

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-170612
DILLARD-LEWIS, INC.	ORDER 01
in the amount of \$1,000	GRANTING MITIGATION TO \$200

**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 carrier 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 Dillard-Lewis, Inc. (Dillard-Lewis or Company) filed an incomplete annual report on May 1, 2017, and had not made a complete filing by May 15. On June 20, 2017, the Commission assessed a penalty of \$1,000 against Dillard-Lewis, calculated as \$100 per business day from May 1 to May 15.
- 3 On June 21, 2017, Dillard-Lewis filed a complete annual report. On July 14, 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 it did not receive any notification that its report was incomplete and did not have an opportunity to correct the violations.
- 4 On August 2, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recently verified that Yahoo email accounts do not deliver messages sent from the Commission. Accordingly, regulated companies with Yahoo email accounts did not receive any notification from Staff that their reports were incomplete. Because Dillard-Lewis did not have an opportunity to correct the violations at an earlier date, Staff supports the Company's request for mitigation and recommends the Commission assess a reduced

penalty of \$200 based on Staff's assumption that the Company would have likely corrected the deficiencies within two business days.

### DISCUSSION

- 5 WACs 480-30-071 and 480-30-076 require charter and excursion carrier 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 complete when initially filed.
- 6 We nevertheless agree with Staff that mitigation of the penalty is appropriate in these circumstances. 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.<sup>1</sup> Here, Staff attempted to notify the Company via email that its annual report filing was incomplete. Unbeknownst to the Company, its Yahoo email account was unable to receive communications from the Commission. As such, Dillard-Lewis was not given the same opportunity as similarly situated companies that received email notifications to correct its violations prior to accruing the maximum penalty. Staff's recommendation to assess a \$200 penalty for two violations of WACs 480-30-071 and 480-30-076 is a reasonable approximation of the timeframe in which the Company would have likely corrected the violations had it received Staff's email. Accordingly, we find that the violations at issue occurred due to circumstances beyond Dillard-Lewis's control, and conclude that the Commission should assess a reduced penalty of \$200.

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<sup>1</sup> 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.

**ORDER**

THE COMMISSION ORDERS:

- 7 (1) Dillard-Lewis, Inc.'s request for mitigation of the \$1,000 penalty is GRANTED,  
in part, and the penalty is reduced to \$200.
- 8 (2) The \$200 penalty is due and payable no later than September 20.
- 9 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 6, 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.**