

The Vermont Statutes Online

Title 30 : Public Service

Chapter 001 : Appointment, General Powers, And Duties

(Cite as: 30 V.S.A. § 30)

§ 30. Penalties; affidavit of compliance

(a)(1) A person, company, or corporation subject to the supervision of the Commission or the Department of Public Service, who refuses the Commission or the Department of Public Service access to the books, accounts, or papers of such person, company, or corporation within this State, so far as may be necessary under the provisions of this title, or who fails, other than through negligence, to furnish any returns, reports, or information lawfully required by it, or who willfully hinders, delays, or obstructs it in the discharge of the duties imposed upon it, or who fails within a reasonable time to obey a final order or decree of the Commission, or who violates a provision of chapter 2, 7, 75, or 89 of this title, or a provision of section 231 or 248 of this title, or a rule of the Commission, shall be required to pay a civil penalty as provided in subsection (b) of this section after notice and opportunity for hearing.

(2) A person who violates a provision of chapter 3 or 5 of this title, except for the provisions of section 231 or 248 of this title, shall be required to pay a civil penalty after notice and opportunity for hearing. If the Commission determines that the violation substantially harmed or might have substantially harmed the public health, safety, or welfare; the interests of utility customers; the environment; the reliability of utility service; or the financial stability of the company, the Commission may impose a civil penalty as provided in subsection (b) of this section. If the Commission determines that the violation did not cause or was not likely to cause such harm, the Commission may impose a civil penalty of not more than \$42,500.00, in addition to any financial benefit to the violator resulting from the violation.

(b) The Commission may impose a civil penalty under subsection (a) of this section of not more than \$85,000.00, in addition to any financial benefit to the violator resulting from the violation. In the case of a continuing violation, an additional fine of not more than \$42,500.00 per day may be imposed. In no event shall the total fine exceed the larger of:

(1) \$170,000.00, in addition to any financial benefit to the violator resulting from a violation; or

(2) in the case of a company that pays gross receipt taxes under section 22 of this title, one-tenth of one percent of the gross Vermont revenues from regulated activity of

the person, company, or corporation in the preceding year, in addition to any financial benefit to the violator resulting from a violation.

(c) In determining the amount of a fine under subsection (a) of this section, the Commission may consider any of the following factors:

(1) the extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers;

(2) whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;

(3) the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;

(4) the length of time that the violation existed;

(5) the deterrent effect of the penalty;

(6) the economic resources of the respondent;

(7) the respondent's record of compliance; and

(8) any other aggravating or mitigating circumstance.

(d) After notice and an opportunity to be heard, the Commission may order any person, company, or corporation subject to the supervision of the Commission or the Department of Public Service who negligently fails to furnish any returns, reports, or information lawfully required by it to pay a civil penalty of not more than \$42,500.00, in addition to any financial benefit to the violator resulting from a violation.

(e) A person who knowingly, under oath, makes a false return or statement or who knowingly, under oath, when required by law, gives false information to the Commission, or the Department of Public Service, or who knowingly testifies falsely in any material matter before either of them, shall be deemed to have committed perjury and shall be punished accordingly.

(f) Violations of the rules of procedure for the determination of cases heard by the Public Utility Commission shall not be subject to the provisions of subsection (a), (b), or (c) of this section.

(g) At any time, the Commission may require a person, company, or corporation to file an affidavit under oath or affirmation that the person, company, or corporation or any facility or plant thereof is in compliance with the terms and conditions of an order, approval, certificate, or authorization issued under this title or rules adopted under this title. A request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file such an affidavit within the period prescribed by the Commission or the material misrepresentation of a fact in an affidavit shall be a

violation subject to civil penalty under subdivision (a)(1) of this section and shall also be grounds for revocation or rescission of the order, approval, certificate, or authorization as to which the Commission required the affidavit.

(h) In accordance with the process set forth in this subsection, the Department may issue an administrative citation to a person the Department believes after investigation violated section 246, 248, 248a, or 8010 of this title, any rule adopted pursuant to those sections, or any certificate of public good issued pursuant to those sections.

(1) An administrative citation, whether draft or final, shall:

(A) state each provision of statute and rule and each condition of a certificate of public good alleged to have been violated;

(B) include a concise statement of the facts giving rise to the alleged violation and the evidence supporting the existence of those facts;

(C) request that the person take the remedial action specified in the notice or pay a civil penalty of not more than \$5,000.00 for the violation, or both; and

(D) if remedial action is requested, state the reasons for seeking the action.

(2) The Department shall initiate the process by issuing a draft administrative citation to the person and sending a copy to each municipality in which the person's facility is located, each adjoining property owner to the facility, the complainant if any, and, for alleged violations of the facility's certificate of public good, each party to the proceeding in which the certificate was issued.

(A) At the time the draft citation is issued, the Department shall file a copy with the Commission and post the draft citation on its website.

(B) Commencing with the date of issuance, the Department shall provide an opportunity of 30 days for public comment on the draft citation. The Department shall include information on this opportunity in the draft citation.

(C) Once the public comment period closes, the Department:

(i) Shall provide the person and the Commission with a copy of each comment received.

(ii) Within 15 days of the close of the comment period, may file a revised draft citation with the Commission. The revised draft citation may be accompanied by a stipulation or agreed settlement between the person and the Department with a request for Commission approval.

(D) The Commission may on its own initiative open a proceeding to investigate the violation alleged in the draft citation. The Commission shall take any such action within 25 days of the close of the public comment period, or the filing of a revised draft citation, whichever is later. Such a Commission proceeding shall supersede the draft

citation.

(3) If the Commission has not opened a proceeding pursuant to subdivision (2)(D) of this subsection, the Department may issue a final administrative citation to the person. Within 30 days of receipt of a final administrative citation, the person shall respond in one of the following ways:

(A) Request a hearing before the Commission on the existence of the alleged violation, the proposed penalty, and the proposed remedial action.

(B) Pay any civil penalty set forth in the notice and agree to undertake such remedial action as is set forth in the notice and submit to the Department for its approval a plan for compliance. In such a case, the final administrative citation shall be enforceable in the same manner as an order of the Commission.

(C) Decline to contest the existence of the alleged violation and request a hearing on either the proposed penalty or remedial action, or both. When exercising this option, a person may agree to either the proposed penalty or remedial action and seek a hearing only on the penalty or action with which the person disagrees.

(4) When a person requests a hearing under subdivision (3) of this subsection, the Commission shall open a proceeding and conduct a hearing in accordance with the provisions of this section on the alleged violation and such remedial action and penalty as are set forth in the notice. Notwithstanding any contrary provision of this section, a penalty under this subdivision (4) shall not exceed \$5,000.00.

(5) If a person pays the civil penalty set forth in a final administrative citation, then the Department shall be precluded from seeking and the Commission from imposing additional civil penalties for the same alleged violation unless the violation is continuing or is repeated.

(6) If a person agrees to undertake the remedial action set forth in a final administrative citation, failure to undertake the action or comply with a compliance plan approved by the Department shall constitute a separate violation.

(7) The Commission may approve disposition of a final administrative citation by stipulation or agreed settlement submitted before entry of a final order.

(8) Penalties assessed under this subsection shall be deposited in the General Fund except for any amounts the Commission directs to be used for the benefit of ratepayers generally. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 16, eff. Feb. 1, 1981; 1995, No. 99 (Adj. Sess.), § 1; 2009, No. 146 (Adj. Sess.), § F29; 2011, No. 47, § 10, eff. May 25, 2011; 2013, No. 89, § 13; 2017, No. 53, § 8; 2021, No. 42, § 4.)

