

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Penalty Assessment No.)	
UW-990527)	DOCKET NO. UW-990527
)	
HARBOR SPRINGS WATER CO., INC.)	COMMISSION DECISION AND ORDER
)	AFFIRMING AND ADOPTING INITIAL
)	ORDER; VACATING PENALTY IN
.....)	PART

SUMMARY

NATURE OF PROCEEDING: On April 11, 1999, the Washington Utilities and Transportation Commission issued Penalty Assessment Docket No. UW-990527 against Harbor Springs Water Co., Inc., in the amount of \$6,200, for violations of RCW 80.04.080 and WAC 480-11-031, annual reports, and WAC 480-110-041, current telephone number. In a May 4, 1999, letter to the Commission, Harbor Springs Water Co., Inc. (Harbor Springs) through its president, Dennis J. Lozner, replied to the penalty assessment. The Commission construed this correspondence as a request for mitigation, and, on its own motion scheduled the penalty assessment for a Brief Adjudicative Proceeding on July 13, 1999.

INITIAL ORDER: Administrative Law Judge Lois Ellen Gold entered an Initial Order on July 23, 1999. The Initial Order would grant the Petition for Mitigation in Part, on Condition, and Deny the Petition for Mitigation in Part.

PARTIES: Dennis J. Lozner, Tacoma, Washington, represents Harbor Springs, appearing without counsel. Mary Tennyson, Assistant Attorney General, Olympia, Washington, represents the Washington Utilities and Transportation Commission Staff (Staff).

ADMINISTRATIVE REVIEW: No petition for administrative review was filed within the 21 days allowed by rule. In accordance with RCW 34.05.464 and WAC 480-09-780(6), the Commission accepts the findings of fact and conclusions of law, and adopts the Initial Order as its own for purposes of this proceeding.

COMMISSION: The Commission affirms the Initial Order and vacates the penalty in part.

MEMORANDUM**I. Background**

Harbor Springs is a small jurisdictional water company providing water to areas of Gig Harbor, Pierce County, Washington. Since June 1998 Commission Staff has been in contact with Harbor Springs numerous times by telephone and letter regarding the past due 1994, 1995, 1996, and 1997 annual reports, a violation of RCW 80.04.080 and WAC 480-110-031, and failure to keep a current telephone number on file at the Commission, a violation of WAC 480-110-041.

On August 18, 1998, it was agreed that if Harbor Springs submitted the 1997 annual report, the Commission would not require that it submit annual reports for 1994, 1995, and 1996. Commission Staff rendered technical assistance to Harbor Springs regarding the requirement to file annual reports and the forms that needed to be filed. Harbor Springs was provided with opportunities to file the 1997 annual report without penalty, but failed to meet agreed-to dates. Harbor Springs' continuing lack of compliance with state law and Commission rules resulted in a Commission determination on April 19, 1999, that penalties should be assessed against the company. A penalty of \$6000.00 was assessed for failure to file its past due annual report for the year 1997, and a penalty of \$200.00 was assessed for failure to provide the Commission with Harbor Springs' current telephone number. On May 22, 1999, Dennis Lozner wrote a letter to the Commission Secretary requesting mitigation of the penalty.

On June 22, 1999, the Commission, on its own motion, determined that a Brief Adjudicative Proceeding was appropriate to resolve the issues in this case, pursuant to the provisions of RCW 34.05.482 and WAC 480-09-500. A duly noticed Brief Adjudicative Proceeding was held in Olympia, Washington, before Administrative Law Judge Lois Ellen Gold on July 13, 1999, to determine whether the penalty should be mitigated and what actions were necessary for Harbor Springs to cure instances of non-compliance with state law and Commission rules and to maintain substantial future compliance.

The record supports the Commission's findings of violations of RCW 80.04.080, WAC 480-110-031, and WAC 480-110-041 by Harbor Springs. Mr. Lozner acknowledged that Harbor Springs did violate state law and Commission rules. He testified candidly and credibly as to his failure to comply with legal requirements, which he said was due to his lack of knowledge of the regulatory process and lack of funds to pay a regulatory accountant to prepare the annual reports. He stated that he wanted to abide by all legal requirements and maintain compliance, but needed substantial assistance to do so. He appeared genuinely committed to work with Commission Staff.

After presentation of testimony, discussions were held off the record and the parties reached a settlement. The Settlement Agreement provides for partial mitigation of penalty, conditioned upon Harbor Springs' compliance with an agreed-to schedule to pay a portion of the penalty and to file its 1997, 1998, and 1999 annual reports.

An Initial Order was filed on July 23, 1999, accepting the Settlement Agreement which had been reached between the parties. The Order imposed a penalty in the amount of \$6200.00 against Harbor Springs which would be vacated in certain portion each time Harbor Springs fulfilled a scheduled condition of the Order.

Paragraph one of the Initial Order provides that Harbor Springs must file the 1997 annual report on or before September 1, 1999. On satisfying this condition, \$1400.00 of the penalty would be vacated. On August 31, 1999, Harbor Springs filed the completed 1997 annual report. On September 30, 1999, Harbor Springs filed a revised 1997 annual report.

Paragraph two of the Initial Order provides that Harbor Springs must pay \$600.00 to the Commission on or before September 1, 1999. On fulfilling this condition, \$1400.00 of the penalty would be vacated. On August 31, 1999, Dennis Lozner, representing Harbor Springs, delivered a check in the amount of \$600.00 to the Commission.

Paragraph three of the Initial Order provides that Harbor Springs must file the 1998 annual report on or before October 1, 1999. On fulfilling this condition, \$1400.00 of the penalty would be vacated. On September 30, 1999, Harbor Springs filed the 1998 annual report.

II. Commission Discussion and Decision

We focus primarily on the question of whether Harbor Springs demonstrates an intention to take whatever steps are necessary to bring it into compliance with state law and Commission regulations. We find it does.

The record is conclusive as to the facts supporting the Commission's findings that Harbor Springs Water Co., Inc. did violate state law and Commission rules by failure to timely file annual reports with the Commission, as required by RCW 80.04.080, WAC 480-110-031, and failure to provide the Commission with a current telephone number, a violation of WAC 480-110-041.

Harbor Springs exhibits good faith in its efforts to cure past violations, which gives credence to its stated determination to adhere to state law and Commission rules in the future. The purpose of penalty assessments is to secure

compliance with the law. Where the company penalized comes forward and endeavors to take whatever steps are necessary to bring it into compliance, conditional, partial mitigation by suspension is a means to both impress upon the company the importance of compliance and to ease the financial impact of the penalty which should further encourage, and perhaps better enable, the company to take all steps necessary to achieve full compliance in the near term.

Considering the underlying policy that penalty assessments should encourage compliance, the nature and circumstances of the uncontested violations, and the company's present attitude of good faith, supported by efforts to comply with the law, there appears to be a basis for granting partial mitigation on a conditional basis.

Upon consideration of all the evidence of record, mitigation by suspension is granted in part, on condition, and denied in part.

ORDER

THE COMMISSION ORDERS:

1. The Initial Order is affirmed and adopted.
2. As Harbor Springs Water Co., Inc., filed its completed 1997 annual report with the Commission by September 1, 1999, in compliance with the Initial Order, \$1400.00 of the imposed penalty is vacated.
3. As Harbor Springs Water Co., Inc., paid a monetary penalty of \$600.00 to the Commission by September 1, 1999, in compliance with the Initial Order, \$1400.00 of the imposed penalty is vacated.
4. As Harbor Springs Water Co., Inc., filed its 1998 annual report with the Commission by October 1, 1999, in compliance with the Initial Order, \$1400.00 of the imposed penalty is vacated.
5. Harbor Springs Water Co., Inc., will file its 1999 annual report with the Commission by May 1, 2000. Upon meeting this condition, the final \$1400.00 of the penalty will be vacated.
6. Harbor Springs Water Co., Inc., will keep a current telephone number on file with the Commission.

7. The Commission retains jurisdiction over this matter to effectuate the provisions of this Order. This matter should not be considered closed and the penalties finally mitigated until Staff reports that Harbor Springs Water Co., Inc., has demonstrated continuing substantial compliance with state law and Commission rules as required in this Order.

DATED at Olympia, Washington, and effective this day of October 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO ALL PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for consideration filed within 10 days of this order's service date pursuant to RCW 34.050470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).