

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Penalty Assessment  
Against  
  
GENIE SERVICE COMPANY, INC.

DOCKET TE-061753  
  
MOTION TO AMEND FINAL  
ORDER AND IMPOSE  
SUSPENDED PENALTIES

**RELIEF REQUESTED**

1 Staff of the Utilities and Transportation Commission (Commission Staff or Staff) requests the Commission amend Order 02 in Docket TE-061753 under WAC 480-07-875 to impose the penalties suspended in that order.

**STATEMENT OF FACTS**

2 This docket involves a penalty of \$1,400 that the Commission assessed against Genie Service Company, Inc. (Genie) on December 1, 2006. Genie requested mitigation, and Staff and Genie agreed to mitigation of half of the penalty. The parties further agreed that Genie would pay the remaining penalty in installments to begin the first day of the first month following Commission approval of the settlement.<sup>1</sup> On April 19, 2007, the Commission approved the settlement with conditions. According to the Final Order, \$700 of the \$1,400 penalty would be mitigated only if Genie could “remain free of motor carrier safety rule violations for a one-year period following the effective date of this order.”<sup>2</sup> Other conditions of the order required Staff to conduct compliance reviews during the year and to “institute a penalty assessment proceeding if [Genie] [incurred] additional violations during this period, including an assessment for the \$700 balance of the original penalty

<sup>1</sup> Settlement Agreement, Docket No. TE-061753, ¶¶ 6–7.

<sup>2</sup> Order 02, *Final Order Denying Staff’s Petition for Review, Modifying Initial Order and Approving Settlement Agreement with Conditions*, Docket No. TE-061753, ¶ 16.

assessment.”<sup>3</sup>

3            Since the Final Order became effective, Motor Carrier Staff has conducted two compliance reviews of Genie’s operations.<sup>4</sup> At the first recheck, in June 2007, Staff found no violations.<sup>5</sup> At the subsequent recheck, however, in November 2007, Staff identified 12 violations of motor carrier regulations<sup>6</sup> involving either driver qualification documentation or hours of service requirements, as follows:

- One violation of 49 C.F.R. 391.51(b)(2), failing to maintain inquiries into driver's driving record in driver's qualification file.
- One violation of 49 C.F.R. 391.51(b)(2), failing to maintain inquiries into driver’s employment record in driver’s qualification file.
- Three violations of 49 C.F.R. 391.51(b)(4), failing to maintain the responses of each state agency to the annual driver record inquiry.
- Three violations of 49 C.F.R. 395.5(a)(1), requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours following eight consecutive hours off duty.
- Four violations of 49 C.F.R. 395.5(a)(2), requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.<sup>7</sup>

4            Genie has been cited in the past for violation of all of the regulations at issue.<sup>8</sup>

5            Staff received a letter from Genie in December 2007, responding to the findings at the November 2007 recheck.<sup>9</sup> In the letter, Genie claims that one of the hours of service violations did not occur and asks for Commission assistance in training Genie drivers in log sheet completion.<sup>10</sup>

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<sup>3</sup> *Id.* at ¶ 17.

<sup>4</sup> *See* Declaration of John Foster, dated February 19, 2008, ¶¶ 3–4.

<sup>5</sup> *Id.* at ¶ 3.

<sup>6</sup> The Commission has adopted federal regulations covering vehicle and driver safety set forth in Title 49 of the Code of Federal Regulations. WAC 480-30-221.

<sup>7</sup> *Id.* at ¶¶ 4–5.

<sup>8</sup> *See id.* at ¶ 7.

<sup>9</sup> *See id.* at ¶ 10.

<sup>10</sup> *See id.* at Appendix D.

6 Genie has not remitted any portion of the penalty that the company had agreed to  
pay.<sup>11</sup>

### **ISSUE**

7 Should the Commission amend the Final Order to impose suspended penalties, given  
that the Final Order conditioned mitigation of penalties on the company's ability to remain  
free of motor carrier safety rule violations for one year and given that Commission Motor  
Carrier Staff have identified violations of rules regarding driver qualification and drivers'  
hours of service before the end of the year-long period?

### **EVIDENCE**

8 Staff relies on the following evidence: Declaration of John Foster, Commission  
Motor Carrier Law Enforcement Special Investigator, with attachments; and Declaration of  
Jeff Schmidlkofer, Fiscal Analyst in the Financial Services Section of the Commission.

### **ARGUMENT**

9 Under WAC 480-07-875, the Commission may amend any order after providing  
notice to the company and an opportunity for hearing. Staff asks that the Commission  
amend the Final Order in this docket because Genie has failed to meet the Commission's  
conditions for mitigating the full penalty amount.

10 According to the Final Order, mitigation of the entire amount required Genie to  
operate violation-free for the entire year subsequent to the order's effective date. The  
order's effective date was April 19, 2007.<sup>12</sup> Genie incurred violations in a compliance  
review conducted in November 2007. Because these violations occurred before April 19,  
2008, the end of the year-long period, notably in areas in which Genie has received

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<sup>11</sup> See Declaration of Jeff Schmidlkofer, ¶3.

<sup>12</sup> See WAC 480-07-800, which provides that an order is effective when entered and that signing an order is entry of an order. The order was signed April 19, 2007.

violations before, and because Genie has yet to pay any portion of the penalty, the Commission should impose the conditionally mitigated \$700 and order Genie to pay the entire penalty amount of \$1,400.

### CONCLUSION

*11* In conclusion, Staff asks the Commission to amend the final order to reflect Genie's failure to meet the conditions for mitigating the penalty and, as appropriate, to schedule a prehearing conference in Docket TE-061753.

DATED this \_\_\_\_\_ day of February, 2008.

Respectfully submitted,

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