

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

In the Matter of Penalty Assessment)	DOCKET TE-061753
Against)	
)	ORDER 03
)	
GENIE SERVICE COMPANY, INC.)	ORDER GRANTING MOTION TO
)	AMEND FINAL ORDER AND
)	IMPOSING SUSPENDED PENALTIES
)	
.....)	

1 **Synopsis:** *The Commission grants Commission Staff’s Motion to Amend Final Order and Impose Suspended Penalties. We amend the Final Order to assess against Genie Service Company, Inc., the previously suspended penalties on the condition that the Company remain free of motor carrier violations for one year. We require the Company to pay in full the \$700 in suspended penalties and \$700 in unpaid penalties, or a total of \$1,400, within seven days of the date of this Order.*

2 **Nature of Proceeding.** This proceeding involves a penalty assessment against Genie Service Company, Inc. (Genie or Company) for 14 violations of the Washington Utilities and Transportation Commission’s (Commission) motor carrier safety rules.

3 **Procedural History.** The Commission issued a penalty assessment against Genie on December 4, 2006, in the amount of \$1,400 for 14 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 a hearing before an administrative law judge. On February 5, 2007, the Commission Staff (Staff)¹ opposed the penalty reduction noting that Genie had received three conditional safety ratings in five compliance reviews over the previous five years.

¹ In formal proceedings, such as this, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding

- 5 The Commission set this matter for hearing. Prior to hearing, the parties reached a settlement of all disputed issues. The parties filed the settlement and supporting narrative on February 14, 2007, wherein Genie admitted to the violations, agreed to pay a reduced penalty of \$700, and agreed to comply in the future with all applicable statutes and Commission rules.
- 6 On February 27, 2007, Administrative Law Judge Theodora M. Mace entered Order 01, Initial Order Approving Settlement Agreement with Conditions (Initial Order) which approved the settlement on the condition that the Company remain free of motor carrier safety rule violations for a period of one year. The Initial Order further required Staff to audit the Company after the one- year period, and if the audit revealed that the Company had complied with the motor carrier safety rules during the one-year period, then \$700 of the original \$1,400 penalty would be mitigated. The Initial Order assessed the other \$700 in penalties, with payment due the Commission on May 4, 2007.
- 7 On March 12, 2007, Staff filed a petition for administrative review. Not opposing suspension of the remaining penalties, Staff objected to the language directing when and how Staff should conduct an additional audit of Genie.
- 8 On April 19, 2007, the Commission entered Order 02, Final Order Denying Staff's Petition for Review, Modifying Initial Order, and Approving Settlement with Conditions, (Final Order) which modified the Initial Order to afford Staff flexibility in scheduling and conducting compliance reviews of Genie. The Commission approved all other terms and conditions set forth in the Initial Order.
- 9 **Motion to Amend Final Order and Impose Suspended Penalties.** On February 19, 2008, Staff filed a Motion to Amend Final Order and Impose Suspended Penalties (Motion). Staff asserts that it has conducted two compliance reviews of Genie's operations since the Final Order became effective. The first compliance review in June 2007 revealed no violations. During the second compliance review in November 2007, Staff identified 12 violations of motor carrier regulations involving

either driver qualification documentation or hours of service requirements.² Staff asserts that Genie has been cited in the past for violation of all the regulations at issue.³ Staff further asserts that Genie has not submitted payment of the \$700 penalty assessed the Company in the Final Order which was due and payable in May, 2007.

- 10 On February 22, 2008, the Commission issued a Notice of Opportunity to Respond to Staff's Motion, allowing Genie to file a response by March 10, 2008. The Notice also informed Gene that if Staff's motion were granted, the Company would be required to pay the penalties suspended in this case. To date, Genie has not responded.
- 11 **Discussion.** We review Staff's Motion under the standard set forth in WAC 480-07-875, which permits us to amend any order after providing the Company with notice and the opportunity to be heard. As noted, Genie was provided the required notice and the opportunity to be heard, but Genie did not respond. Accordingly, we amend the Final Order.
- 12 The following 12 violations were the topic of a Notice of Penalty Assessment issued in Docket TE-080282:
- 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.

² These violations are the topic of a Notice of Penalty Assessment issued in Docket TE-080282.

³ According to Staff, Genie has repeatedly violated these same rules since 2001: (1) 49 C.F.R. 391.51(b)(2): Genie was issued notices of violations in 2001 (driving record and employment record), 2004 (driving record and employment record), and in this docket in 2006 (driving record). These violations are considered critical violations by the Federal Motor Carrier Safety Administration (FMCSA); (2) 49 C.F.R. 391.51(b)(4): Genie received notice of violations in 2004; (3) 49 C.F.R. 395.5(a)(1): Genie was issued notices of violations in 2006 (this docket) and in March 2007; and (4) 49 C.F.R. 395.5(a)(2): Genie was issued notices of violations in March 2007.

- 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.⁴

13 In Docket TE-080282, Genie submitted an application for mitigation admitting all violations.⁵ The violations occurred between the July 2007 audit and the November 2007 audit, well in advance of the April 19, 2008, deadline to remain free of violations. Accordingly, we amend our Final Order to impose the \$700 in suspended penalties. Further, we require Genie to pay the entire \$1,400 penalty within seven days of the date of this Order since the Company failed to meet its obligation to pay the initial \$700 penalty in May, 2007.

14 The most vexing aspect of this case, however, is Genie's pattern of noncompliance with motor carrier safety rules that spans several years. As far back as 2001, Genie has violated motor carrier safety rules considered critical by the FMCSA and this Commission.

15 Our previous efforts to deter Genie's noncompliance with applicable safety regulations focused on the assessment of monetary penalties. Clearly, these efforts have been unsuccessful, if not completely ignored. We need only to look at the matter before us, in which Genie failed to pay the unsuspended portion of the assessed penalty. More importantly, Genie continues to violate motor carrier safety rules.

16 Under WAC 480-30-171(1), we may suspend a certificate for cause, including the failure or refusal to comply with "operating standards that protect the public health,

⁴Declaration of John Foster. Staff noted that Genie sent Staff a letter following the November 2007 inspection claiming that one of the hours of service violations did not occur and that the log sheet must have been incorrectly completed. This letter was apparently unpersuasive because Staff included all violations in its evidence in this proceeding and in its Notice of Penalty Assessment issued in Docket TE-080282.

⁵ With the issuance of Order 01 in that proceeding, the Commission denied Genie's Application for Mitigation and required payment of the \$1,200 penalty associated with the violations.

safety, or welfare”⁶ or “repeated failure or refusal to comply with . . . rules pertaining to operations of passenger transportation companies.”⁷ Given Genie’s record of violations, we hereby institute a proceeding, on our own motion to consider whether Genie’s certificate should be suspended for cause.

ORDER

THE COMMISSION ORDERS:

- 17 (1) Commission Staff’s Motion to Amend Final Order and Impose Suspended Penalties is granted.
- 18 (2) The Company shall pay \$1,400 within seven days of this Order, consisting of the \$700 in suspended penalties and \$700 in unpaid penalties.
- 19 (3) A separate proceeding will be initiated to consider suspension for cause of Genie Service Company, Inc.’s certificate to operate as a passenger transportation company in Washington.
- 20 (4) The Commission retains jurisdiction over this matter to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective May 23, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

⁶ WAC 480-30-171(1)(e).

⁷ WAC 480-30-171(1)(h).

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.