



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • www.utc.wa.gov

June 20, 2014

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Evergreen Transfer & Storage, Inc.*

Commission Staff's Response to Application for Mitigation of Penalties TV-140957

Dear Mr. King:

On June 5, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket TV-140957 against Evergreen Transfer & Storage, Inc. for 10 violations of Washington Administrative Code (WAC) 480-15-480, which requires household goods carrier companies to furnish annual reports to the commission no later than May 1 each year.¹

On June 6, 2014, Evergreen Transfer & Storage, Inc. wrote the commission requesting mitigation of penalties (Mitigation Request).² In its Mitigation Request, Evergreen Transfer & Storage, Inc. does not dispute that the violation occurred. The company states, "...I would ask that that penalty be removed or mitigated to zero, as it was an oversight on my part...". The statement continues, "I am usually reminded when I receive the annual report forms and fee packets from the Commission via mail. However, the Commission used an old address that the post office no longer forwards from. I understand it is my responsibility to submit the report on time and that the mailing of the packages is not the sole source of how an annual report is available to file."

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the May 1 deadline. On February 28, 2014, Annual Report packets were mailed to all regulated household goods companies. The instructions for annual report completion page of the annual report informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2014, to avoid enforcement action.
UTC Annual Reports

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage's Mitigation Request received on June 6, 2014

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On May 28, 2014, Evergreen Transfer & Storage, Inc. filed the 2013 annual report and timely paid the required regulatory fees and late payment penalty. The company has been active since August 18, 2005. No previous violations of WAC 480-15-480 are on commission record. Staff supports the company's request for mitigation as this is the company's first delinquent filing. Staff recommends a reduced penalty assessment of \$200.

If you have any questions regarding this recommendation, please contact Amy Andrews, Regulatory Analyst, at (360) 664-1157, or aandrews@utc.wa.gov.

Sincerely,

Sondra Walsh, Director
Administrative Services

ATTACHMENT A

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage's Mitigation Request received on June 6, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TV-140957
PENALTY AMOUNT: \$1,000

Evergreen Transfer & Storage, Inc.
8576 SW Warrior Drive
Port Orchard, WA 98367

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-15-480, which requires household goods carrier companies to file their annual reports and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2014.

Revised Code of Washington (RCW) 81.04.080 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-15-480 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$1,000 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all household goods carrier companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2014. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 17. You did not request an extension.

As of May 15, 2014, Evergreen Transfer & Storage, Inc. has not filed its 2013 annual report or paid its 2014 regulatory fee. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request.

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage's Mitigation Request received on June 6, 2014

Failure to provide such a statement will result in denial of the request. If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection, which may file suit in state court to collect the penalty. The Commission may also initiate proceedings under WAC 480-15-450 to cancel your permit to operate as a household goods carrier in Washington.

DATED at Olympia, Washington, and effective June 5, 2014.

DENNIS J. MOSS
Administrative Law Judge

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage's Mitigation Request received on June 6, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TV-140957

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

[] 1. Payment of penalty. I admit that the violations occurred. I have:

[] Enclosed \$ _____ in payment of the penalty

[] Submitted my payment of \$ _____ online at www.utc.wa.gov. My confirmation number is _____.

[] 2. Request for a hearing. I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

[] 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

[] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR [] b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage’s Mitigation Request received on June 6, 2014

ATTACHMENT B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TV-140957

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

[] 1. Payment of penalty. I admit that the violations occurred. I have:

[] Enclosed \$ _____ in payment of the penalty

[] Submitted my payment of \$ _____ online at www.utc.wa.gov. My confirmation number is _____.

[] 2. Request for a hearing. I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

[X] 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

[] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR [X] b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 06/05/14 [month/day/year], at Bremerton, WA [city, state]

Evergreen Transfer & Storage, Inc.

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage’s Mitigation Request received on June 6, 2014

Evergreen Transfer & Storage, Inc.

8576 SW Warrior Drive / Bremerton, WA 98367
Phone: (360) 674-2628 / Fax: (360) 674-3628



5 June 2014

To Whom it May Concern at the Washington Utilities and Transportation Commission,

This is in response to your letter dated 5 June 2014 NOTICE OF ENFORCEMENT ACTION. Please find enclosed Evergreen Transfer & Storage annual assessment TV-140957.

In regard to the enforcement penalty, I would ask that that penalty be removed or mitigated to zero, as it was an oversight on my part and the additional 2% penalty on my late Regulatory Fee has been paid. I am usually reminded when I receive the annual report forms and fee packets from the Commission via mail. However, the Commission used an old address that the post office no longer forwards from. The industrial park where our main corporate offices are located was annexed by the city of Bremerton in 2009 and the address was documented as changed on my annual reports starting in 2010. I was not aware of any other method of informing the Commission of an address change in this kind of circumstance. I understand it is my responsibility to submit the report on time and that mailing of the packages is not the sole source of how an annual report is available to file. I do feel this matter can be handled without taking up the time of the administrative law judge.

Certainly in view of the frail condition of the economy I would rather not have penalties added to my bottom line and do not take these matters lightly. I would appreciate your consideration for mitigation and continued dialogue about how to prevent these situations in the future, possibly to include an electronic filing and reminder system versus relying on the postal system with hard copies.

Again thank you in advance for your consideration in this matter.

A handwritten signature in black ink, enclosed in a hand-drawn oval. The signature appears to be "Timothy D Katona".

Vr

Timothy D Katona
President
Evergreen Transfer & Storage

¹See attachment A for a copy of the penalty assessment sent on June 5, 2014

²See attachment B for a copy of Evergreen Transfer & Storage's Mitigation Request received on June 6, 2014