

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment	)	DOCKET UW-120863
Against	)	
	)	ORDER 01
EVERGREEN EXCHANGE, INC.,	)	
d/b/a LOHAVEN WATER LLC,	)	ORDER PARTIALLY
	)	SUSPENDING PENALTY,
in the amount of \$2,100.00.	)	SUBJECT TO CONDITION
.....	)	

**MEMORANDUM**

- 1 **Penalty.** On July 13, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against Evergreen Exchange, Inc., d/b/a Lochaven Water LLC (Evergreen), 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 each year.
  
- 2 On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated water companies as required by WAC 480-110-505(3). On May 14, 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 \$800. The letter explained that companies who 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 Evergreen, however, did not file its 2011 annual report until July 3, 2012. This is 63 days late, making the company liable for a penalty of up to \$6,300 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 July 18, 2012, the company filed a form provided by the Commission requesting mitigation of the penalty (Mitigation Request). In its Mitigation Request, Evergreen does not dispute that the violation occurred. The company states that its late filing resulted from the fact that it purchased Lochaven Water LLC., in July 2010 and had not made itself aware of the Commission's requirement for an annual report.

5 **Commission Staff Support for Partial Mitigation.** Commission Staff filed a Response to the Mitigation Request on August 6, 2012. Staff supports mitigating the assessed penalty from \$2,100 to \$1,050 because this is Evergreen's first offense.

6 **Commission Determination.** The Commission determines that it should grant the Mitigation Request to the extent Staff recommends by suspending one-half of the penalty amount subject to the condition that Evergreen 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. An additional penalty may be assessed for any late filing of the 2012 annual report.

7 This decision is based on the acknowledgment by Evergreen that it violated the law, the reasons related by the company for its late filing, and the company's willingness to come into compliance.

### ORDER

#### THE COMMISSION ORDERS THAT:

- 8 (1) The penalty of \$2,100 assessed against Evergreen Exchange, Inc., on July 13, 2012, is suspended in the amount of \$1,050 subject to the condition that Evergreen 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.
- 9 (2) One-half of the penalty of \$2,100 assessed against Evergreen Exchange, Inc., on July 13, 2012, (*i.e.*, \$1,050) is due and payable to the Commission within 15 days following the date of this Order.

- 10 (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 14, 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.**