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1 PROCEEDINGS

2 JUDGE MACE: Let's be on the record in Docket
3 No. TC-051121. This is the Washington Utilities and
4 Transportation Commission complaint against Pennco
5 Transportation Inc. This is in the nature of a
6 show-cause hearing, why Pennco Transportation's
7 certificate should not be canceled for discontinuance
8 of service without permission from the Commission and
9 for failure to file 2004 annual report and failure to
10 file 2005 regulatory fees.

11 This hearing is being convened on August
12 31st, 2005, at three p.m. at the offices of the
13 Washington Utilities and Transportation Commission in
14 Olympia, Washington. My name is Theodora Mace. I'm
15 the administrative law judge who has been assigned to
16 this case.

17 I would like to ask now if there is anyone on
18 the conference bridge. After I take your appearance,
19 I'm just going to call and check to make sure that it
20 is on. So let me begin with an appearance from
21 Commission staff.

22 MR. THOMPSON: I'm Jonathan Thompson,
23 assistant attorney general, representing the
24 Commission. Would you like a full form of appearance?

25 JUDGE MACE: Yes.

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1 MR. THOMPSON: My street address is 1400
2 South Evergreen Park Drive Southwest. My PO Box is
3 40128, and that's Olympia, Washington, 98504. My phone
4 number is (360) 664-1225. Fax is (360) 586-5522.
5 E-mail is jonat@atg.wa.gov, or, jthompso@wutc.wa.gov.

6 JUDGE MACE: Thank you. I'm going to take a
7 brief recess while I check to make sure the conference
8 bridge is connected so that in case Pennco is making an
9 appearance by telephone, we will be able to take that
10 appearance. Excuse me for a moment.

11 (Discussion off the record.)

12 JUDGE MACE: Let the record show that the
13 administrative law judge figured out how to connect to
14 the conference bridge and has asked whether there is
15 anyone who seeks to enter an appearance via the
16 conference bridge and has received no response, so it
17 appears that at the present time, there is no one who
18 has appeared on behalf of Pennco Transportation, Inc.,
19 at this show-cause hearing.

20 I would like to give, I believe it would be
21 Mr. Harris from Pennco, I would like to give someone
22 from Pennco an opportunity to show up or to call in, so
23 I'm going to give them until about 20 after three.
24 That's another ten minutes. If you would just bear
25 with me, those of you who are hear in the hearing room,

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1 and then we will go ahead with the hearing. We are
2 adjourned for ten minutes.

3 (Discussion off the record.)

4 JUDGE MACE: Let's be back on the record in
5 Docket No. TC-051121. Let me ask at this point if
6 anyone has come onto the conference bridge. Is there
7 anyone on the conference bridge? Let the record show I
8 hear no response. At this point, I think we can go
9 ahead with the presentation of the information that
10 Staff has about this respondent, and so Mr. Thompson,
11 I'll turn it over to you.

12 MR. THOMPSON: Staff will be calling Betty
13 Young to offer some testimony on the elements that were
14 set out in the Commission's notice.

15 JUDGE MACE: Please stand and raise your
16 right hand.

17 (Witness sworn.)

18

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q. Ms. Young, will you please state your full
22 name and spell it for the record?

23 A. My name is Betty Young, B-e-t-t-y, Y-o-u-n-g.

24 Q. What is your position with the Washington
25 Utilities and Transportation Commission?

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1 A. I'm a compliance specialist with the business
2 practices investigation.

3 Q. What are your responsibilities as they
4 pertain to this matter?

5 A. I conduct investigations into the business
6 practices of regulated utility and transportation
7 companies. As part of those duties, I investigate
8 companies that are delinquent in filing annual reports
9 and paying regulatory fees and/or violate Commission
10 rules regarding cessation of service.

11 Q. What is your testimony going to cover this
12 afternoon?

13 A. I'm going to testify about Pennco
14 Transportation, Inc.'s failure to comply with
15 Commission rules regarding annual reports and
16 regulatory fees and its failure to obtain the
17 Commission's permission to cease providing service
18 under its certificate, which is number C-1054.

19 Q. Could you please just explain briefly what
20 the requirements are for auto transportation companies
21 with respect to annual reports and regulatory fees?

22 A. Yes. Auto transportation companies subject
23 to regulation by the Commission are required to file
24 annual reports, and that's per WAC 480-30-120, and pay
25 a regulatory fee every year. The annual report details

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1 the gross intrastate operating revenue for the company
2 for the preceding calendar year. Regulatory fees based
3 on that revenue are collected for the current year, and
4 that's per RCW 81.21.020.

5 Q. When are regulatory fees and annual reports
6 due for auto transportation companies?

7 A. Regulatory fees must be paid and the annual
8 reports must be filed by May 1st each year, and that's
9 per WAC 480-30-110 and 480-30-120.

10 Q. How does the Commission inform companies that
11 its reports and fees are due?

12 A. The Commission's licensing services section
13 mails annual report forms and regulatory fee packets to
14 auto transportation companies in Washington every year.
15 A letter signed by Executive Secretary Carol Washburn
16 instructs companies to file those by May 1st.

17 Q. Do you have a copy of the letter that would
18 have been sent to Pennco Transportation?

19 A. Yes, I do.

20 Q. And that is what's been marked as Exhibit 1?

21 JUDGE MACE: You can have these back.

22 (Indicating.)

23 Q. And is this a true and correct copy of that
24 letter?

25 A. Yes, it is.

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1 MR. THOMPSON: Staff would offer what's been
2 marked as Exhibit 1 for admission.

3 JUDGE MACE: I'll admit it.

4 Q. (By Mr. Thompson) Did Pennco file a 2004
5 annual report or pay its 2005 regulatory fees?

6 A. No, it did not.

7 Q. Did the Company seek an extension?

8 A. No.

9 Q. Did the Commission follow-up in any way on
10 Pennco's failure to do those two things?

11 A. Yes. On June 1st, licensing services staff
12 sent a letter again signed by Carol Washburn to each
13 auto transportation company that had not filed by
14 May 1st. The letter stated that Staff intended to
15 recommend enforcement action, including possible
16 penalties and/or suspension or revocation of the
17 company's authority or for any company that failed to
18 file a completed annual report or pay the regulatory
19 fee by July 1st, 2005.

20 Q. Do you have a copy of that letter?

21 A. Yes, I do.

22 Q. Is what's been marked as Exhibit 2 a true and
23 correct copy of that letter?

24 A. Yes, it is.

25 MR. THOMPSON: Staff would offer Exhibit 2

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1 for admission.

2 JUDGE MACE: I'll admit that.

3 Q. (By Mr. Thompson) Did Pennco pay its fees or
4 file its annual report as directed by that letter?

5 A. No, it did not.

6 Q. And it still has not done so?

7 A. No, it hasn't.

8 Q. Now let's turn to the matter of the Company
9 ceasing service without permission of the Commission.
10 Can you explain briefly what the Commission's
11 requirements are with regard to auto transportation
12 companies ceasing to provide service?

13 A. Yes. Commission rules require auto
14 transportation companies to formally notify the
15 Commission prior to discontinuing service and to obtain
16 the Commission's permission to do so, and that's per
17 WAC 480-30-060.

18 Q. What's your understanding about whether
19 Pennco is providing service currently?

20 A. It's my understanding that they are not
21 currently operating.

22 Q. Can you just briefly explain the
23 circumstances surrounding Pennco ceasing to provide
24 service earlier this year?

25 A. Yes. The Commission received notice on March

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1 22nd, 2005, that insurance coverage for Pennco would be
2 canceled effective April 23rd, 2005. Licensing
3 services staff sent notice to the Company that Pennco
4 needed to file proof of insurance coverage with the
5 Commission on or before April 23rd or the Company's
6 operating authority would be suspended.

7 Pennco did not submit proof of insurance by
8 April 23rd. The Commission then suspended Pennco's
9 certificate to insure that the Company was not hauling
10 passengers without proper insurance. Then on May 4th,
11 2005, the Commission received an insurance binder for
12 Pennco and issued an order lifting that suspension,
13 allowing Pennco to resume operating.

14 Q. Did the Commission notify Pennco at that time
15 that it was free to resume providing service?

16 A. Yes. The Commission mailed an order lifting
17 the suspension effective May 4th, 2005.

18 Q. And that order has been premarked as
19 Exhibit 3?

20 A. Yes.

21 MR. THOMPSON: Although it's a Commission
22 order, we'll offer that as well.

23 JUDGE MACE: I'll admit Exhibit 3.

24 Q. (By Mr. Thompson) Did the Commission receive
25 any communications from Pennco's owner, Mr. Harris,

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1 regarding the Company ceasing to provide service?

2 A. Yes. The Commission received two letters
3 from Mr. Harris referencing cessation of Pennco's
4 operation. One was a letter to Carol Washburn dated
5 May 9th, 2005, and the second was a letter to Judge
6 Mace on May 31st, in the context of a separate docket
7 number.

8 Q. And the May 9th Carol Washburn letter is
9 marked as Exhibit 4. Is that a true and correct copy?

10 A. Yes, it is.

11 Q. And the letter to Judge Mace is marked as
12 Exhibit 5?

13 A. Yes.

14 Q. That's a true and correct copy?

15 A. Yes, it is.

16 MR. THOMPSON: We would offer Exhibits 4 and
17 5 for the record.

18 JUDGE MACE: I'll admit them.

19 Q. (By Mr. Thompson) Did the Commission advise
20 Mr. Harris of the need to get its permission prior to
21 ceasing to provide service?

22 A. Yes. Mr. Harris was actually notified on two
23 separate occasions. On June 24th, 2005, Commission
24 staff Bonnie Allen testified in Docket TC-041340 that
25 Mr. Harris had contacted her and that she had informed

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1 him of WAC 480-30-060, which requires auto
2 transportation companies to get the Commission's
3 permission prior to discontinuing service.

4 Also on July 6th, 2005, Carol Washburn sent
5 Mr. Harris a letter advising that Commission rules
6 require auto transportation companies to formally
7 notify the Commission prior to discontinuing service
8 and to formally obtain the Commission's permission for
9 the discontinuance. Mr. Harris was directed to respond
10 by July 13th, 2005, with a written request to
11 discontinue service or a request for a waiver of the
12 rule requirement.

13 Q. Is what's been marked as Exhibit 6 a copy of
14 that letter from Carol Washburn dated July 6th?

15 A. Yes.

16 Q. Is it a true and correct copy?

17 A. Yes, it is.

18 MR. THOMPSON: We would offer what's been
19 marked as Exhibit 6.

20 JUDGE MACE: I'll admit it.

21 Q. (By Mr. Thompson) Did Mr. Harris respond as
22 directed in that letter?

23 A. No, he did not.

24 Q. And have you done anything personally to
25 determine if Pennco is currently operating?

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1 A. I attempted to contact the Company by phone.
2 The phone number is listed here at the Commission.
3 Those numbers are 1-888-673-6626 and (360) 582-3736, on
4 July 19th, and at that time, there was a recording on
5 the line that stated the number had been temporarily
6 disconnected. I called those two numbers again
7 yesterday, and the recording has been changed to
8 reflect that the numbers have been discontinued and are
9 no longer in service.

10 Q. Are those the numbers that are reflected on
11 the Company's tariffs as well?

12 A. Yes.

13 MR. THOMPSON: That's all the questions I
14 have for Ms. Young.

15 JUDGE MACE: Thank you very much. You are
16 excused.

17 MR. THOMPSON: I guess I would conclude by
18 saying that the basis for Staff's case is as set out,
19 essentially, in the Commission's notice. We are
20 relying primarily on RCW 81.68.030, which says that the
21 Commission may revoke a certificate if it is shown that
22 the holder willfully violates or refuses to observe any
23 of the Commission's proper rules, and the testimony has
24 demonstrated that the Company had ample notice and
25 repeated notice of the requirements of the rules

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1 regarding annual reports and regulatory fees but has
2 not complied with those, as we will as the rule
3 regarding obtaining the Commission's permission for
4 cessation of service. So we would respectfully request
5 that the Commission revoke Pennco Transportation's
6 authority under Certificate C-1054 on that basis.

7 JUDGE MACE: I just want to make sure that
8 we've covered every base. The caption of the case
9 talks about a show-cause for why the certificate should
10 not be canceled. There is no difference between
11 cancellation and revocation. You are requesting
12 revocation. Is it the same thing?

13 MR. THOMPSON: Yes, I believe it is.
14 Actually, the statute uses the term "suspend, revoke,
15 alter, or amend," and I think probably "cancel" is just
16 synonymous with "revoke."

17 JUDGE MACE: Just so I touch on that. All
18 right. Well, it shouldn't be too long before I enter
19 an order, and if there is nothing else, then thank you.
20 The record is closed.

21 (Show-cause hearing concluded at 3:33 p.m.)

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