

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment)	DOCKET TE-100267
Against)	
)	ORDER 01
CWA, INC.)	
)	ORDER DENYING MITIGATION;
in the Amount of \$100)	REQUIRING PAYMENT OF
)	PENALTY
.....)	

1 **Penalty Assessment:** On February 19, 2010, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$100 against the CWA, Inc. (CWA or Company) for a violation of WAC 480-30-071, which requires charter and excursion carriers to file annual safety reports with the Commission and pay regulatory fees by December 31 each year. The Commission advised CWA that it was required to act within 15 days of receiving the notice either to pay the amount due, request a hearing to contest the alleged violation, or request mitigation to contest the amount of the penalty. The Commission served the Penalty Assessment on CWA by certified mail on February 19, 2010, and the returned certified mail card indicates the Company received the assessment on February 20, 2010.¹

2 **Application for Mitigation:** On February 23, 2010, CWA filed an Application for Mitigation, waiving a hearing and requesting an administrative decision. CWA asserts that it should not be liable for the penalty as it was sent the form in error. CWA claims it does not run charters, and operates only a scheduled service. Richard Johnson, the President of the Company, states that he called Commission investigator Tom McVaugh after receiving the letter and safety report form in December, 2009. Mr. Johnson states that he “reminded Tom that the UTC has made the same error for the last several years and that we respond in the same way each time, which is to call and remind that we don’t run Charters, so can’t complete this form.” Mr. Johnson

¹ The Commission received the signed certified card on February 23, 2010, indicating the Company’s receipt of the Penalty Assessment.

asserts that Mr. McVaugh must have forgotten to put a note in the file that the Company does not run charters.

3 **Response to Application for Mitigation:** On March 12, 2010, Commission Staff (Staff)² filed its response to the Application for Mitigation through the Declarations of Sheri Hoyt and Tom McVaugh, opposing mitigation.

4 Ms. Hoyt states in her Declaration that the Commission entered an order on February 15, 2008, granting CWA's application for auto transportation authority, authorizing passenger services between Walla Walla and Pasco, Washington, under Certificate 63162. Ms. Hoyt reports that CWA timely filed on December 2, 2008, its 2008 annual safety report, which indicates the Company used one vehicle for intrastate charter or excursion operations during the year.³ Ms. Hoyt states that there are no notations on the report indicating that the Company believed it should not have to file the report.

5 Further, Ms. Hoyt reports that the Commission amended CWA's authority on August 7, 2009, in Docket TC-080207, reissuing it to include statewide charter and excursion carrier service. The Commission did so after learning that the authority was omitted from CWA's authority when the Commission originally issued Certificate 63162. Ms. Hoyt argues that this amended authority reflects that CWA should file an annual safety report and pay a regulatory fee.

6 Mr. McVaugh states in his Declaration that Mr. Johnson telephoned him and stated that CWA had not conducted any charter or excursion bus operations in 2009 and that the Company had nothing to report. Mr. Johnson also reported the same situation had occurred in 2008. Mr. McVaugh states he advised Mr. Johnson to "correspond with the commission," and also that the Company could cancel the authority so the issue would be resolved in the future.

² In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See, RCW 34.05.455.*

³ The 2008 Annual Report is attached to Ms. Hoyt's Declaration.

- 7 **Commission Decision:** CWA claims it does not operate as a charter or excursion carrier and should not have to file a report, and that it is not liable for the penalty. The facts Staff presents contradict the Company's assertions. As CWA holds authority to provide service as a charter and excursion carrier in the state of Washington, the Company is responsible for complying with statutes and Commission rules governing charter and excursion carriers until such time as it requests cancellation of the authority. After contacting Mr. McVaugh, the Company failed to follow through with the instructions Mr. McVaugh gave to write to the Commission or cancel its authority.
- 8 Given these facts, the circumstances described in the Company's Application for Mitigation do not provide a justification for failing to timely file the required annual safety report and pay its regulatory fee. If CWA wishes to avoid filing the report and paying the fee in the future, the Company should follow the directions in the Commission's initial letter, by locating the voluntary cancellation form on the Commission's Web site and submitting the form to the Commission. The \$100 penalty assessed by the Commission is due and payable within 15 days of the date of this Order.
- 9 It is so ordered.
- 10 The Commissioners have delegated authority to the Secretary to enter this Order pursuant to RCW 80.01.030 and WAC 480-07-905(1)(h).

Dated at Olympia, Washington, and effective March 23, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).