 664-1160. The receptionist will refer the company to the correct person.

C. Factors the Commission will Consider in Determining the Type of Enforcement Action to Take or the Level of Penalty to Be Imposed

15 Upon finding, at the conclusion of an inspection or investigation, that a company has violated an applicable statute, rule, order, or tariff, the Commission will consider whether an enforcement action, beyond technical assistance, is appropriate and, if so, which action to take. The Commission will consider factors that include but are not limited to:

- (1) *How serious or harmful the violation is to the public.* The more serious or harmful a violation, the more appropriate penalties or other sanctions may be. Certain violations or conditions are a likely candidate for penalties or a complaint, even for a first-time offense. Examples include, but are not limited to, the responsibility to charge consumers the tariff rates; the requirement for a drug and alcohol testing program, driver medical cards, and commercial drivers' licenses; and the requirement to maintain or repair

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corrosion protection on pipelines. In addition, if a violation exists that puts the public at an imminent safety risk, the Commission will take immediate action to prevent the risk from becoming reality, up to and including shutting down company operations.

- (2) *Whether the violation is intentional.* A company that willingly and intentionally violates a Commission requirement may be dealt with more severely than a company that unknowingly committed a violation. In determining whether a company willingly and intentionally committed a violation, the Commission will consider factors that include, but are not limited to, whether:
 - a. The company ignored Staff's previous technical assistance.
 - b. The company committed previous violations of the same statute or regulation.
 - c. The company appears to be hiding or obscuring the facts.
 - d. There is clear evidence through documentation or other means that show the company knew of and failed to correct the violation.
- (3) *Whether the company self-reported the violation.* The Commission may be more lenient with a company that self-reports to the Commission a violation that occurred.
- (4) *Whether the company was cooperative and responsive.* The Commission may consider the company's cooperation and responsiveness during an investigation when it considers enforcement action after the investigation is completed.
- (5) *Whether the company promptly corrected the violations and remedied the impacts.* The Commission may be more lenient when a company promptly corrects a violation, and any underlying system problems, when these are pointed out by Staff. For example, if the violation had an impact on customers, such as an overcharge, the Commission may be more lenient if the company immediately took steps to refund the money and to remedy any other harm,

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- (6) *The number of violations.* While numbers alone do not determine appropriate enforcement actions, the more violations the Commission finds, the more likely it is to take an enforcement action.
- (7) *The number of customers affected.* The more customers affected by a violation, the more likely the Commission will take enforcement action.
- (8) *The likelihood of recurrence.* If the company has not changed its practices, or if the violations are repeat violations made known to the company in the course of an earlier inspection or investigation, the Commission will be more likely to take an enforcement action.
- (9) *The company's past performance regarding compliance, violations, and penalties.* The Commission will deal more harshly with companies that have a history of non-compliance, repeated violations of the same or other regulations, and previous penalties.
- (10) *The company's existing compliance program.* The Commission is more likely to take enforcement action if the company does not have an active and adequate compliance program in place, or if the Commission has previously identified deficiencies with the company's compliance program and the company has not corrected the deficiencies.
- (11) *The size of the company.* The Commission will consider the size of the company in taking enforcement actions. It is not the Commission's intention to take enforcement actions disproportionate to companies of similar size with similar penalties, or to take enforcement actions disproportionate to a company's revenues.

16 In addition, company size is also a consideration with respect to a first-time paperwork violation. RCW 34.05.110 exempts certain first-time paperwork violations committed by small businesses from penalties or administrative sanctions. This statute also describes what an agency must do when a small business incurs violations that may or may not be exempt from violations. For the purposes of RCW 34.05.110, a small business is one with 250 or fewer employees or annual revenue of less than seven million dollars.

D. Procedural Options to Initiate an Enforcement Action

- 17 The Commission has at its disposal a range of procedural options for enforcing Commission statutes, rules, orders, and tariffs. These include:
- (1) Sending the company a compliance letter noting the violation and asking for voluntary compliance and perhaps requiring the company to develop a compliance plan for addressing the business practices that resulted in a violation;
 - (2) Assessing a monetary penalty administratively against a company;
 - (3) Issuing a formal complaint seeking to impose a monetary penalty or other remedy, including regulatory orders to cease and desist or undertake certain practices;
 - (4) Through the Office of the Attorney General, commencing an action in superior court to secure compliance through order or injunction;
 - (5) Referring violations to either the appropriate county prosecuting attorney or the Attorney General for possible criminal prosecution.
- 18 Generally, the Commission will pursue options (1), (2) or (3). In choosing among those options, the Commission will consider the factors stated in V.C., above. The Commission would seek civil enforcement in superior court where compliance through the administrative process may not be effective. The Commission will refer matters to a prosecuting attorney or the Attorney General for criminal prosecution in exceptional circumstances where criminal enforcement is important to protecting the public interest.

E. Factors the Commission Will Consider in Determining Whether to Mitigate a Penalty

- 19 If the Commission issues a penalty assessment administratively, the company against which the penalty is assessed has an opportunity to respond in writing either to dispute the assessment or to request that the Commission mitigate the penalty. Generally, the company would request mitigation if it agrees the violations occurred, but believes circumstances exist to warrant a lesser penalty. The company seeking mitigation must file a written statement providing the grounds for mitigation, and must request either a hearing or a Commission determination based solely on the

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written statement. The Commission will consider the following factors in determining if mitigation is appropriate:

- (1) Whether the company demonstrates that the facts considered by the Commission underlying the assessment were incorrect or do not support the penalty assessed.
- (2) Whether the company demonstrates that mitigating information or factors exist that the Commission may not have considered in setting the assessed penalty amount.
- (3) Whether the company explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring compliance by the company with applicable statutory and regulatory requirements.

F. Factors the Commission Will Consider in Determining Whether to Suspend a Penalty

20 The Commission will consider to following factors in determining whether to suspend a portion of a penalty:

- (1) Whether this is a first-time penalty for this or a similar violation.
- (2) Whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future. Examples include purchasing new technology, making system changes, or training company personnel.
- (3) Whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.
- (4) Whether Staff and the company have agreed that Staff will conduct a follow-up investigation at the end of the suspension period and that if a repeat violation is found, the suspended penalties are re-imposed.
- (5) Whether the company can demonstrate other circumstances exist that convince the Commission to suspend the penalties.

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VI. COMMISSION DISCRETION

- 21 As part of its official policy regarding enforcement practices, the Commission explicitly reserves discretion in applying any stated portion of the policy. The Commission retains the discretion to apply enforcement actions on a case-by-case basis. If circumstances exist that influence the Commission to take more lenient, or more severe, action than described within this policy, the Commission will do so without limiting itself to the confines of the stated policy.

DATED at Olympia, Washington, and effective January 4, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner