

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

In the Matter of a Penalty Assessment)	DOCKET UW-081083
Against)	
)	ORDER 01
Parkland Water System, Inc.,)	
)	ORDER DENYING MITIGATION
in the amount of \$100.00.)	
.....)	

1 **Penalty.** On June 25, 2008, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in Docket UW-081083 in the amount of \$100 against Parkland Water System, Inc. (Parkland Water), for violation of WAC 480-110-505. This rule requires all water companies to, among other things, complete and file with the Commission an annual report form and accompanying regulatory fee no later than May 1st of each year. The penalty assessment contained language advising Parkland Water that it was required to act within 15 days of receiving the notice to either pay the amount due, request a hearing to contest the alleged violation, or request mitigation to contest the amount of the penalty. The Penalty Assessment was served on Parkland Water by certified mail on June 30, 2008.¹

2 On July 16, 2008, the Commission received Parkland Water’s annual report. No regulatory fee was due. However, Parkland Water did not remit the \$100 penalty.²

3 On September 16, 2008, the Commission sent another letter to Parkland Water by certified mail. The letter contained a copy of the original penalty assessment and extended the payment deadline to September 30, 2008. A signed return receipt card indicates that Parkland Water received this second letter on September 17, 2008.

4 On November 19, 2008, the Commission sent a third letter to Parkland Water, again by certified mail. This letter contained another copy of the original penalty assessment and advised Dennis Burke, owner of Parkland Water, of the corporation’s final opportunity to respond by December 1, 2008, or risk incurring additional penalties or a Commission enforcement action in superior court. A signed return receipt card indicates that Parkland Water received this letter on November 20, 2008.

¹ On July 22, 2008, the Commission received the envelope back indicating the certified mailing had gone unclaimed.

² Declaration of Sheri Hoyt, ¶ 8.

- 5 **Late Mitigation Request.** On November 24, 2008, Parkland Water sent a letter to the Commission claiming that it did not have the funds to pay the penalty and therefore seeking mitigation of the \$100 penalty. The letter presented no explanation for its delayed response to the Penalty Assessment. Instead, the letter explained that Parkland Water was the smallest water company in Washington, with only seven customers, and that its budget was only sufficient to pay for water system maintenance and directly associated expenses. The letter closed by indicating that Parkland Water would seek to be relieved of Commission jurisdiction if its mitigation request was not granted. The Commission received the letter on November 25, 2008, the next business day.
- 6 Commission Staff filed a Response opposing Parkland Water’s request for mitigation on December 11, 2008.
- 7 **Jurisdiction.** RCW 80.04.405 allows the Commission to consider remission or mitigation of penalties “upon written application therefore, received within fifteen days.” The statute makes no “good cause” or other exception to this 15-day deadline to seek review of penalties imposed by the Commission. Thus, regardless of the circumstances, the Commission has no jurisdiction to consider untimely petitions.
- 8 **Commission Decision.** The Commission denies the late petition of Parkland Water for mitigation. Although the company did not accept the penalty assessment sent by certified mail on June 30, 2008, it is undisputed that the company received the second mailing of the Penalty Assessment by certified mail on September 17, 2008. Therefore, under the most generous reading of RCW 80.04.405, the company was required to ensure its response was received by the Commission no later than October 1, 2008.³ The company failed to make any response until prompted by a third letter from the Commission threatening further action if the penalty was not timely paid.
- 9 The Commission received Parkland Water’s letter requesting mitigation on November 25, 2008, well after the statutory deadline for such petitions had expired. Under RCW 80.04.405, the Commission has no jurisdiction to mitigate or otherwise review the penalty. Accordingly, the penalty of \$100 is due and payable immediately.

³ We recognize that Parkland Water’s response to the original Penalty Assessment would have been due on July 15, 2008. The record indicates that although the original certified mailing was returned unclaimed, the Commission also sent a copy of the Penalty Assessment through regular mail that was not returned. *See* Declaration of Sheri Hoyt, ¶ 10. Regardless of which date is used to measure the 15 day response period, Parkland Water’s request for mitigation was late.

- 10 Parkland Water's assertions regarding its small size and correspondingly small budget are noted.⁴ However, a late mitigation request is not the proper venue for arguing that the Commission should no longer exercise jurisdiction over Parkland Water. Parkland Water was subject to the Commission's jurisdiction in 2007 and therefore Parkland Water was required to timely file its annual report for 2007. The Commission has continued to regulate Parkland Water in 2008 and, in accordance with WAC 480-110-505, the company will be expected to timely file its Annual Report for 2008 no later than May 1, 2009.⁵
- 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 December 16, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

⁴ Parkland Water has raised this issue in the past (*see* Docket UW-060985, Order 03, ¶ 7) and Commission Staff has again invited the company to discuss the matter more thoroughly with a regulatory analyst. *See* Declaration of Sheri Hoyt, ¶¶ 13 and 14.

⁵ Parkland Water was previously penalized for failure to timely file its 2005 annual report. In that case, Parkland Water filed a timely request for a hearing on the matter but was ultimately denied mitigation of the \$100 penalty. *See* Docket UW-060985, Order 03, ¶ 2. Parkland Water filed its 2006 annual report in a timely fashion. *See* Declaration of Sheri Hoyt, ¶ 12.

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. Under WAC 480-07-904(3), you may seek Commission review of this 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 under WAC 480-07-904(1). 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.