

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of a Penalty Assessment Against | DOCKET TE-170596 |
| ALCLS, LLC | ORDER 01 |
| in the amount of \$1,000 | DENYING REQUEST FOR HEARING; DENYING CONTEST OF VIOLATIONS; DENYING MITIGATION |

BACKGROUND

- 1 On February 28, 2017, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all charter and excursion carriers. 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 ALCLS, LLC (ALCLS or Company) did not file an annual report on May 1, 2017, and had not made that filing by May 15. On June 20, 2017, the Commission assessed a penalty of \$1,000 against ALCLS, calculated as \$100 per business day from May 1 to May 15.
- 3 On June 23, 2017, ALCLS responded to the Commission’s penalty assessment, contesting the violations and requesting a hearing. In its response, the Company states, “please take into consideration the enclosed paperwork proving that I truly thought that I had done everything I was supposed to do.” The Company a copy of its report filed with the Washington Secretary of State with a note stating “I truly thought this was the annual report – I updated it on March 14, 2017.” The Company further explained that the penalty would create a severe financial hardship.
- 4 On June 26, 2017, ALCLS filed a complete annual report and paid its regulatory fee.
- 5 On July 28, 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 ALCLS failed to identify any such circumstances, Staff does not support the Company's request. Staff does, however, recommend the Commission suspend a \$500 portion of the penalty on the condition the Company timely files its 2017 annual report by May 1, 2018.

DISCUSSION

- 6 WAC 480-30-071 and WAC 480-30-076 require charter and excursion 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 annual report was timely filed.
- 7 As a preliminary matter, we deny the Company's request for a hearing. The Commission's penalty assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. Commission records show that the Company's annual report was not received until June 26, 2017. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.
- 8 The Commission also denies the Company's contest of the violations. The undisputed facts show that the Commission received the Company's annual report on June 26, 2017, long after the May 1 deadline. The Company has thus violated the law.
- 9 We agree with Staff that mitigation of the penalty is not appropriate in the circumstances presented here. The penalty assessment advised the Company that requests for mitigation will only be granted if the violations occurred due to circumstances beyond its control.¹

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.

ALCLS's explanation for its late filing – that it misunderstood the Commission's annual reporting requirements – was expressly identified as an unacceptable basis for requesting mitigation. Accordingly, we find that ALCLS failed to demonstrate that the violations occurred due to circumstances beyond its control, and conclude that its request for mitigation should be denied.

- 10 Finally, we decline to adopt Staff's recommendation to suspend a portion of the penalty based on the Company's financial status. The penalty assessment expressly excludes financial hardship as a basis for leniency. To reduce the impact of the penalty, ALCLS may work with Staff to establish a mutually agreeable payment arrangement.

ORDER

THE COMMISSION ORDERS:

- 11 (1) ALCLS, LLC's request for mitigation of the \$1,000 penalty is DENIED.
- 12 (2) The \$1,000 penalty is due and payable no later than September 14, 2017.
- 13 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 August 31, 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.