

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment Against
GENIE SERVICE COMPANY, INC. in the
Amount of \$1,400

DOCKET NO. TE-061753

DECLARATION OF
JOHN FOSTER

JOHN FOSTER, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as Motor Carrier Law Enforcement (MCLE) Special Investigator in the Motor Carrier Safety Section. I have been employed at the Commission for over 20 years, holding various positions. As an MCLE Special Investigator, my responsibilities include performing safety inspections, economic investigations, and other related motor carrier activities in a Commission program which regulates transportation activities.
3. On August 21, 2006, I contacted Daniel Carter, Chief Financial Officer of Genie Service Company, Inc. (Genie) by telephone and advised him that I had received an assignment to conduct a safety compliance review on his company. Arrangements were made to conduct the review at Genie's terminal on September 25, 2006. At this time Mr. Carter did not advise me that he had moved his terminal from West Richland to Richland.
4. On September 25, 2006, accompanied by MCLE Special Investigator Tom McVaugh, I attempted to contact Mr. Carter at the address of record for Genie, 4083 West Van Giesen, West Richland, WA 98353. When we arrived at this address we found the building occupied by another business. I attempted to contact Mr. Carter at the telephone number on record with the Commission and found this number to be disconnected with no new number provided. I contacted Licensing Services at the Commission and was advised that no change of address or telephone number for Genie had been submitted. Investigator McVaugh inquired in the current business and was told that Genie had moved to a location at the Richland airport. We then drove to the Richland airport and found Genie's terminal and contacted Mr. Carter at 1846 Terminal, Suite 101, Richland, WA 99352.

5. I inspected the carrier's records for the period of September 25, 2005, through September 24, 2006. Upon completion of my investigation, I determined that Genie was in violation of Commission safety rules regarding drivers' hours of service, driver qualifications, and vehicle maintenance. These violations included the following:
 - Two violations for failing to maintain inquiries into driver's driving record in driver's qualification file.
 - Seven violations for failure to require a passenger-carrying commercial motor vehicle driver to prepare a record of duty status.
 - Two violations for requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours following eight consecutive hours off duty.
 - One violation for requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.
 - One violation for failure to maintain parts and accessories in safe and proper operating condition.
6. In addition, there was also one violation for failure to notify the Commission of a change of address and telephone number.
7. As a result of the inspection, a "conditional" safety rating was issued. A conditional safety rating issues when a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard. To meet the safety fitness standard and get a "satisfactory" rating, the motor carrier must demonstrate it has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements. This was the third conditional rating Genie has received from five compliance reviews conducted by Commission personnel in the past five years.
8. On December 4, 2006, the Commission issued a Penalty Assessment in the amount of \$1,400 to Genie in Docket No. TE-061753 for these violations. Genie was required to respond within 15 days to the penalty.
9. On December 11, 2006, Genie filed a request for a mitigation hearing but did not state any reasons for mitigation. The Commission subsequently required Genie to state its reasons for mitigation by January 25, 2007.
10. The Commission received Genie's response on January 24, 2007.
11. The request for mitigation was signed by Dan Carter, Chief Financial Officer for his company. Mr. Carter requests mitigation of the penalty based on a number of issues. Each issue is addressed below.

12. Driver's Driving Record
 - Genie states that it will review each driver's driving record in June of each year.
 - These penalties should not be mitigated because Genie had received prior technical assistance on this issue during inspections conducted on July 25, 2001, and November 3, 2004. MCLE staff notified Mr. Carter during these inspections that driver records must be reviewed to ensure that all drivers are still qualified to drive and that any driver without this review will remain in violation until it has been conducted.

13. Duty Status Records
 - Genie states that during the first half of 2006 over 50% of his drivers' hours were within 100 miles.
 - These penalties should not be mitigated because the record of duty status penalties were issued for failing to prepare drivers logs as required when not meeting the requirements of the 100 air mile exemption and while operating over 100 air miles.

14. Ten-Hour Driving Rule
 - Genie stated that drivers sometimes exceed the 10 hour driving rule due to weather, road and traffic conditions.
 - While the federal rules do allow extra driving time for adverse driving conditions (defined as snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions), when none of these were apparent or known to the person dispatching the run at the time it was begun, Mr. Carter provided no documentation or explanation concerning the existence of any adverse conditions. Adverse weather conditions are not likely in August, and Genie travels to Seattle regularly and should be aware of normal traffic conditions. Because there is no evidence of the presence of adverse conditions, mitigation of these penalties is not appropriate.

15. Seventy-Hour Duty Rule
 - Genie stated that the driver exceeded the 70-hour rule because of a request made by a client.
 - Genie should not allow its customer preferences to control its compliance with safety regulations. The fact that the company exceeded the 70-hour rule to please a customer does not excuse the violation or justify mitigation.

16. Push-Out Window Inspection
 - Genie states that one bus was not offered for service for one year and missed its push out window inspection.
 - Mitigation is not appropriate on this basis because no penalty was issued for push out window violations. The Commission issued the violation of CFR 49, Part 396.3(a)(1), which requires parts and accessories to be in

safe and proper operating condition all times, because the low air warning device for the braking system in one of Genie's vehicles was inoperable.

17. Notification of Change of Address
 - Genie states that the company was notifying clients, vendors and agencies of its change of address through routine correspondence and there had been none with the Utilities and Transportation Commission.
 - WAC 480-30-041 requires regulated companies to notify the Commission of a change of address or telephone number within 30 days. Genie's address changed on approximately June 1, 2006, and the company never notified the Commission of the address change. The fact that Genie had not happened to correspond with the Commission during the 30 days following its move does not excuse the violation. The company did not present evidence that any circumstances existed that prevented it from complying with the 30-day notification rule. Consequently, mitigation is not appropriate.

18. In addition, Genie states that is it requesting a penalty reduction because the penalty will be a financial hardship and because the company is eager and willing to address all of the issues raised in the penalty assessment. Reduction of the penalty amount is not appropriate for the reasons set out above in response to the other issues in the mitigation request. Genie has been provided with Commission safety guides and rule books, and the carrier has received technical assistance on each of these violations during four previous inspections. Furthermore, the amount of the penalty is appropriate given all of the circumstances.

19. Genie must ensure that its employees are knowledgeable of, and adhere to, applicable safety regulations. This is a requirement of the federal government, appearing in Title 49 of the Code of Federal Regulations, Part 390.3(e)(1), which states that every employer shall be knowledgeable of and comply with all regulations contained in the federal rules applicable to them.

20. I recommend that the Commission deny the company's request for mitigation in full. Genie is responsible for ensuring its employees follow the rules, yet it chose to either require or allow the company's drivers and management to violate them. Mr. Carter's explanations do not justify or excuse the violations.

Dated this 5th day of February, 2007 at Olympia, Washington.

John Foster