

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET UW-120861
Against)	
)	ORDER 01
CRISTALINA L.L.C.,)	
)	
in the amount of \$2,100.)	ORDER DENYING MITIGATION
)	
.....)	

MEMORANDUM

- 1 **Penalty.** On July 13, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against Cristalina L.L.C. (Cristalina), for violations of Washington Administrative Code (WAC) 480-110-505. This rule requires water companies to file annual reports with the Commission by May 1 of each year.

- 2 **Background.** On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated water companies, including Cristalina. In addition to other information, the cover letter informed Cristalina to avoid enforcement action it must complete the annual report form, pay any regulatory fees and return the material by May 1, 2012. The letter also stated Cristalina could file a written request for an extension of time by April 24, 2012, stating a valid reason for why it needed an extension of time and stating when the report would be filed. The company did not file a request for an extension of time.

- 3 On May 14, 2012, the Commission mailed a letter to Cristalina and other companies that had not yet filed an annual report notifying them that, to date, they had incurred a penalty of \$800. The letter also explained that if Cristalina filed its annual report by May 25, 2012, it would receive mitigated penalties of \$25 per day, with an additional \$25 per day for each instance in the previous five years that the company had received a penalty for filing a late report.

4 Cristalina filed its 2011 annual report form on May 29, 2012. The Commission immediately informed the company that its report was incomplete. As of September 6, 2012, Cristalina still had not filed a complete report, according to Commission Staff.

5 **Mitigation Request.** The Commission requires companies against which penalties are assessed to respond within 15 days after they receive the penalty assessment either paying the penalty, requesting a hearing, or applying for mitigation on the basis of a written statement of reasons supporting mitigation. The Commission provides a form offering these options.

6 Cristalina had until July 28, 2012, to return its penalty assessment response form. It failed to do so. On August 16, 2012, however, Cristalina filed the form provided by the Commission requesting mitigation of the penalty (Mitigation Request). In its Mitigation Request, Cristalina does not dispute that the violations occurred and states:

We submitted the report on [blank]. My assistant made a copy and filed it. When we received notice it was late we resubmitted the report. We do not believe we should incur a fine and we will send it registered mail next year. We are a small company worth no \$.”

7 **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response to Cristalina’s Mitigation Request on September 12, 2012. Staff does not support mitigating the assessed penalty of \$2,100 because Cristalina failed to file its response within the 15 day timeframe required for the Commission to consider mitigation. Staff recommends denying the mitigation request.

8 **Commission Determination.** The Commission determines that it should deny the Mitigation Request. This decision is based on the pattern of compliance failures evident in this case and the company’s failure to establish any mitigating circumstances that explain or excuse its behavior.

- 9 Cristalina failed to file its report on time, by May 1, 2012. The fact that the report it finally submitted on May 29, 2012, is dated April 28, 2012, does not in the least establish that it was filed on or near the earlier date. It is perhaps significant in this connection that the company left a blank space rather than stating in its sworn Mitigation Request that the report was, in fact, filed on or about April 28, 2012.
- 10 Cristalina's statement that "[w]hen we received notice it was late we resubmitted the report" also does not square with the facts. The Commission notified Cristalina its report was late on May 15, 2012. Cristalina did not respond to this notice until May 29, 2012, four days after the grace period during which the Commission offered the company an opportunity to file its report and receive a significantly reduced penalty for its tardiness.
- 11 Even though the Commission informed Cristalina that the report it finally filed on May 29, 2012, was incomplete, the Company made no effort as of September 6, 2012, to file a complete report. Indeed, even as of the date of this Order the Commission's records include only the incomplete annual report Cristalina filed in May.
- 12 This pattern of noncompliance suggests a decided lack of regulatory fitness on the part of Cristalina. It is appropriate, therefore to assess and not mitigate what unquestionably is a significant penalty for a small company such as this one. The desire to avoid similar penalties in the future should encourage the company to take whatever steps are necessary to fully educate itself about the Commission's regulatory requirements and to comply with them. Commission Staff has been, and continues to be, available to Cristalina to provide technical assistance in this regard, if that is what the company needs.

ORDER

THE COMMISSION ORDERS THAT:

- 13 (1) The penalty of \$2,100 assessed against Cristalina L.L.C. on July 13, 2012, is due and payable to the Commission within 15 days following the date of this Order.

- 14 (2) 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 October 4, 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.