

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the) DOCKET NO. UT-010139
)
Penalty Assessment Against) ORDER GRANTING REMISSION
XO Washington, Inc.)
)
.....)

1 On February 12, 2001, the Washington Utilities and Transportation Commission issued Penalty Assessment No. UT-010139 in the amount of \$2300 against XO Washington, Inc (XO). The penalty was assessed for violation of WAC 480-120-027(3)(a); failure to file contracts within five days of execution. The Notice of Assessment of Penalties stated:

On February 2, 2001, XO Washington, Inc. filed a business contract with the Washington Utilities and Transportation Commission. This contract was filed 30 days after the effective date. This is a violation of WAC 480-120-027(3)(a). Such conduct supports a penalty in the amount of \$2300.

2 On March 8, 2001, XO filed with the Commission an Application for Mitigation of Penalties. In its application, XO contends, in paragraphs 2 and 3, that the contracts at issue were filed within five days of execution as required by rule, contrary to what was stated in the Notice of Penalties. The Company alleges it made a typographical error on the Essential Terms and Conditions sheet affixed to the contract by stating that the effective date of the contracts was January 3, 2001, rather than January 31, 2001. On March 13, 2001, XO submitted a revised statement of essential terms and conditions correcting its earlier error.

3 The Commission hereby takes notice that “1-31-01” is hand-written next to the customer’s representative’s signature on the two page boilerplate contract. The contract execution date was not clearly stated in the contract or in the essential terms and conditions sheet, though we take it from XO’s Application that it was also January 31, 2001. The Commission, therefore, encourages the Company in its future filings to clearly state the contract execution date in both the cover letter and the essential terms and conditions sheet.

4 In its petition, XO also challenges the motives for and wisdom of seeking the penalties, but it fails to recognize the Commission’s discretion in such matters and we reject the contention.

5 Finally, XO also argues that the imposition of penalties under RCW 80.04.405

deprives it of property without notice and an opportunity to be heard. We also reject this argument. The mitigation process that has in this instance resolved the matter in XO's favor prior to the required remission of the penalty, coupled with the opportunity for a more formal or extensive review under WAC 480-09-500 and the state's Administrative Procedure Act, assure the protection of XO's rights.

6 Therefore, having considered the matter, the Commission is of the opinion that the application should be granted

ORDER

7 IT IS HEREBY ORDERED That the petition of XO Washington, Inc. for remission of Penalty Assessment Docket No. UT-010139 in the amount of \$2300 be granted.

DATED at Olympia, Washington and effective this day of March, 2001.

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner