

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

In the Matter of the Penalty Assessment)	DOCKET TE-061753
Against)	
)	ORDER 01
GENIE SERVICE COMPANY, INC.)	
)	INITIAL ORDER APPROVING
)	SETTLEMENT AGREEMENT WITH
)	CONDITIONS
.....)	

1 **Synopsis:** *This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final, the Commission will approve the settlement agreement filed by Genie Services Company, Inc. and Commission Staff, with the condition that the company remain free of motor carrier safety rule violations for a period of one year from the date of the final order.*

2 **Nature of proceeding:** This case involves a request for mitigation of the Commission’s penalty assessment against Genie Service Company, Inc. (Genie) for fourteen violations of the Commission’s motor carrier safety rules, WAC 480-30-999.

3 **Procedural history:** The Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Genie on December 4, 2006, in the amount of \$1,400 in connection with fourteen alleged violations of the Commission’s motor carrier safety rules, WAC 480-30-999.

4 On January 24, 2007, Genie requested a reduction in the penalty assessment of \$1,300 and asked for a hearing before an Administrative Law Judge.

5 The Commission set the mitigation request for hearing on February 12, 2007. The parties to the proceeding were Commission Staff and Genie. On February 9, 2007, prior to the hearing, the parties advised the Commission that they had reached a full settlement of the matter.

- 6 **The settlement agreement and supporting narrative:** The parties filed their settlement agreement and a narrative supporting the agreement on February 14, 2007. In the settlement, the company admits the violations enumerated in the penalty assessment (paragraph 6) and agrees to pay a reduced penalty of \$700 (paragraph 6). Genie further agrees to comply in future with all applicable Commission rules and statutes (paragraph 8).
- 7 In the supporting narrative the parties request that, because this is a less complex case, the Commission consider the settlement without need for a hearing and the appearance of witnesses. The parties point out that the settlement serves the public interest because it avoids further unnecessary expenditures of money and resources that would be necessary if they went ahead with a full hearing on the matter.
- 8 **Discussion:** Under WAC 480-07-700, the Commission encourages parties to settle contested cases where it is possible to do so. The Commission reviews settlements to determine whether they serve the public interest, whether the settlement terms are supported by the record, and whether the settlement is lawful. *WAC 480-07-750(1)*. In regulating motor carrier safety, the Commission has an interest in encouraging carriers to abide by Commission safety rules.
- 9 In this instance, the Commission appreciates the parties' efforts to resolve this matter in a way that satisfies the public interest, as well as the interest in judicial economy. However, the settlement as it stands does not fully resolve the Commission's ongoing mandate to promote the public interest and to ensure the safety of the traveling public. In Staff's response to the company's request for mitigation, Staff states that Genie has received three conditional ratings in five compliance reviews over the last five years. *See Declaration of John Foster, ¶ 7*. Staff explains that a carrier is given a conditional rating when the "carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard". *Id.* Based on the record in this proceeding, the Commission's concern is better served by approving the settlement on condition that the remaining \$600 of the original penalty assessment be fully mitigated only after Genie demonstrates that it can remain free of the Commission's motor carrier safety rule violations for one year.
- 10 Staff should audit the company after one year from the date of this order. If the company has committed no further motor carrier safety rule violations, the original penalty will be fully mitigated and the company need pay no more than the \$600, as agreed upon in the settlement. If Staff finds that the company has violated safety

rules during the year, Staff should institute a new penalty assessment that will include the \$700 balance of the original remaining penalty, and penalties associated with the new violations.

ORDER

THE COMMISSION ORDERS THAT:

- 11 (1) The parties' settlement agreement, filed on February 14, 2007, is approved and adopted on condition that Genie remain free of motor carrier safety rule violations for the period of one year from the date of this order.
- 12 (2) Commission Staff should conduct a safety audit one year from the date of this order to determine whether Genie has incurred further motor carrier safety rule violations and should institute a penalty assessment proceeding if Genie has incurred additional violations, including an assessment for the \$600 balance of the original penalty assessment.
- 13 (3) The Commission retains jurisdiction over this matter to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective February 27, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO PARTIES:

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after the service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **10** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
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