

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-170635
PENINSULA BREW TOURS, LLC	ORDER 01
in the amount of \$1,000	DENYING MITIGATION; SUSPENDING PENALTY SUBJECT TO CONDITION

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 carriers. 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 Peninsula Brew Tours, LLC (Peninsula Brew Tours or Company) did not file an annual report on May 1, 2017, and had not made that filing by May 15. On June 21, 2017, the Commission assessed a penalty of \$1,000 against Peninsula Brew Tours, calculated as \$100 per business day from May 1 to May 15. The penalty assessment advised the Company that the Commission would suspend a \$750 portion of the penalty on the condition that the Company file a complete annual report and pay the \$250 portion of the penalty that was not suspended.
- 3 On June 27, 2017, Peninsula Brew Tours filed a complete annual report and paid its regulatory fee. On July 3, the Company responded to the Commission's penalty assessment, admitting the violations and requesting mitigation based on the information provided. In its response, the Company stated, "... we are a small company which operated one vehicle and less than \$3500 profit. While we do admit and recognize that the annual report is our responsibility we simply overlooked the submission this year."
- 4 On July 19, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. The penalty assessment notified the Company that mitigation would only be granted if the Company could demonstrate that the violations occurred due to circumstances beyond its control. Because Peninsula Brew Tours failed to identify any such circumstances, Staff does not support the

Company's request. Staff further noted that the Company has the opportunity to pay a reduced penalty of \$250 because this is a first-time violation.

DISCUSSION

- 5 WAC 480-30-071 and WAC 480-30-076 require charter and excursion 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 report was timely filed.
- 6 We agree with Staff that mitigation of the penalty is not appropriate in the circumstances presented here. 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.¹ Peninsula Brew Tours' explanation for its late filing – that it mistakenly overlooked the requirement – is expressly identified in the penalty assessment as an unacceptable basis for mitigation. Accordingly, we find that Peninsula Brew Tours failed to demonstrate that the violations occurred due to circumstances beyond its control, and conclude that its request for mitigation should be denied.
- 7 We will, however, adopt Staff's recommendation to continue to suspend a \$750 portion of the penalty subject to the condition that Peninsula Brew Tours pays the \$250 portion of the penalty that is not suspended no later than September 19, 2017. If Peninsula Brew Tours fails to pay the \$250 penalty by that date, the remaining \$750 penalty will become immediately due and payable without further order by the Commission.

ORDER

THE COMMISSION ORDERS:

- 8 (1) Peninsula Brew Tours, LLC's request for mitigation of the \$1,000 penalty is DENIED.

¹ 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 employees; employee termination or turnover; personal events such as weddings or graduation ceremonies; and vacations or business trips.

- 9 (2) The Commission suspends a \$750 portion of the penalty on the condition that Peninsula Brew Tours, LLC pays the \$250 portion of the penalty that is not suspended no later than September 19, 2017.
- 10 (3) If Peninsula Brew Tours, LLC, fails to pay the \$250 penalty by 5 p.m. on September 20, 2017, the remaining \$750 portion of the penalty will become immediately due and payable without further order by the Commission.
- 11 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.