

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment) DOCKET TV-120947
Against)
) ORDER 02
T&S TRANSPORTATION &)
INSTALLATION, INC.,)
) ORDER DENYING FURTHER
in the amount of \$2,100.00.) MITIGATION
.....)

BACKGROUND

- 1 Revised Code of Washington (RCW) 81.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each and every such violation shall be a separate and distinct offense and, in the case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. The Commission interprets noncompliance with WAC 480-15-480 as continuing violations, giving rise to penalties of \$100 for each day a company fails to make each requisite filing after the date on which it was due.

- 2 On July 24, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$2,100 against T&S Transportation & Installation, Inc. (T&S Transportation or Company), for violations of Washington Administrative Code (WAC) 480-15-480. This rule requires household goods carriers to file annual reports with the Commission by May 1 each year.

- 3 On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated household goods carriers as required by WAC 480-15-480. On May 15, 2012, the Commission mailed a letter to companies that had not yet filed an annual report notifying them that they had incurred, as of that date, a penalty of \$900. The letter explained that companies that filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per 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 T&S Transportation did not file its 2011 annual report until August 3, 2012. This is 94 days late, making the Company liable for a penalty of up to \$9,400 as provided in RCW 80.04.405. The Commission, considering the nature of the offense and other factors, exercised its discretion to assess less than the maximum penalty. The Commission assessed a significant, but not unduly punitive, penalty of \$2,100.
- 5 On August 3, 2012, T&S Transportation filed a Commission form requesting mitigation (Mitigation Request), and a letter transmitting its annual report and supporting its request for mitigation. T&S Transportation does not dispute that the violation occurred. The Company states:
- We were not aware of any potential \$2,100.00 penalty for a late report as the annual report form details only the 2% fee and the 1% per month fee. We respectfully request any additional late fee be forgiven as not appropriate to apply to a \$400 tax [sic]. We have had a very difficult year due partly to the economy as well as experiencing two heart attacks and quadruple bypass operation on myself with an additional operation of installing a defibulator unit in my chest at the beginning of the year. While I could have filed the report timelier, cash flow played a roll [sic] in accepting the 2% penalties that I was aware of. Again, I respectfully request the Penalty Assessment be forgiven as not appropriate to the tax or circumstances.
- 6 Commission staff filed a response to the Mitigation Request on August 10, 2012. Staff opposed mitigating the assessed penalty because this is not the Company's first offense. T&S Transportation became regulated in February 2007 and has received three penalties for filing a delinquent annual report, in addition to the penalty assessment this year. T&S Transportation received a penalty of \$100 in 2008, a penalty of \$200 in 2009 and a penalty of \$400 in 2010.
- 7 The Commission again contacted T&S Transportation via letter dated May 15, 2012, stating that its annual report was overdue and offering administrative "mitigation" of potential penalties if the company filed by May 25, 2012. Yet, T&S Transportation did not file its report until August 3, 2012.

- 8 Even so, the Commission acknowledged the severe medical challenges T&S Transportation's principal faced, and granted the Mitigation Request in part by suspending one half of the penalty subject to the condition that T&S Transportation files its 2012 annual report by May 1, 2013. If the Company fails to timely file its 2012 annual report, the suspended penalty will become due without further action by the Commission. Previous penalty assessments, albeit increasingly higher from year to year, have been ineffective in bringing T&S Transportation into compliance. The Commission's principal goal in assessing a more significant penalty this year is to gain compliance by T&S Transportation in the future.
- 9 On September 11, 2012, T&S Transportation filed a letter requesting review of Delegated Order 01, in Docket TV-120947, Mitigating Penalty Assessment.
- 10 Commission Staff reviewed Order 01, in Docket TV-120947, and opposes any further mitigation of the suspended penalty. The Commission acknowledged the severe medical challenges the Company faced in the preceding year. Staff does not find any information which would support further mitigation or reduction of the penalty.

FINDINGS AND CONCLUSIONS

- 11 (1) The Utilities and Transportation Commission is an agency of the State of Washington which may assess financial penalties against regulated household goods carriers that are in violation of commission order, rule, regulation or decision of the commission pursuant RCW 81.04.405.
- 12 (2) This matter was brought before the Commission at its regularly scheduled meeting on September 27, 2012.
- 13 (3) After review and giving due consideration, the Commission find that the suspended penalty shall remain \$1,050 subject to condition that T & S Transportation files its 2012 annual report by May 1, 2013.

ORDER

THE COMMISSION ORDERS:

- 14 (1) Effective September 28, 2012, the penalty of \$2,100 assessed against T&S Transportation & Installation, Inc., on July 24, 2012, remain suspended in the amount of \$1,050 subject to condition that T&S Transportation & Installation, Inc. files its 2012 annual report by May 1, 2013. If T&S Transportation & Installation, Inc. fails to timely file its 2012 annual report, the suspended penalty will become due without further action by the Commission.
- 15 (2) One-half of the penalty of \$2,100 assessed against T&S Transportation & Installation, Inc., on July 24, 2012, (*i.e.*, \$1,050) is due and payable to the Commission within 15 days following the date of this Order.

DATED at Olympia, Washington, and effective September 27, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner