

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GERTRAUDE M. TAUT,

Complainant,

v.

ALL MY SONS MOVING & STORAGE,

Respondent.

DOCKET NO. TV-021248

REPLY COMMENTS ON
BEHALF OF COMMISSION
STAFF

I. INTRODUCTION

1 A brief adjudicative proceeding (BAP) was held at the Commission's offices in Olympia on November 8, 2002. The Administrative Law Judge entered an Initial Order on November 18, 2002. The complainant, Gertraude Taut, filed comments on December 2, 2002, and All My Sons, respondent, filed comments on December 9, 2002. Commission Staff now responds to the comments filed.

II. STORAGE COSTS

2 Comments filed by Ms. Taut indicate that she believes storage costs will be \$330 per month. Staff's recommendation at the hearing was for Ms. Taut to pay

\$330¹ per month, pro rated from September 27, 2002. However, the Administrative Law Judge (ALJ) determined that All My Sons should charge storage in transit (SIT) rates consistent with Tariff 15-A, Item 100.

3 There is contradicting evidence on Ms. Taut's intent regarding the destination of her shipment. See Exhibit 9 (letter from Ms. Taut to All My Sons dated April 22, 2002) and Exhibit 15 (Washington UTC Complaint); Exhibit 3 (March estimate). The assessment of weight and credibility of evidence is well within the ALJ's discretion.

III. OFFER OF ADDITIONAL TESTIMONY

4 In its comments, All My Sons offered additional testimony regarding the *Rights and Responsibilities Brochure* and the appropriate storage fees. The additional testimony is not properly before the Commission because the evidentiary record is closed. A hearing was held, and parties had the opportunity to present evidence. Allowing parties to offer evidence after the evidentiary phase has concluded is inconsistent with notions of judicial efficiency and finality. The time to offer evidence is past.

5 Under WAC 480-09-500(9), the record of a BAP consists of documents considered or created by the presiding officer or the review officer. The presiding officer prepares an initial order, which becomes final only if the Commission adopts it by order. WAC 480-09-500(3) and (4).

¹ Staff based the figure on Company's \$55.00 per crate permanent storage rate. Staff used the Company's

6 Review of the initial order is permitted under RCW 34.05.464(4) and WAC
480-09-500(5). A review officer may not go outside the record or admit additional
evidence, unless the agency has adopted regulations explicitly allowing such action.
RCW 34.05.464; *C.M. Towle v. Dept. of Fish and Wildlife*, 94 Wn. App. 196, 205, 971
P.2d 591 (1999). Here, the Commission has not adopted explicit regulations
allowing a review officer to consider new evidence when reviewing an initial order.
See WAC 480-09-500; *see also* WAC 480-09-780. Thus, while the review officer may
reach different factual and legal conclusions, review must be based on the same
record as considered by the presiding officer. *Towle*, 94 Wn. App. at 206.

7 The additional evidence offered should not be considered.² Comments
regarding the existing record are properly before the Commission for consideration.

IV. DETAILED BILLING

8 In her comments, Ms. Taut requests a detailed billing be provided for a
number of items.

9 **Moving Charges.** The Initial Order provides detail regarding how the
moving charges are to be calculated. *Taut v. All My Sons & Storage*, Docket No. TV-
021248, Initial Order On Brief Adjudicative Proceeding at ¶ 54 (November 18, 2002).

original estimate of six crates, rather than the seven crates Ms. Taut ultimately needed.

² The review officer does have discretion to remand the matter for further proceedings if deemed necessary.
RCW 34.05.464.

10 **Storage Fees.** All My Sons should inform Ms. Taut and the Commission of the amount it will charge for SIT. Tariff 15-A, Item 100 sets minimum and maximum rates per 100 pounds. The charges must be within these limits.

11 **Wooden Crates.** The wooden crates used in storage are not usually left at a shipper's destination. They are either unloaded at the storage facility onto a truck or unloaded at the destination site. The tariff does, however, outline "warehouse handling in" and "warehouse handling out" charges that may apply to this case. Tariff 15-A, Item 100. The Company should inform Ms. Taut and the Commission of what charges will apply and the amount of those charges.

12 **Delivery of Household Goods.** The Initial Order explicitly stated that Ms. Taut is responsible for the costs of moving her shipment out of storage. *Taut v. All My Sons*, Docket No. TV-021248, Initial Order at ¶¶ 75, 80. Ms. Taut has the responsibility of arranging this delivery.

13 **Use of Another Moving Company.** If Ms. Taut intends to use a different moving company to ship her household goods from storage, she has the responsibility of making arrangements with the other company. Liability is outlined in the tariff. Tariff 15-A, Item 25, Item 90.

14 **Cost for Furniture Left on March 26-27, 2002.** Ms. Taut arranged for another moving company to move the remaining furniture into storage. See Exhibit 9 (letter from Ms. Taut to All My Sons dated April 22, 2002). She now seeks damages. The

Commission does not have jurisdiction to grant damages of this nature.³ Ms. Taut would need to bring this claim before a court of competent jurisdiction if she wishes to pursue it.

V. DAMAGES UNDER RCW 81.04.440⁴

15 Ms. Taut now seeks damages under RCW 81.04.440. Ms. Taut does not seek relief that the Commission can grant. RCW 81.04.440. Therefore, her claim for damages is not appropriately before the Commission.

16 Administrative agencies, such as the Commission, have only those powers expressly granted to them and those necessarily implied from their statutory delegation of power. *Tuerk v. Dept. of Licensing*, 123 Wn.2d 120, 124-125, 864 P.2d 1382 (1994). The Commission may order companies to pay penalties based on violations under RCW 81.04.380 and RCW 81.04.405. All fines and penalties collected under Title 81 RCW are to be paid into the state treasury. RCW 81.04.400. The Commission may also order companies to refund excess charges to customers under RCW 81.04.220 and RCW 81.04.230, but this relief is not applicable here because All My Sons has not received payment. *Taut v. All My Sons*, Docket No. TV-021248, Initial Order at ¶ 38.

³ See argument under Section V below.

⁴ Ms. Taut cites RCW 80.04.440, which is identical to RCW 81.04.440. However, Title 80 RCW does not apply to household goods carriers because it applies to public utilities. Title 81 RCW applies to transportation companies.

17 The Commission lacks jurisdiction to grant relief under RCW 81.04.440. Ms. Taut must bring her claim in a court of competent jurisdiction if she wishes to pursue it.

VI. CANCELLATION OF OPERATING PERMIT

18 Ms. Taut seeks the cancellation of All My Sons' operating permit for the first time in her comments. This is not an appropriate request. The issue of cancellation goes beyond the scope of the current proceedings.

19 A complaint must include the grounds for the complaint and the relief requested. WAC 480-09-420(5)(b). The complaint must include the relevant facts and statutes or rules. *Id.* The complaint in this case did not include cancellation of the Company's operating permit. *See Taut v. All My Sons*, Docket No. TV-021248, Formal Complaint (September 27, 2002). It is not appropriate to introduce new issues after a proceeding has concluded.

VII. REQUEST FOR FORMAL HEARING

20 A hearing was held in this proceeding, during which the ALJ received extensive oral comments and thoroughly reviewed the evidence with the parties.

//

//

The parties were given the opportunity to respond to the evidence and comments.

Another “formal hearing” is unnecessary to address the issues raised in this docket.

DATED this 18th day of December, 2002.

CHRISTINE O. GREGOIRE
Attorney General

LISA WATSON
Assistant Attorney General
Washington Utilities and
Transportation Commission
(360) 664-1186