

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant v. PELICAN POINT WATER COMPANY. Respondent.	DOCKET UW-143980 ORDER 04 IMPOSING AND SUSPENDING PENALTY, IN PART
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BACKGROUND

- 1 On April 23, 2015, the Washington Utilities and Transportation Commission (Commission), entered Order 01, Order of Consolidation, Complaint for Penalties; Notice of Brief Adjudicative Proceeding (Order 01). The Complaint alleges that Pelican Point Water Company (Pelican or Company) and its owner and authorized representative, Jill Goodrich, each violated Washington Administrative Code (WAC) 480-110-505 a total of 1,360 times by failing to file annual reports and pay regulatory fees as required for the 2012 and 2013 reporting years. The Commission also entered Order 02, Subpoena and Subpoenas Duces Tecum for Production of Documents (Order 02), requiring Ms. Goodrich to appear before the Commission at a brief adjudicative proceeding and to bring the documents specified in the Subpoenas.
- 2 On September 1, 2015, Commission staff (Staff) filed a settlement agreement on behalf of the parties (Settlement Agreement). On September 9, 2015, the Commission entered Order 03, Initial Order Approving Settlement Agreement (Order 03). In Order 03, the Commission assessed a penalty of \$34,000 against the Company for violations of WAC 480-110-505.¹ The Commission suspended a \$31,500 portion of the penalty until June 30, 2017, conditioned on the Company meeting its annual reporting and regulatory fee requirements for the 2015 and 2016 reporting years and paying the remaining \$2,500 penalty within 10 days of the effective date of the order. Order 03 further provided that if the Company failed to satisfy any of the conditions in the order, the entire \$31,500

¹ Under the Settlement Agreement approved in Order 03, the Commission assessed the penalty against the Company and dismissed the complaint against Jill Goodrich, in her individual capacity.

suspended portion of the penalty would become immediately due and payable without further action by the Commission.

3 On September 24, 2017, Commission staff (Staff) reviewed Commission records related to Order 03 and determined that the Company failed to file its 2015 and 2016 annual reports by the due date, as required in Order 03. Specifically, on May 20, 2016, the Company filed its 2015 annual report and paid its regulatory fee with interest. The Company received a \$1,000 penalty assessment in Docket UW-160532 for failing to file the report by May 1, 2016. The Company paid the penalty on June 20, 2016, and did not apply for mitigation. Then on June 27, 2017, the Company filed an incomplete 2016 annual report and paid its regulatory fee, with interest. The Company again received a \$1,000 penalty assessment in Docket UW-170422 for failing to file its annual report by May 1. The Company paid the \$1,000 penalty and did not apply for mitigation.

4 Staff reached out to the Company by email and phone and advised the Company that its 2016 annual report was incomplete. The Company has not responded, and the 2016 annual report remains incomplete.

5 On December 7, 2017, Staff filed a letter with the Commission recommending that \$5,000 of the suspended \$31,500 penalty be imposed because the Company failed to satisfy two conditions of Order 03, and the 2016 annual report remains incomplete. In addition, Staff recommends that the remaining \$26,500 penalty be further suspended and then waived on the condition that the Company files its complete annual report and pays its required regulatory fees no later than May 1, 2018, for the 2017 reporting year, and no later than May 1, 2019, for the 2018 reporting year.

DISCUSSION AND DECISION

6 Order 03 imposed a penalty and suspended a portion of the penalty conditioned on 1) the Company paying the unsuspended portion of the penalty by the due date, and 2) the Company filing its complete annual report and paying its required regulatory fees for the 2015 and 2016 reporting years by the May 1 due date. Order 03 provided that if the Company failed to satisfy any of the conditions, the suspended portion of the penalty would become immediately due and payable without further Commission action. The Company failed to file its annual reports for the 2015 and 2016 reporting years and pay the required regulatory fees by the due date. The Company's late filing triggered the imposition of the suspended portion of the penalty.

7 Nevertheless, Staff recommends the Commission impose only \$5,000 of the deferred penalty and continue to suspend the remaining balance of \$26,500, and then waive it, on the condition that the Company files its complete annual report and pays its required

regulatory fees no later than May 1, 2018, for the 2017 reporting year, and no later than May 1, 2019, for the 2018 reporting year. Staff reasons that a portion of the penalty should be imposed because the 2016 annual report remains incomplete, but that the remainder of the penalty should continue to be suspended because the Company paid its penalty and outstanding regulatory fees in full and filed annual reports. Staff believes that continuing to suspend a portion of the penalty will help encourage ongoing compliance.

8 We agree with Staff that continuing to suspend a portion of the penalty is appropriate in the circumstances presented here. First, the Company corrected the violation related to the 2015 annual report prior to receiving the \$1,000 penalty, which was issued on June 13, 2016. Second, in addition to paying the portion of the penalty that was not suspended, the Company is current with its reporting and financial obligations for 2015, and current with its financial obligations for 2016. Finally, the \$31,500 penalty is disproportionately punitive in light of the nature and limited extent of the Company's conduct. However, we remain concerned that the Company has failed to respond to Staff regarding the Company's incomplete 2016 report. We find that the Company should be penalized for its continuing failure to file a complete 2016 annual report and therefore impose \$5,000 of the suspended penalty. We also require the Company to file a complete 2016 annual report within 30 days of the date of this Order. With regard to the remaining penalty, we find that continuing to suspend the penalty is an appropriate response relative to the violation, and will also create a significant incentive for future compliance.

FINDINGS AND CONCLUSIONS

- 9 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including water companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 10 (2) Order 03, Initial Order Approving Settlement Agreement, imposed and suspended in part a penalty with conditions, including that the Company timely file annual reports and pay regulatory fees for the 2015 and 2016 reporting years.
- 11 (3) Pelican Point Water Company failed to satisfy conditions of Order 03 when it failed to file its 2015 annual report and pay regulatory fees by the May 1, 2016, due date, and when it failed to file its 2016 annual report and pay regulatory fees by the May 1, 2017, due date. Failure to file by the due date resulted in the penalty becoming immediately due and payable.
- 12 (4) Pelican Point Water Company filed an incomplete 2016 annual report.

- 13 (5) The Commission concludes that a \$5,000 portion of the suspended penalty is now due and payable.
- 14 (6) The Commission concludes that the remaining \$26,500 portion of the suspended penalty should remain suspended, and then waived, subject to the condition that Pelican Point Water Company 1) file its complete 2016 annual report within 30 days of the date of this Order, and 2) file its 2017 annual report and pay regulatory fees by May 1, 2018, and file its 2018 annual report and pay regulatory fees by May 1, 2019. If Pelican Point Water Company fails to satisfy any of these conditions, the entire suspended penalty will become immediately due and payable without further Commission order.

ORDER

THE COMMISSION ORDERS THAT

- 15 (1) Pelican Point Water Company must pay \$5,000 of the penalty imposed and suspended in Order 03.
- 16 (2) The Commission further suspends the remaining \$26,500 of the penalty imposed in Order 03, and then waives it, subject to the condition that Pelican Point Water Company 1) file its complete 2016 annual report within 30 days of this Order, and 2) file its complete 2017 annual report and pay its required regulatory fees no later than May 1, 2018, and 3) file its complete 2018 annual report and pay its required regulatory fees no later than May 1, 2019.
- 17 (3) If Pelican Point Water Company fails to satisfy the conditions imposed in by this Order, the entire suspended penalty of \$26,500 will become immediately due and payable without further Commission order.

DATED at Olympia, Washington, and effective February 14, 2018.

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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).