

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment	)	DOCKET UW-120867
Against	)	
	)	ORDER 01
PARKLAND WATER SYSTEM, INC.	)	
	)	INITIAL ORDER SUSPENDING
In the Amount of \$2,100	)	PENALTY, IN PART, SUBJECT TO
	)	CONDITIONS
	)	
.....	)	

**MEMORANDUM**

- 1 **Penalty.** On July 13, 2012, the Washington Utilities and Transportation Commission (Commission) issued Penalty Assessment UW-120867 against Parkland Water System, Inc. (Parkland Water) in the amount of \$2,100, alleging a violation of WAC 480-110-505, which requires permitted water companies to file annual reports with the Commission by May 1 each year and pay regulatory fees annually on that date.
  
- 2 **Background.** On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated water companies, including Parkland Water, as required by WAC 480-110-505(3). This letter instructed the companies to file their annual reports and pay regulatory fees by May 1, 2012. The letter stated that failure to file the annual report by May 1 would result in a penalty and possible cancellation of the company’s permit to operate in Washington. Companies wishing to request an extension of time were asked to do so by April 24, 2012, providing a reason for the request and identifying a date when the report would be provided. Parkland Water did not request an extension of time.
  
- 3 On May 14, 2012, the Commission mailed a letter to Parkland Water and other water companies that had not yet filed an annual report notifying them that they had incurred, as of that date, a penalty of \$800. The letter also stated that additional penalties of \$100 per day would be assessed for each subsequent day the company failed to comply. The letter explained that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per business

day, with an additional \$25 per day assessed for each instance in the previous five years that the company received a penalty for filing a late report.

- 4 On May 25, 2012, the Commission received from Parkland Water a largely incomplete 2011 Annual Report form and a check for \$3.57. The Commission returned the form and the check to Parkland Water along with a letter from Commission Staff informing the company that it appeared no regulatory fee was due. Staff's letter also stated that the company's annual report "remains incomplete." The letter informed Parkland Water that it should "resubmit your documents when complete data is [sic] available."
- 5 On July 13, 2012, the Commission issued Penalty Assessment UW-120897 in the amount of \$2,100 against Parkland Water. The Penalty Assessment stated that Parkland Water did not file its Annual Report by May 31, 2012, which is 21 business days past the deadline of May 1, 2012. On this basis, the Commission assessed a penalty of \$2,100.
- 6 On July 24, 2012, Parkland Water filed with the Commission a request for hearing stating that its report was filed on time and regulatory fees were paid. Parkland Water went on to say that the Commission later returned its report and check stating that no fees were due and requesting the report be returned when additional information became available.
- 7 **Hearing.** The Commission conducted a duly noticed Brief Adjudicative Proceeding on September 5, 2012, before Administrative Law Judge Dennis J. Moss. The presiding officer received into evidence the Declaration of Mr. Mathew Perkinson, a Staff Compliance Investigator at the Commission, along with six attached exhibits. Mr. Robert D. Cedarbaum, Assistant Attorney General, represented Mr. Perkinson at the hearing.
- 8 Mr. Donald Burke, the owner and operator of Parkland Water, appeared and was given opportunities to make sworn statements on the record, which was transcribed, and present documents for receipt into the record. Mr. Burke was not represented by counsel.

9 Mr. Perkinson's Declaration established that Staff does not support mitigation of the penalty assessed against Parkland Water. Staff's position is based on the facts that Parkland Water did not acknowledge its violation and that the circumstances upon which it would have the Commission grant mitigation are either factually incorrect or were already considered at the time the Commission issued the penalty.

10 Considering among other things that this is not Parkland Water's first violation of requirement that it file an annual report by May 1 each year, Mr. Perkinson states in his Declaration that Staff does not support suspension of any portion of the penalty. Nevertheless, Staff would recommend suspension of one-half the penalty if Parkland water:

- Admits to the violations set forth in Penalty Assessment UW-120867.
- Agrees to pay a penalty of \$1,050 no later than 10 days following a final Commission order in this docket.
- Agrees to submit a complete 2011 Annual Report to the Commission no later than 10 days following a final Commission order in this docket.
- Agrees to file its 2012 Annual Report no later than May 1, 2013.

Staff states that should Parkland Water fail to comply with any of these conditions, the full amount of the penalty will thereafter be immediately due and payable.

11 **Commission Determination.** The Commission determines that it should deny Parkland Water's Mitigation Request because this is a second violation, the Company was uncooperative in its dealings with the Commission, and the Company refused to acknowledge fully its plain violation of WAC 480-110-505. However, it is evident from Mr. Burke's sworn statements at hearing and the documentary evidence presented, that Parkland Water made at least some effort to respond to the Commission's letter of May 14, 2012, stating that the company could avoid penalties of any more than \$450 (*i.e.*, 18 business days at penalty of \$25 per day) if it filed its Annual Report by May 25, 2012.

12 Parkland filed an Annual Report form on May 25, 2012. Staff's letter rejecting this largely incomplete Annual Report form states that Parkland Water should resubmit its Annual Report when complete data became available. Mr. Burke interpreted this to give him license to complete and refile his company's Annual Report at an

unspecified future date without the risk of further penalty. While this is not an entirely reasonable interpretation, it is an arguable one.

- 13 Under these circumstances, the Commission determines it should provide Parkland Water an opportunity to avoid the full impact of the penalty assessed against it by suspending all but the \$450 penalty that would have been assessed if the report the company filed on May 25, 2012, was fully compliant. The Commission determines in addition that this suspension should be conditioned as suggested by Staff. That is, Parkland Water should be required to:

- Pay a penalty of \$450 no later than 10 days following a final Commission order in this docket.
- Submit a complete 2011 Annual Report to the Commission no later than 10 days following a final Commission order in this docket.
- File its 2012 Annual Report no later than May 1, 2013.

If Parkland Water fails to meet any of these conditions, the suspended penalty amount of \$1,650 should become due and payable without further action by the Commission.

- 14 Parkland Water may be subject to an additional penalty assessment for any failure to file its 2012 Annual Report by May 1, 2013.

### **ORDER**

THE COMMISSION ORDERS THAT:

- 15 (1) The penalty of \$2,100 assessed against Parkland Water System, Inc., on July 13, 2012, is suspended in the amount of \$1,650 subject to the conditions that the company:
- Pay a penalty of \$450 no later than 10 days following a final Commission order in this docket.
  - Submit a complete 2011 Annual Report to the Commission no later than 10 days following a final Commission order in this docket.
  - File its 2012 Annual Report no later than May 1, 2013.

If Parkland Water System, Inc. fails to meet any of these conditions the suspended penalty will become due and payable immediately without further action by the Commission.

- 16 (2) The Commission delegates to its Secretary authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).
- 17 (3) The Commission retains jurisdiction over Parkland Water System, Inc. to enforce the terms of this Order.

DATED at Olympia, Washington, and effective September 12, 2012.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

DENNIS J. MOSS  
Administrative Law Judge

**NOTICE TO PARTIES**

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in

WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **three (3)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250