

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

CHENEY CARE FOUNDATION

in the amount of \$1,000

DOCKET TN-170579

ORDER 01

DENYING MITIGATION

BACKGROUND

- 1 On February 28, 2017, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all nonprofit transportation companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by May 1, 2017, or face penalties of \$100 for each violation of Commission rules. In the case of continuing violations, each day's continuance is a separate violation. RCW 80.04.405.
- 2 Cheney Care Foundation (Cheney Care or Company) did not file an annual report on May 1, 2017, and had not made that filing by May 15. On July 7, 2017, the Commission assessed a penalty of \$1,000 against Cheney Care, calculated as \$100 per business day from May 1 to May 15.
- 3 On June 29, 2017, Cheney Care filed a complete annual report. On July 17, the Company responded to the Commission's penalty assessment, admitting the violations and requesting mitigation based on the written information provided. In its response, the Company explained that the person responsible for compiling the necessary information failed to do so.
- 4 On August 7, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. The penalty assessment notified the Company that mitigation would only be granted if the Company could demonstrate that the violations occurred due to circumstances beyond its control. Because Cheney Care failed to identify any such circumstances, Staff does not support the Company's request. Due to the Company's nonprofit status, however, Staff recommends the Commission suspend a \$900 portion of the penalty on the condition the Company files its 2017 annual report no later than May 1, 2018.

DISCUSSION

- 5 WAC 480-31-080 requires nonprofit transportation companies to file annual reports by
May 1 of each year. Companies are responsible for complying with their legal
obligations, and the Company should have ensured its report was timely filed.
- 6 We agree with Staff that mitigation of the penalty is not appropriate in the circumstances
presented here. The penalty assessment advised the Company that a request for
mitigation will only be granted if the violations occurred due to circumstances beyond its
control.¹ Cheney Care's explanation for its late filing – that its employee made an error –
is expressly identified in the penalty assessment as an unacceptable basis for mitigation.
Accordingly, we find that Cheney Care failed to demonstrate that the violations occurred
due to circumstances beyond its control, and conclude that its request for mitigation
should be denied.
- 7 We also decline to adopt Staff's recommendation to suspend a portion of the penalty.
Although we are sensitive to the Company's nonprofit status, we note that financial
hardship was excluded from the list of acceptable bases for granting mitigation.
Moreover, Cheney Care received a \$200 penalty for these same violations in 2013.
Because these are repeat violations, we find it appropriate to impose the full penalty. To
reduce the financial impact of the penalty, the Company may work with Staff to establish
mutually agreeable payment arrangements.

ORDER

THE COMMISSION ORDERS:

- 8 (1) Cheney Care Foundation's request for mitigation of the \$1,000 penalty is
DENIED.

¹ Those circumstances include, but are not limited to: death or serious illness of the person responsible for filing the report, or a member of that person's immediate family; destruction by fire or other casualty of the company's place of business or business records; or an act of fraud, embezzlement, theft, or conversion on the part of an employee. Circumstances that do not qualify as an acceptable basis for requesting mitigation include: financial hardship; a misunderstanding or lack of knowledge of Commission rules; failure to receive an annual report form from the Commission; mistakes or misconduct on the part of an employee; employee termination or turnover; personal events such as weddings or graduation ceremonies; and vacations or business trips.

- 9 (2) Cheney Care Foundation must either pay the \$1,000 penalty or file jointly with Staff a proposed payment arrangement no later than September 19, 2017.
- 10 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective September 5, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



STEVEN V. KING

Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.