

WAC 480-07-917 Penalties for failure to file annual report and pay regulatory fees.

(1) **Monetary penalties.** Any public service company that fails to file a complete annual report with the commission and pay any required regulatory fees by May 1st of each year, or by a subsequent deadline the commission has previously established in response to a company's timely request to extend the May 1st filing date, must pay the following monetary penalties to the commission:

(a) Two hundred fifty dollars if the filing is one to thirty days late;

(b) Five hundred dollars if the filing is thirty-one to sixty days late; or

(c) One thousand dollars if the filing is sixty-one to ninety days late.

(2) **Alternative penalties.** If a public service company has not filed a complete annual report and paid any required regulatory fees within ninety days after the filing deadline, the commission in its discretion may impose one or both of the following penalties as an alternative to the monetary penalties in subsection (1) of this section:

(a) Revocation or cancellation of the company's operating authority (unless otherwise prohibited under applicable law) following notice and opportunity for hearing (if required by applicable law); and

(b) Penalties the commission may assess pursuant to RCW 80.04.380, 80.04.405, 81.04.380, or 81.04.405, as applicable.

(3) **Notice.** The commission will serve a notice on each public service company that has failed to file a complete annual report and pay any required regulatory fees by the deadline, specifying the amount of the monetary penalty due as of the date of the notice. The notice will also advise the company that the specified penalty is due and payable and will increase as provided in subsection (1) of this section, or that the company may be subject to the alternative penalties in subsection (2) of this section, if the company continues to fail to file a complete annual report and pay any required regulatory fees.

(4) **Waiver.** The commission may waive a monetary penalty, in whole or in part, if the public service company demonstrates to the commission's satisfaction that the company failed to file its complete annual report and pay any required regulatory fees by the deadline due to circumstances beyond the company's control.

(a) *Request.* The commission must receive any request for waiver of the monetary penalty within fifteen days of the date of the commission notice informing the company that the penalty is due and payable. The request must include a written statement of the reasons the company failed to file a complete annual report and pay any required regulatory fees by the deadline sufficient to demonstrate that the company's failure was due to circumstances beyond its control. Unless those circumstances continue to persist, the company should file a complete annual report and pay any required regulatory fees prior to, or at the same time as, submitting a request for waiver.

(b) *Circumstances beyond a company's control.* Circumstances beyond a company's control that may support a request to waive some or all of the monetary penalty include, but are not limited to:

(i) Death or serious illness of the person responsible for filing the report, or a member of that person's immediate family;

(ii) Destruction by fire or other casualty of the company's place of business or business records;

(iii) An act of fraud, embezzlement, theft, or conversion on the part of an employee; or

(iv) The commission did not send notice of the annual report filing requirement to the company as a result of commission error. Commission error for these purposes does not include either the commission's inability to send notice to the company or the commission sending notice to an incorrect address if the company has failed to provide the commission with the company's current correct email address (or physical address if the company has notified the commission that it does not have, and cannot obtain, an email address).

(c) *Circumstances not beyond a company's control.* Circumstances that are not beyond a company's control and that will not support a request to waive some or all of the monetary penalty include, but are not limited to:

- (i) Financial hardship;
 - (ii) Misunderstanding or lack of knowledge of commission rules;
 - (iii) Failure to receive an annual report form from the commission unless the annual report form was not available on the commission's website, or the commission did not furnish a copy of the form upon request in reasonable time for the company to file the form and pay any required fees;
 - (iv) Mistakes or misconduct on the part of an employee other than fraud, embezzlement, theft, or conversion;
 - (v) Employee termination or turnover;
 - (vi) Personal events such as weddings or graduation ceremonies;
- and
- (vii) Vacations or business trips.

(d) *No tolling.* A request for waiver of a monetary penalty does not toll a company's obligation to file a complete annual report and pay any required regulatory fees. If the company has not made the required filing, the penalty amount will continue to escalate as provided in subsection (1) of this section unless and until the company makes that filing, regardless of whether the company has requested a waiver of the penalty.

(e) *Commission decision.* Within ten days of receiving a request for waiver, the commission will issue a notice informing the company of the commission's decision on the request.

(f) *No administrative review.* Except for penalties the commission assesses pursuant to subsection (2)(b) of this section, the decision on any request for waiver of a monetary penalty is final and is not subject to further administrative review.

(5) **Delegation.** The commission delegates to the director of regulatory services, or the director's designee, the authority to assess and to determine whether to waive, in whole or in part, the monetary penalties in subsection (1) of this section. The commission delegates to the director of the administrative law division, or an administrative law judge the director designates, the authority to impose the alternative penalties in subsection (2) of this section.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-917, filed 8/29/18, effective 9/29/18.]