

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

In the Matter of the) DOCKET TV-050537
)
PENALTY ASSESSMENT AGAINST) ORDER 06
ALL MY SONS MOVING &)
STORAGE OF SEATTLE, INC.) APPROVING REVISED
) SETTLEMENT AGREEMENT
.....)

MEMORANDUM

- 1 **PROCEEDINGS.** Administrative Law Judge Karen Caillé recommended in an Initial Order entered on July 10, 2006, that the Washington Utilities and Transportation Commission (Commission) approve a proposed settlement agreement between All My Sons Moving & Storage of Seattle, Inc. (All My Sons), and Commission regulatory staff (Staff) to resolve the issues in this proceeding.¹ On informal review the Commission found one provision in the settlement unexplained and unsupported by any information in the record. Specifically, paragraph 6 of the agreement appeared to be a safe-harbor provision covering possible violations by All My Sons that may not have been scrutinized by Staff.

- 2 The Commission undertook administrative review on its own motion and entered its Order on Review, Order 03, on September 14, 2006. We observed in Order 03 that the Commission’s power to assess penalties when policing violations of statutes and rules is essential to its ability to carry out its fundamental responsibility to regulate in the public interest.

- 3 We concluded in Order 03 that the Commission should not approve a provision such as the safe-harbor provision that would preclude the Commission from assessing penalties for violations that have not yet been closely scrutinized or perhaps even discovered. Accordingly, we approved the settlement as a reasonable resolution of

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

the issues presented, subject to the condition that the safe-harbor provision was rejected and, therefore, null and void.

4 All My Sons filed its Petition for Reconsideration on September 21, 2006. The company requested that the Commission approve the settlement without condition. The Commission, in Order 04, denied the petition. However, we pointed out in Order 04 that the parties, upon notice to the Commission, could reopen negotiations to discuss whether the safe-harbor provision might be replaced with a more narrowly drawn term that identifies specific violations outside the penalty assessment period which Staff agrees not to pursue.

5 The parties gave notice of their intention to reopen negotiations and, on December 19, 2006, filed their revised settlement agreement. The parties state in their Narrative Supporting Revised Settlement Agreement that the agreement is identical to the previous one except for the safe-harbor provision. The revised agreement replaces the safe-harbor provision with more narrowly drawn language that identifies specific violations for which Staff has agreed not to pursue penalties.

6 **DISCUSSION AND DECISION.** The revised settlement identifies four specific complaints filed with the Commission during the period March through June 2005 and states that Staff has agreed not to pursue penalties for violations associated with these complaints.² All of the violations occurred before the Commission served Penalty Assessment TV-050537 on September 15, 2005. The Commission issued all of these violations, except four, prior to the date of the penalty assessment. The four exceptions were issued two weeks after service of the penalty assessment and only one day after All My Sons filed its request for a hearing.

7 Considering the timing of the violations identified in the revised settlement, it appears Staff was aware of them and made a reasonable concession in the context of a settlement in agreeing not to pursue penalties for these specific violations. We observe, too, that the Settlement Agreement does not preclude the Commission from pursuing penalties for violations of statutes and Commission rules unrelated to the

² The Settlement Agreement identifies as violations Staff agrees not to pursue those associated with commission complaint number 92499, which occurred in March and May of 2005; the violations associated with commission complaint number 93714, which occurred in April and May of 2005; the violations associated with commission complaint number 94190, which occurred in June of 2005; and the violations associated with commission complaint number 94126, which occurred in April of 2005.

subject matter of the settlement or for subsequent violations of the statutes and rules identified in the parties' agreement.

- 8 We determine Commission approval of the revised settlement agreement is in the public interest and that it should be adopted as a full resolution of the issues pending in this proceeding.

ORDER

THE COMMISSION ORDERS THAT:

- 9 (1) The parties' settlement agreement, filed on December 19, 2006, attached as an appendix to this order and incorporated by reference into the body of this order, is approved and adopted in full resolution of the issues in this proceeding.
- 10 (2) Jurisdiction remains in the Commission to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective January 23, 2007.

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