

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY ASSESSMENT
AGAINST CAVLOGIX CORPORATION,
D/B/A TEMPSTORE MOVING
COMPANY, in the amount of \$3,100

DOCKET NO. TV-051913

COMMISSION STAFF'S RESPONSE TO
TEMPSTORE MOVING COMPANY'S
APPLICATION FOR MITIGATION

1 Pursuant to WAC 480-07-370(1)(c), commission staff submits this response to
TempStore Moving Company's Application for Mitigation.

I. BACKGROUND

2 The Washington Utilities and Transportation Commission (commission) assessed
penalties totaling \$3,100 against TempStore Moving Company (TempStore) in a Notice
of Penalties served on January 4, 2006. The penalties were assessed for 31 alleged
violations of various provisions of chapter 480-15 WAC and Commission Tariff 15-A,
which prescribe commission rules applicable to household goods carriers. On January
13, 2006, TempStore filed an Application for Mitigation of Penalties (Application).

3 TempStore operates in Washington as a household goods carrier under Permit
No. HG60620. For 2004, TempStore reported gross intrastate operating revenues of
approximately \$123,000.¹

4 In September of 2004, Business Practices Investigations Staff (staff) began an
audit of TempStore's business practices.² This audit culminated in a December 2004
report titled "Cavlogix Corporation d/b/a TempStore Moving Company Staff
Investigation."³ In that report, staff outlined each area in which TempStore's business

¹ Declaration of Betty Young, Attachment B (Post-Audit Review of the Business Practices of Cavlogix Corporation d/b/a TempStore Moving Company) at page 9.

² Declaration of Betty Young, Attachment B at page 9.

³ Declaration of Betty Young at ¶5; see Attachment A.

practices failed to comply with state laws and commission regulations and recommended actions to bring TempStore into compliance.⁴ TempStore submitted a compliance plan on February 2, 2005.⁵ Commencing in August of 2005, staff conducted a follow-up audit.⁶ The audit indicated that TempStore was out of compliance with a number of commission rules and tariff items.⁷ In November of 2005, staff documented the results of this audit in a report titled “2005 Post-Audit Review of the Business Practices of Cavlogix Corporation d/b/a TempStore Moving Company” (second audit report).⁸

II. ARGUMENT

5 In its Application for Mitigation of Penalties, TempStore contests the validity of three of the penalty items, and it asks that penalties in seven other areas be reduced or rescinded because the violations were committed by former employees who have since been terminated. Staff supports fully mitigating the penalty associated with the remarks section of the nonbinding estimate form but opposes mitigation of any of the other penalties.

A. The Penalty Assessed in Item #1 Concerning the “Remarks” Section on the Nonbinding Estimate Form Should Be Mitigated.

6 In its Application for Mitigation of Penalties, TempStore disputes that its nonbinding estimate form lacks a “remarks” section.⁹ Specifically, TempStore states that the copy of the nonbinding estimate form submitted to the commission was an

⁴ Declaration of Betty Young, Attachment B at page 9.

⁵ Declaration of Betty Young, Attachment B at Appendix B.

⁶ Declaration of Betty Young, Attachment B at page 9.

⁷ Declaration of Betty Young at ¶7.

⁸ Declaration of Betty Young at ¶5; *see* Attachment B at page 9.

⁹ Application at page 1.

incorrect form.¹⁰ TempStore points out that it used the correct nonbinding estimate form on the move for customer Mackay, as shown on page 63 in staff's report.¹¹

7 Because it appears that TempStore has revised its nonbinding estimate form to include a "remarks" section, the penalty incurred for this violation is not appropriate and should be mitigated.

B. The Penalty Assessed in Item #4 Concerning the Inventory List Is Appropriate.

8 Regarding the penalty assessed for allegedly failing to list the estimated cubic footage of each article on an inventory, TempStore contests the validity of the penalty, claiming that the penalty is based on a list of packing materials rather than on an inventory sheet.¹²

9 This penalty is appropriate. In an email on October 10, 2005, staff specifically requested a copy of the inventory for Ms. Mackay's nonbinding estimate.¹³ The document shown on page 64 of the second audit report is the form staff received from TempStore in response to that request.¹⁴ This form does not list the estimated cubic footage of any of the items. Because staff has received no evidence that the required inventory was completed for this estimate, staff opposes mitigation.

C. The Penalties Assessed for Violations That TempStore Claims Were Caused by Former Employees Should Not Be Excused.

10 In its Application, TempStore claims that a number of violations were committed by two former employees who were terminated for their inability to follow company

¹⁰ *Id.* at page 1.

¹¹ *Id.* at page 1.

¹² Application at page 2.

¹³ Declaration of Betty Young at Attachment C.

¹⁴ *See* Declaration of Betty Young, Attachment B at page 64.

procedures and protocols.¹⁵ Specifically, this claim addresses penalty items 5 through 7, 9, 10, 13, and 14, which concern alleged failures to obtain necessary signatures, properly fill out the bill of lading, and exclude a lunch break from the charges.

11 While staff recognizes TempStore’s efforts to employ competent employees and dismiss unreliable ones, at the end of the day it remains the company’s responsibility to ensure the compliance of all of its employees with applicable laws and regulations. Furthermore, the company has received technical assistance from staff on all of these types of violations in the form of the initial audit. In its compliance plan, TempStore stated that its response was a “plan to correct each of the violations and provide training to staff in order to correct the problem.”¹⁶ Specific responses follow:

- “The estimator will be instructed to obtain a signature from the customer on the estimate form” (reference alleged violation in penalty item #5);
- “Lead person and/or driver will be instructed to make sure they sign the bill of lading indicating receipt of the customer’s goods” (reference alleged violation in penalty item #6);
- “TempStore will ensure employees list the name of the consignee on the bill of lading” (reference alleged violation in penalty item #7);
- “Training will be provided to staff to ensure they list the exact address of the shipment or any part of the shipment that was unloaded or loaded” (reference alleged violation in penalty item #9);
- “Training will be provided to staff to ensure the customer initial the type of estimate (binding or nonbinding) on the bill of lading, when a customer requests a written estimate” (reference alleged violation in penalty item #10);
- “Employees have been instructed to record on the bill of lading all breaks and interruptions so the customer is not charged for this time” (reference alleged violation in penalty item #13); and
- In response to staff’s recommendation that the company list on the bill of lading specific information necessary to bill the customer the correct rates and charges, including total mileage, TempStore stated, “Staff will be trained to ensure all necessary information is listed on the bills of lading” (reference alleged violation in penalty item #14).¹⁷

¹⁵ Application at pages 1–2.

¹⁶ Declaration of Betty Young, Attachment B at Appendix B.

¹⁷ Declaration of Betty Young, Attachment B at Appendix B.

12 From these responses it is evident that with regard to each of the penalty items addressed above TempStore was on notice of compliance problems. Because TempStore should not be excused from its responsibility to ensure the compliance of all of its employees, these penalties should not be mitigated.

D. The Penalties Assessed in Item #8 Concerning Storage-in-Transit Inventory Are Appropriate.

13 Under penalty item 8, the commission assessed penalties for TempStore's alleged failure to include four required items on a storage-in-transit (SIT) inventory. The four required items are listed in the second audit report: (1) the number of the bill of lading under which the shipment is moving, (2) the condition of each article when it was forwarded from the warehouse, (3) the dates when all charges, advances, or payments were made or received, and (4) the date the shipment was forwarded from the warehouse.¹⁸

14 In its Application, TempStore ostensibly explains the alleged violations by describing the circumstances responsible for the lack of a customer signature and a destination address on the SIT inventory. The explanation, however, is not responsive to the violations alleged. Consequently, staff does not support mitigation.

III. CONCLUSION

15 Staff supports mitigating the penalty associated with the "remarks" section of the nonbinding estimate form but opposes mitigating any of the remaining penalties. Accordingly, staff requests that TempStore's Application for Mitigation of Penalties be granted in part and denied in part.

¹⁸ Declaration of Betty Young, Attachment B at page 19.

Dated this 1st day of February 2006.

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