

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

In the Matter of Penalty Assessment)	DOCKET TE-080282
Against)	
)	
GENIE SERVICE COMPANY, INC.,)	ORDER 01
in the Amount of \$1,200)	
)	DENYING APPLICATION FOR
)	MITIGATION
.....)	

MEMORANDUM

- 1 **Penalty:** On February 22, 2008, the Washington and Utilities Transportation Commission (Commission) assessed a penalty in the amount of \$1,200 against Genie Service Company, Inc., (Genie) for 12 alleged violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference Title 49, CFR, including Parts 391 and 395 regarding driver qualifications and drivers' qualification files and drivers' hours of service. Revised Code of Washington (RCW) 81.04.405 allows the Commission to assess penalties of up to \$100 for every violation. The notice of penalty assessment informed Genie that the company had 15 days to pay the penalty, request a hearing, or request mitigation.

- 2 **Factual Basis:** On November 26, 2007, the Motor Carrier Safety Section Staff (Staff) conducted a compliance review at Genie as part of a plan to monitor the company's overall compliance with the Commission's safety rules and regulations as required by Commission Order in Docket TE-061753.¹ Staff found one violation of failing to maintain inquiries into driving records in driver's qualification files and three violations of requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours. These four violations are identical to violations previously identified in a September 2006 compliance review. In addition, Staff found one violation of failing to maintain inquiries into driver's employment record in driver's qualification file, three violations of failing to maintain the responses to each state agency to the annual driver record inquiry, and four violations

¹ Order 02, entered April 19, 2007.in Docket TE 061753, *In the Matter of the Penalty Assessment Against Genie Service Company, Inc.*

of requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.

- 3 **Request for Mitigation:** On March 13, 2008, the Commission sent Genie a delinquency letter advising the company that it had not responded to the penalty assessment within the 15 days allowed by the Notice of Penalty Assessment. The delinquency letter further advised Genie that the \$1,200 penalty was due and payable immediately and that if payment was not received by March 20, 2008, the Commission would consider additional sanctions.
- 4 On March 17, 2008,² Genie filed an application for mitigation and requested a hearing for a decision by an administrative law judge. Genie did not state any reasons why the penalty should be reduced.³
- 5 On March 24, 2008, Staff filed a response to the application for mitigation. Staff asserted that Genie failed to timely submit its application to the Commission. Staff stated that Genie signed for the penalty assessment on February 25, 2008, and provided a copy of the return receipt on file in this case. Therefore, the deadline for submitting an application for mitigation was March 11, 2008. The penalty has not been paid to date. Staff opposed the application for mitigation because it was not timely filed. In the alternative, should the Commission wish to consider the application, Staff recommended that the Commission hear this matter as a Brief Adjudicatory Proceeding.
- 6 **Decision:** The Commission denies the application for mitigation because it has two defects: (1) it was not filed by the deadline required by the notice of penalty assessment; and (2) the application for mitigation does not contain any reasons why the Commission should reduce the penalty. The Commission establishes deadlines to ensure that all similarly-situated companies are treated in the same manner. Requiring a company to state reasons to reduce a penalty allows the Commission to reasonably and intelligently rule on a request for mitigation or schedule additional proceedings to address the request. In this case, Genie neither filed in a timely manner nor stated reasons why the Commission should consider a penalty reduction.
- 7 The applicable portions of Title 49 CFR §§391.51(b)(2) and (b)(4) provide that the qualification file for a driver **must** include a copy of the response by each State

² The deadline for filing an application for mitigation was March 11, 2008.

³ The form attached to the Notice of Penalty Assessment clearly states that if you request mitigation, you must state the reason(s) why the penalty should be reduced.

agency concerning a driver's driving record and the response by each State agency concerning the annual driving record required by Title 49 CFR §§391.23(a)(1) and 391.25(a), respectively. These requirements are mandatory, not discretionary, and aid a motor passenger carrier in determining the fitness of a driver to transport passengers. As such, they are not ministerial functions; they are important provisions that ensure that drivers are operating motor vehicles in a safe and responsible manner.

8 Even more important are the violations regarding the maximum driving time for passenger-carrying commercial vehicles set forth in Title 49, CFR §395.5(a)(1) and (2). These provisions provide, in pertinent part, that a company "shall not permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle more than 10 hours following 8 consecutive hours off duty; or for any period after having been on duty 15 hours following 8 consecutive hours off duty." Again, these regulations are mandatory, not discretionary, and are an integral part of providing commercial motor carrier service in a safe and responsible manner. Drivers who have exceeded the maximum driving time are presumed to be too fatigued and/or inattentive to operate vehicles in a safe manner. It is apparent that the restriction on hours of operating commercial motor vehicles is designed to ensure that business is conducted in a manner that protects the public. The public includes not only those individuals who choose to avail themselves of passenger service but also the members of the public who may be traversing public roadways at the same time as commercial motor carriers.

9 The Commission is very concerned because four of these violations are identical to violations revealed during a previous audit, in September 2006,⁴ of Genie's operations. The repetitive nature of violations appears to demonstrate that Genie does not conduct its operations in a manner designed to ensure compliance with these regulations. Accordingly, it is appropriate to assess a penalty in the amount of \$1,200. The penalty is due and payable, in full, within seven days of the date of this Order.

10 Finally, Genie was informed that if it failed to pay the \$1,200 penalty by March 20, 2008, the Commission would consider additional sanctions. The Commission should institute a proceeding to consider whether Genie's certificate should be suspended for cause. According to WAC 480-30-171, the Commission may suspend a certificate for cause including the failure or refusal to comply with "operating standards that protect

⁴ Docket TE-061753.

the public health, safety, or welfare”⁵ or “repeated failure or refusal to comply with . . . rules pertaining to operations of passenger transportation companies.”⁶ . A separate proceeding should be opened to consider suspension of Genie’s certificate.

11 It is so ordered.

12 The Commissioners have delegated authority to the Executive Secretary to enter this Order pursuant to RCW 80.01.030 and WAC 480-07-905(1)(h).

Dated at Olympia, Washington, and effective May 14, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN
Executive Secretary

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.

⁵ WAC 480-30-171(1)(e).

⁶ WAC 480-30-171(1)(h).