

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

In the Matter of the)	DOCKET TV-050537
)	
)	ORDER 03
PENALTY ASSESSMENT AGAINST)	
ALL MY SONS MOVING &)	ORDER ON REVIEW APPROVING
STORAGE OF SEATTLE, INC.)	AND ADOPTING SETTLEMENT
)	AGREEMENT SUBJECT TO
)	CONDITION
.....)	

1 *Synopsis: The Commission, on its own motion, conducted administrative review of the Initial Order entered in this docket on July 10, 2006. This Final Order of the Commission approves and adopts the parties’ Settlement Agreement subject to the condition that paragraph 6, a “safe-harbor” provision concerning matters outside the scope of this proceeding, is rejected.*

SUMMARY

2 **PROCEEDINGS.** This proceeding concerns a penalty assessment by the Washington Utilities and Transportation Commission (Commission) against All My Sons Moving & Storage of Seattle, Inc. (All My Sons) in the amount of \$69,600. All My Sons challenged the assessment and, in the alternative, sought mitigation. Prior to submission of any testimony, the parties engaged in settlement discussions and negotiated a Settlement Agreement, which they filed on June 16, 2006. Administrative Law Judge Karen Caillé entered an Initial Order on July 10, 2006, recommending that the Commission approve and adopt the Settlement Agreement in full resolution of the issues in this proceeding. The Commission, on its own motion, elected to undertake administrative review of the Initial Order.

3 **PARTY REPRESENTATIVES.** Greg W. Haffner, Curran Mendoza P.S., Kent, Washington represents All My Sons. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Commission Staff.¹ Public Counsel did not participate in this proceeding.

4 **COMMISSION DETERMINATIONS.** The Commission determines that it should approve and adopt the parties' Settlement Agreement subject to the condition that paragraph 6 of the Settlement Agreement is null and void. Paragraph 6 is a "safe-harbor" provision that would preclude Commission action concerning violations by All My Sons during the period December 10, 2004, through December 31, 2005. We find that the Commission should not be precluded from taking action concerning violations that may have occurred in periods outside the periods examined in Penalty Assessment No. TV-050537.

MEMORANDUM

I. Background and Procedural History

5 In the spring of 2005, Staff conducted a compliance audit of All My Sons' business practices. Staff found violations of laws and rules enforced by the Commission and compiled its findings along with technical assistance and recommendations in an audit report.² Based on the recommendations in the report the Commission assessed penalties of \$69,600 against All My Sons for 696 violations of law.³

6 All My Sons filed a request for hearing or, in the alternative, mitigation of the penalty amount.⁴ All My Sons claimed that certain of the alleged violations were technical and that prior technical assistance relating to those violations had not been provided, disputed the legal basis for some of the alleged violations, disputed the factual basis

¹ In formal proceedings before the Commission, the Commission's Regulatory Staff (Commission Staff) appears as an independent party with the same privileges, rights, and responsibilities as any other party in the proceeding. Commission Staff operates independently from the three-member Commission, who decides the merits of each case. *RCW 34.05.455, WAC 480-07-340.*

² Staff Audit Report of the Business Practices of All My Sons Moving and Storage of Seattle, Inc., April 2005.

³ See Penalty Assessment No. TV-050537 issued September 15, 2005, for a detailed list of violations and specific penalty amounts.

⁴ All My Sons' Request for Hearing, September 28, 2005.

of some of the alleged violations, asked that penalties be mitigated for alleged violations that the Company claimed caused no harm to customers, denied receiving notices from the Commission, and claimed that with respect to some of the alleged violations Staff's prior technical assistance had been confusing.⁵

7 Prior to the submission of any testimony, the parties engaged in settlement discussions covering all of the issues in dispute and negotiated an agreement.

II. Settlement Agreement.

8 The proposed Settlement Agreement is a full settlement of all issues presented in this proceeding, executed by All My Sons and Commission Staff. The proposed Settlement Agreement is attached to this Order as Appendix A, and is largely self-explanatory. The settlement reduces the penalty amount from \$69,600 to \$40,950, and All My Sons admits to four hundred and eighteen violations in the following categories:

- Failure to use forms that complied with Commission regulations (16 violations),
- Failure to complete estimate forms and bills of lading according to applicable laws and regulations (101 violations),
- Failure to issue supplemental estimates when circumstances changed in a way to cause the estimated charges to increase (4 violations),
- Charging one customer more than the allowed 125% of the written estimate (1 violation),
- Failure to timely respond to, timely resolve, and keep a proper record of customer claims and complaints as required by Commission regulations (254 violations),
- Failure to calculate the fuel surcharge according to the fuel charge supplement of the household goods tariff (36 violations),

⁵ *Id.*, pp. 1-2.

- Failure to provide customers with a written estimate of the total overtime charges and obtain the customers' written consent for overtime services (3 violations),
- Failure to maintain a copy of the weight tickets as required (1 violation),
- Failure to pass through commercial ferry costs to a customer (1 violation), and
- Failure to properly calculate the mileage rate for a mileage-rated move (1 violation).

The Settlement Agreement provides that the remaining violations alleged in the penalty assessment are withdrawn.

III. Discussion and Determination on Administrative Review of Initial Order.

9 In her Initial Order, Judge Caillé stated:

Based on the record developed in this proceeding, the issues raised in this docket are adequately addressed and resolved by the proposed Settlement Agreement. The parties have reached an agreement that represents a compromise of their positions, finding it in their best interests to avoid the expense, inconvenience, uncertainty, and delay necessitated by ongoing adversarial proceedings. The Settlement Agreement addresses the Company's violations and provides mitigation of penalties for certain violations. Under the circumstances, the proposed Settlement Agreement is fair and in the public interest, and should be approved and adopted as a full resolution of the issues pending in Docket TV-050537.

Judge Caillé accordingly recommended in her Initial Order that the Commission approve and adopt the proposed Settlement Agreement.

10 On informal review of the Settlement Agreement's terms, the Commission found one provision unexplained and unsupported by any information in the record. Specifically, paragraph 6 of the Settlement Agreement appeared to be a safe-harbor provision related to possible violations by All My Sons outside the period for which

penalties were assessed and, hence, beyond the scope of this proceeding. If so, the Commission would have to consider whether it would be lawful, and even if lawful, appropriate to approve the safe-harbor provision.

- 11 The Commission gave notice that it would reopen the record to receive evidence related to this provision and issued several bench requests. These were directed principally to Staff, but the Commission gave All My Sons an opportunity to respond, if it wished. Staff responded on August 3, 2006, to Bench Request Nos. 1-3 and on August 10, 2006, to Bench Request No. 4. All My Sons elected not to respond. The Commission gave notice of its intent to receive Staff's responses as exhibits on August 14, 2006, subject to any objections received by August 18, 2006. No objections were heard.
- 12 Staff's response to Bench Request No. 1 disclosed for the record the periods during which violations were identified that became subject to Penalty Assessment No. TV-050537. Staff's response states that it requested data from All My Sons for the period April 23, 2005, through May 8, 2005, and used those records to identify some of the violations included in the penalty assessment. In addition, Staff reviewed documents from customer complaints against All My Sons that were filed between August 10, 2000, and August 30, 2004. Staff based additional penalties on violations identified in connection with those complaints. The last such violation included in Staff's review took place on December 9, 2004.
- 13 Staff's response to Bench Request No. 2 identified a number of informal complaints filed against All My Sons since December 9, 2004 and not within the April 23, 2005, through May 8, 2005, time frame. In connection with these complaints, Staff found forty-four violations, none of which were the subject of Penalty Assessment No. TV-050537. Under the safe-harbor provision, the Commission would be precluded from assessing penalties for these violations, according to Staff's response to Bench Request No. 3.
- 14 The Commission's fundamental responsibility is to regulate in the public interest. In the context of policing violations of statutes and rules the Commission's power to assess penalties is essential to its ability to carry out this fundamental responsibility. Accordingly, we will not approve a provision, such as the safe-harbor provision in the

Settlement Agreement here, which would preclude us from assessing penalties for violations that have not yet been closely scrutinized or perhaps even discovered. The situation here is distinguishable from that where known violations are not pursued as part of a settlement because the nature and number of violations do not warrant further prosecution. The record in this proceeding shows a pattern of continuing violations over many years and the number of customer complaints and apparent violations has increased significantly from year to year.⁶ Despite the pendency of these proceedings, it appears All My Sons continues to conduct its operations in a manner that suggests the Company is either unwilling or unable to comply with the household goods laws and rules. It is possible that there are violations which may have occurred during the safe-harbor period that when viewed in the totality of the circumstances would warrant additional sanctions, including potentially suspension or cancellation of its authority to conduct business in Washington state. We therefore reject the safe-harbor provision included in the Settlement Agreement at paragraph 6.

15 In other respects, the Settlement Agreement represents a satisfactory resolution of the issues specifically disputed in connection with Penalty Assessment No. TV-050537. The settlement includes an admission of wrongdoing by All My Sons and provides that the company will pay a substantial penalty for the more than four hundred violations it admits. By approving and adopting the Settlement Agreement, subject to the condition we impose here, the Commission provides itself and All My Sons an opportunity to avoid further, potentially protracted and expensive litigation, review and appellate process. The parties' settlement represents a compromise of their positions, and allows them to avoid the expense, inconvenience, uncertainty, and delay associated with ongoing adversarial proceedings. The Settlement Agreement addresses the Company's violations and provides mitigation of penalties for certain violations. The proposed Settlement Agreement, as conditioned, is fair and in the public interest. The Commission concludes that it should approve and adopt the conditioned Settlement Agreement as a full resolution of the disputed issues pending in Docket TV-050537.

⁶ Staff Audit Report at 5, 18-19.

FINDINGS OF FACT

16 Having discussed above all matters material to our review, we now make the
following summary findings of fact, incorporating by reference pertinent portions of
the preceding discussion:

17 (1) The Washington Utilities and Transportation Commission is an agency of the
State of Washington vested by statute with the authority to regulate public
service companies, including companies that hold authority to transport
household goods in the state of Washington for compensation.

18 (2) All My Sons Moving & Storage of Seattle, Inc., is a public service company as
defined in RCW 81.04.010, and holds authority to transport household goods
in the State of Washington for compensation.

19 (3) On September 15, 2005, the Commission issued a penalty assessment of
\$69,600 against All My Sons, alleging 696 violations of Commission rules and
household goods tariff.

20 (4) On June 16, 2006, All My Sons and Commission Staff filed a proposed
Settlement Agreement that, if approved, would resolve all the issues in this
docket.

21 (5) Under the terms of the Settlement Agreement, All My Sons admits to four
hundred and eighteen violations in specific categories and agrees to pay a
penalty of \$40,950.

22 (6) All My Sons' compliance history shows a pattern of significant numbers of
customer complaints and possible violations occurring over a long period of
time, including periods both before and after the periods investigated in
connection with Penalty Assessment No. TV-050537.

- 23 (7) Paragraph 6 of the Settlement Agreement is a safe-harbor provision that could preclude Commission sanctions with respect to possible violations by All My Sons that are outside the periods covered by Penalty Assessment No. TV-050537.

CONCLUSIONS OF LAW

24 Having discussed above all matters material to its review, and having stated findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed discussion:

- 25 (1) The Commission has jurisdiction over the subject matter of and parties to this proceeding.
- 26 (2) When a company's compliance history shows a pattern of significant numbers of violations over a long period of time, a safe-harbor provision in a settlement agreement that would preclude Commission sanctions for violations undiscovered at the time of the agreement is contrary to the public interest.
- 27 (3) The Commission should approve and adopt the proposed Settlement Agreement, attached to this Order as Appendix A, and incorporated by this reference as if set forth in full in the body of this Order, as a reasonable resolution of the issues presented subject to the condition that paragraph 6, a safe-harbor provision, is rejected and therefore is null and void.
- 28 (4) The Commission should order All My Sons to pay penalties in the amount of \$40,950 according to the payment plan set forth in paragraph 5 of the Settlement Agreement.
- 29 (5) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

30 THE COMMISSION ORDERS THAT:

- 31 (1) The Settlement Agreement filed by All My Sons and Commission Staff on
June 16, 2006, which is attached to this Order as Appendix A and incorporated
by reference into the body of this Order, is approved and adopted subject to
the condition that paragraph 6 is rejected and is null and void.
- 32 (2) All My Sons must pay penalties in the amount of \$40,950 according to the
payment plan set forth in paragraph 5 of the Settlement Agreement.
- 33 (3) It retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective September 13, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

Appendix A