

[Service Date February 28, 2006]

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

In the Matter of Penalty Assessment)	DOCKET NO. TV-051913
Against)	
)	ORDER NO. 01
CAVLOGIX CORPORATION, d/b/a)	
TEMPSTORE MOVING COMPANY,)	
)	COMMISSION DECISION
In the Amount of \$3,100.)	GRANTING
)	MITIGATION, IN PART
.....)	

1 This matter involves a penalty that the Commission assessed against Cavlogix Corporation, d/b/a TempStore Moving Company (TempStore) on January 4, 2006, under RCW 81.04.405. TempStore petitioned on January 13, 2006, for mitigation of portions of the penalty, but did not request a hearing on its petition. We review the petition on the basis of the pleadings and parties' written statements.

I. BACKGROUND

2 TempStore operates in Washington as a household goods carrier under Permit No. HG-60620. For 2004, TempStore reported gross intrastate operating revenues of approximately \$123,000.

3 In the fourth quarter of 2004, the commission's Business Practices Investigations Staff (staff) audited TempStore's business practices. This audit resulted in a December 2004 report titled "Cavlogix Corporation d/b/a TempStore Moving Company Staff Investigation." The report outlined several areas in which TempStore's business practices violated state laws and commission regulations, and recommended actions to bring TempStore into compliance. Commission

staff member provided technical assistance to the company to assist in identifying problems and in resolving them. In response, TempStore submitted a compliance plan on February 2, 2005.

4 Staff conducted a follow-up audit commencing in August, 2005. The audit indicated that TempStore was out of compliance with a number of commission rules and tariff items. In November 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).

5 As a result of the second audit report, the commission assessed penalties totaling \$3,100 for 31 violations of rule and tariff against TempStore Moving Company in a Notice of Penalties served on January 4, 2006. On January 13, 2006, TempStore filed an Application for Mitigation of Penalties (Application). Staff responded, agreeing to mitigate one penalty that appeared to have been assessed in error. It opposed mitigation of remaining penalties. TempStore replied, proposing that if its petition were denied, it be allowed to pay the penalties over the course of a year. Staff supports the proposal.

II. DISCUSSION AND DECISION

6 TempStore acknowledges responsibility for eleven of the 31 violations, but asks mitigation, in whole or in part, of others. It contests the validity of three of the penalty items, and it asks that 17 penalties in seven other areas be reduced or rescinded because the violations were committed by two former employees who have since been terminated.

7 One violation was assessed for use of an improper form. TempStore demonstrated that it did use the proper form for the move in question. Staff supports mitigating the penalty associated with that asserted violation. The Commission agrees, and mitigates the penalty to zero.

- 8 One penalty was assessed for failure to estimate the volume of items to be moved. TempStore asks mitigation, pointing out that the form it submitted is an inventory form that does not call for an estimate of shipment volume. Commission staff responds that TempStore has nonetheless failed to demonstrate that it prepared an estimate of shipment volume, as required by regulation. *WAC 480-15-650(2)(i)*. The Commission denies this petition for mitigation.
- 9 Under penalty item 8, the commission assessed a penalty for TempStore's failure to include four required items on a storage-in-transit (SIT) inventory: (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.
- 10 In its Application, TempStore explains the alleged violations by describing the circumstances responsible for the lack of a customer signature and a destination address on the SIT inventory. This explanation, however, is not responsive to the violations alleged. Staff therefore opposes mitigation. The Commission agrees that TempStore did not provide an excuse for the violations, and that it has not supported mitigation.
- 11 The remainder of the mitigation sought in TempStore's Application is based on its contention that the violations were committed by two former employees who were eventually terminated for their inability to follow company procedures and protocols. 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.

- 12 Staff recognizes TempStore's need, and its efforts, to employ competent employees and dismiss unreliable ones. It argues, however, that the company still has the responsibility to ensure its compliance with all of the applicable laws and regulations. Staff points out that it provided technical assistance on these types of violations in the course of the initial audit. TempStore acknowledged this in its compliance plan, which addressed the specific items for which penalties were later assessed. Staff consequently opposes mitigation of these penalties.
- 13 We believe that TempStore is sincere in its desire to hire and retain competent people, and have sympathy for its challenges in doing so. However, the requirements of the tariff and the rules are designed to ensure that the shipping public receives the service it is entitled to, at the charges appropriate, under paperwork that complies with requirements and provides information fully supporting legal requirements. TempStore's obligation is, as ours, to ensure that the shipping public gets the service it is entitled to.
- 14 TempStore received technical assistance on the violations at issue, and pledged in its compliance plan to ensure that violations would not recur. It is the company's obligation to monitor and counsel employees to ensure that the customer has the benefit of compliance.
- 15 We grant mitigation in full of one of the penalties, finding that TempStore demonstrates compliance as to the asserted violation. As to the remainder, we deny mitigation, considering the extensive technical assistance, the company's prior recognition of the problems in these areas and the need to comply, and the company's filed compliance plan that pledged compliance. These are not isolated occurrences, but repetitious violations of long-standing concern.

16 We understand the Company's financial situation and grant the request for
payment over time of the assessed penalties. Thirty violations are found, with a
total penalty of \$3,000 payable at the rate of at least \$250 per month, with the first
17 payment due on the fifteenth day of March, 2006, and thereafter on the fifteenth
day of each subsequent month until the entire penalty is paid. Petitioner may
pay more than the amount then due. If the Commission receives payment later
than the due date (except for reasons beyond the control of the petitioner), the
entire balance will be due fifteen days after service of a notice to petitioner of the
Commission's failure to receive timely payment.

III. ORDER

17 The Commission grants in part and denies in part TempStore's application for
mitigation. One penalty is mitigated in full in the amount of \$100; no other
penalties are mitigated.

18 The Commission imposes penalties for 30 violations in the amount of \$100 each
for a total amount of \$3,000.

19 The Commission grants petitioner's request to pay penalties over the course of a
year, allowing monthly payments of at least \$250 beginning March 15, 2006 and
continuing thereafter as provided in this order.

DATED at Olympia, Washington, and effective this 28th day of February, 2006.

WASHINGTON 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.