

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

In re Application of) DOCKET TV-080054
)
)
V&K DELIVERY SERVICES, LLC,) COMMISSION STAFF'S
(THG-63200)) STATEMENT OF POSITION
)
)
.....)

1 Pursuant to the Commission's Notice of Brief Adjudication Setting Time for Oral Statements, served November 6, 2008, Commission Staff submits this Statement of Position and the attached Declaration of David Pratt with four exhibits, A, B, C, and D.

I. BACKGROUND

2 On January 8, 2008, V&K Delivery Services, LLC (V&K Delivery or Company), through owner-manager Mr. Vladimir Kirichenko, submitted an application to the Washington Utilities and Transportation Commission (Commission) for a permit to transport household goods within Washington state.¹ On March 25, 2008, in this docket, the Commission granted temporary authority to V&K Delivery for a period of at least six months while evaluating whether the applicant had met the criteria for obtaining permanent authority.

3 On August 26, 2008, the Commission Issued a Notice of Intent to Cancel Temporary Operating Authority and to Deny Application for Permanent Authority, to V&K Delivery. The Notice explained that Commission's research indicated that Mr. Kirichenko was convicted of attempted residential burglary in 2003, and that state law permitted cancellation

¹See Exhibit A.

of temporary authority and denial of permanent authority on that basis. In response to the Notice, on September 19, 2008, the Company filed a Request for Hearing. On November 6, 2008, the Commission issued a Notice of Brief Adjudication Setting Time for Oral Statements, and providing an opportunity for Commission Staff and the Company to submit simultaneous statements of position in advance of the hearing.

II. APPLICABLE LAW

4 RCW 81.80.070(1)(a)(ii) requires the Commission to consider whether an applicant for a household goods carrier permit is fit to perform the services proposed. The Commission has adopted rules detailing specific conditions under which it may cancel a temporary permit, and reject or deny an application for permanent authority. In particular, WAC 480-15-320(1) allows the Commission to cancel a temporary permit at any time if the permit was not issued in the public interest, and WAC 480-15-320(5)(a) allows the Commission to cancel a temporary permit if carrier has been convicted of any crime. Likewise, WAC 480-15-330(4)(e)(ii) allows the Commission to reject or deny an application for permanent authority if the applicant has been convicted of any crime. It is important to note that, regardless of status of permit authority, a carrier may continue to engage in any business operations that are not regulated by the Commission.

5 Under the Washington Criminal Code, a person is guilty of "Residential Burglary" if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle. RCW 9A.52.025(a). Residential burglary is a class B felony. For sentencing guidelines and disposition purposes, residential burglary is considered a more serious offense than second degree burglary. RCW 9A.52.025(b). A person is guilty of criminal "attempt" if, with intent to commit a specific

crime, he or she does any act which is a substantial step toward the commission of that crime. RCW 9A.28.020.

III. ARGUMENT

6 As set forth below, and in the attached Declaration of David Pratt, Commission Staff recommends the Commission cancel the temporary operating authority and deny the application for permanent authority, of V&K Delivery.

7 V&K Delivery admits on the application to a conviction by Mr. Kirichenko of "2nd degree burglary in 2001 with weapons in King County."² Commission Staff acknowledges that, while this was overlooked during the initial review by Licensing staff, it was subsequently noticed and investigated during the provisional period.³ Commission Staff verified the Company's statement by locating, on the Washington Courts web site, a case record in King County Superior Court matching the applicant's name and, substantially the description given on the application.⁴ A certified copy of the Judgment and Sentence shows that Mr. Vladimir Kirichenko was convicted on January 31, 2003 of the crime of Attempted Residential Burglary, RCW 9A.52.025, and that the crime was committed on May 30, 2001.⁵ A certified copy of the Statement of Defendant on Plea of Guilty also includes several court documents related to the crime.⁶ Commission Staff is additionally concerned with the applicant's admission on the application, supported by the court records, that the crime involved weapons.⁷

² See Declaration of David Pratt at ¶ 5, and Exhibit A, attached.

³ See Pratt Decl. at ¶ 6.

⁴ See Pratt Decl. at ¶ 7, and Exhibit B.

⁵ See Pratt Decl. at ¶ 8, and Exhibit C.

⁶ See Pratt Decl. at ¶ 9, and Exhibit D.

⁷ See Pratt Decl., ¶ 10, and Exhibits A and D.


8 Commission Staff recommends the Commission cancel V&K Delivery's temporary authority, and deny permanent authority, pursuant to WAC 480-15-320(5)(a) and WAC 480-15-330(4)(e), and because it is in the public interest.⁸ The Commission considers an applicant's history regarding both compliance with Commission rules and criminal background, when determining whether to cancel or deny authority. The elements of the crime at issue, in particular, directly pertain to permitted activities. Public safety is further endangered when a weapon is used during such a crime. The moving public entrusts the security of their homes and property to the carriers they select. They have a reasonable right to expect that a permitted carrier does not have a recent criminal history of violating the security of another's home and property. Because of the evidence of the Applicant's conviction, Commission Staff believes it is appropriate, supported by law, and in the public interest, for the Commission to cancel, and reject, permit authority.

9 Accordingly, Commission Staff respectfully requests that the Commission cancel the temporary household goods operating authority of V&K Delivery Services, LLC, and deny the application for permanent authority.

DATED this 24th day of November, 2008.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General


MICHAEL A. FASSIO
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission

⁸ See Pratt Decl. at ¶¶ 10-12.

INDEX
to
Statement of Position

1. Attachment A, Declaration of David Pratt

- **Exhibit A – Permit Application of V&K Delivery Services, LLC**
- **Exhibit B – King County Superior Court Case Summary,
Case No. 02-1-01490-5**
- **Exhibit C – Certified Copy of Judgment and Sentence Felony**
- **Exhibit D – Certified Copy of Statement of Defendant on Plea of
Guilty (Felony)**