

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty)	DOCKET TG-141168
Assessment Against)	
)	ORDER 01
LUDTKE-PACIFIC TRUCKING,)	
INC.)	INITIAL ORDER GRANTING
)	MITIGATION
In the Amount of \$1,000)	
.....)	

1 **Background.** Washington law requires solid waste companies to file annual reports and pay regulatory fees by May 1 of each year. WAC 480-70-071. On February 28, 2014, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee packets to all regulated solid waste companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by May 1, 2014, 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 **Procedural History.** Ludtke-Pacific Trucking, Inc. (Ludtke-Pacific or Company) did not file its annual report on May 1, 2014, and had not made that filing by May 15. On June 9, the Commission issued a penalty assessment against Ludtke-Pacific in the amount of \$1,000, calculated as \$100 per business day from May 1 to May 15.

3 On June 20, 2014, Ludtke-Pacific filed with the Commission a request for hearing. The Company explained that it had recently terminated its bookkeeper, and discovered after doing so that many filing and payment deadlines had been missed. The Company noted that it timely paid its regulatory fees and requested an extension on May 1. The Company ultimately filed its annual report on June 6.

4 **Hearing.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determined that a brief adjudicative proceeding was appropriate for determining whether the penalty should be mitigated and what actions might be necessary to ensure that Ludtke-Pacific complies with its regulatory obligations. On July 28, 2014, the Commission issued a Notice of Brief Adjudicative Proceeding and set

August 26, 2014, at 9:30 a.m. as the time for the parties to make oral statements concerning their positions.

5 **Payment.** On July 31, 2014, the Commission received a check from Ludtke-Pacific in the amount of \$1,000, representing payment in full of the penalty assessment.

6 **Evidence.** At hearing, the company's president, Lloyd Ludtke, testified that he recently terminated his bookkeeper, who had been with the Company for 12 years. Mr. Ludtke explained that prior to the bookkeeper's termination, he was unaware of the Company's past penalties for late-filed annual reports because the bookkeeper paid them without his knowledge. Mr. Ludtke has since hired a new bookkeeper, and assured the Commission that he will personally see that all future reports are timely filed.

7 Commission Staff (Staff) opposed mitigation because the Company received a reduced penalty in 2013 for late filing its 2012 annual report.

8 **Decision.** Despite Staff's recommendation, the Commission finds mitigation to be appropriate in this case. Mr. Ludtke testified credibly and sincerely that he had no knowledge of the Company's past violations, and that he takes compliance with Commission rules very seriously.

9 The Commission may consider a number of factors when entertaining a request for mitigation, including a company's history of compliance, whether the violation was promptly corrected, and the likelihood the violation will recur.¹ Here, the Company received and paid a \$1,800 penalty for violations of WAC 480-70-071 in 2013. Commission records show, consistent with Mr. Ludtke's testimony that he had no knowledge of the prior violations, that the 2013 request for mitigation was submitted by the Company's former bookkeeper. In addition, Mr. Ludtke's original application for mitigation in this docket explained that the bookkeeper's oversight was discovered on May 1, 2014; that same day, the Company paid its regulatory fee and submitted a request for extension, which was denied. The evidence shows that Mr. Ludtke attempted to correct the violation the same day it was discovered, and ultimately filed his annual report prior to receiving a penalty. Finally, given Mr. Ludtke's sincere

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

testimony that he takes personal responsibility for all future filings, we find it unlikely the violations will recur.

- 10 Although we find Mr. Ludtke's testimony credible and persuasive, the responsibility for the timely filing of annual reports ultimately rests with the Company's principals. While we are not willing to reduce the penalty by an amount consistent with the level of mitigation granted to first time offenders, we will exercise our discretion to reduce it by 50 percent.
- 11 The penalty assessed against Ludtke-Pacific is therefore recalculated at a rate of \$50 per day for the 10 business days the company was late in filing its annual report. This results in a revised penalty in the amount of \$500.

ORDER

THE COMMISSION ORDERS:

- 12 (1) The \$1,000 penalty assessed against Ludtke-Pacific Trucking, Inc. is mitigated to \$500.
- 13 (2) The commission shall promptly refund \$500 of the \$1,000 payment received on July 31, 2014.

DATED at Olympia, Washington, and effective September 2, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
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 **one** copy of any Petition or Answer must be filed by mail delivery to:

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Washington Utilities and Transportation Commission
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