

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

In the Matter of the Penalty Assessment	)	DOCKET TE-061753
Against	)	
	)	ORDER 02
GENIE SERVICE COMPANY, INC.	)	
	)	FINAL ORDER DENYING STAFF'S
	)	PETITION FOR REVIEW,
	)	MODIFYING INITIAL ORDER AND
	)	APPROVING SETTLEMENT
	)	AGREEMENT WITH CONDITIONS
.....	)	

1     ***Synopsis:** The Commission denies Staff's petition for administrative review, and modifies the initial order to allow Staff the flexibility to schedule and conduct follow-up compliance reviews of Genie Service Company, Inc. The Commission approves the settlement agreement between the Company and Commission Staff on the condition that the Company remain free of motor carrier safety rule violations for a period of one year from the effective date of this Order.*

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

3     **Procedural history:** After conducting a compliance review of Genie in September 2006, 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 and asked for a hearing before an administrative law judge. In Staff's February 5, 2007, response, Staff opposed mitigation noting that Genie had received three conditional safety ratings in five compliance reviews over the last five years.
- 5 The Commission set the mitigation request for hearing on February 12, 2007. On February 9, 2007, prior to the hearing, Commission Staff and Genie – the only parties to the proceeding – advised the Commission that they had reached a full settlement of the matter.
- 6 The parties filed their settlement agreement and a narrative supporting the agreement on February 14, 2007. In the settlement, the Company admits the violations identified in the penalty assessment and agrees to pay a reduced penalty of \$700. Genie further agrees to comply in the future with all applicable statutes and Commission rules.
- 7 **Initial Order.** On February 27, 2007, Administrative Law Judge Theodora M. Mace entered Order 01, an initial order approving the settlement agreement on condition that the remaining \$700 of the original penalty assessment be fully mitigated only after Genie demonstrates that it can remain free of violations of the Commission's motor carrier safety rules for one year.<sup>1</sup> Given Genie's compliance history, the initial order imposed the conditions finding that the settlement, as it stands, is not consistent with the Commission's mandate to promote the public interest and to ensure the safety of the traveling public.
- 8 The initial order also directs Staff to audit the Company after one year. If, following the audit, Staff finds that 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 \$700. If Staff finds the Company has violated motor carrier safety rules during the year, the order directs Staff to institute a new penalty assessment that will include the \$700 remaining balance of the original penalty and penalties associated with the new violations.

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<sup>1</sup> In paragraphs 6 through 10, the initial order identifies the amount to be paid under the settlement agreement as both \$600 and \$700 and the amount remaining as \$600 and \$700. The original penalty assessment is for \$1400, and the settlement agreement provides that Genie will pay \$700, with \$700 remaining. This order clarifies that the exact amount to be paid under the settlement and the amount remaining are both \$700.

- 9 **Petition for Review.** On March 12, 2007, Staff filed a petition for administrative review of the initial order. Staff does not contest the suspension of the remaining penalty amount, but objects to the language directing when and how Staff should conduct an additional audit of Genie. Staff proposes alternative ordering language. Genie did not file a response.
- 10 **Discussion.** We agree with the finding in the initial order that the settlement agreement as it stands is not consistent with our mandate to promote the public interest and to ensure the safety of the traveling public. Reducing the penalty assessment by half on a promise of future compliance is not sufficient, nor in the public interest, given Genie's compliance history. We uphold the initial order's decision to condition approval of the settlement agreement on Genie's future compliance with the Commission's motor carrier safety rules for a one-year period. We deny Staff's petition, but modify the initial order to allow Staff the flexibility it needs in scheduling and conducting future compliance reviews of the Company.
- 11 Staff raises concerns that language in the initial order limits Staff's procedures for conducting compliance reviews. Paragraphs 9 and 11 of the order require that "Genie remain free of motor carrier safety rule violations for a period of one year from the date of this order." The order also requires Staff to audit the Company after one year. Staff requests the Commission modify the timing of the review directed in the initial order to allow Staff the flexibility to schedule compliance reviews and rechecks. Staff states that it plans to conduct a compliance review of the Company this summer, rather than wait for a full year.
- 12 Staff also asserts that the specific software program it uses for compliance reviews precludes Staff from conducting an audit after one year. This program, also used by the Washington State Patrol and the Federal Motor Carrier Safety Administration, relies on random sampling of data already in the system – specifically data from the last audit six months ago. As a result, Staff asserts that the records for review would comprise only six months of data, not a year's worth, as the initial order requires.
- 13 We interpret the initial order to require that Genie demonstrate its compliance with motor carrier safety rules for a one-year period and that Staff audit the Company to determine the Company's compliance during the year. Staff may conduct compliance reviews using any method or schedule during the one-year period that Staff believes is appropriate. Regardless of the method, schedule or number of reviews Staff

conducts, however, we require that Genie remain free of violations for a one-year period. It is critical for the safety of the traveling public that Genie demonstrates its ability and effort to comply with motor carrier safety rules for a substantial period of time. If Staff finds Genie in violation of motor carrier safety rules at any time during the one-year period, Staff must institute a penalty assessment proceeding for any violations, including an assessment for the \$700 remaining balance of the original penalty assessment.

- 14 We find the terms of the settlement agreement, with the conditions included in this order, are lawful, supported by the record, and serve the public interest. *WAC 480-07-750(1)*. Requiring Genie to demonstrate its compliance with motor carrier safety rules promotes the public interest and ensures the safety of the traveling public.

### **ORDER**

#### **THE COMMISSION ORDERS:**

- 15 (1) Commission Staff's Petition for Administrative Review is denied.
- 16 (2) The parties' settlement agreement, filed on February 14, 2007, is approved and adopted on condition that Genie Service Company, Inc., remain free of motor carrier safety rule violations for a one-year period following the effective date of this Order.
- 17 (3) Commission Staff must conduct compliance reviews, to be scheduled as Staff deems appropriate, to ascertain whether Genie Service Company, Inc., has incurred further motor carrier safety rule violations within a one-year period following the effective date of this Order. Staff must institute a penalty assessment proceeding if Genie Service Company, Inc., has incurred additional violations during this period, including an assessment for the \$700 balance of the original penalty assessment.

- 18 (4) The Commission retains jurisdiction over this matter to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective April 19, 2007.

WASHINGTON STATE 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. Any stipulating party may within 10 days reject the condition(s) proposed in this order, pursuant to WAC 480-07-750(2), in which case this order will become void and the matter set for hearing. If this order is not voided by rejection of the condition(s), judicial review may be available. Administrative relief from the terms of this order 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.**