

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

Regarding Cancellation of Household	)	DOCKET TV-080054
Goods Permit No. THG-63200 and	)	
Dismissal of Application for Permanent	)	
Authority filed by	)	ORDER 01
	)	
	)	
V&K DELIVERY SERVICES, LLC.	)	INITIAL ORDER ON BRIEF
	)	ADJUDICATION; ORDER
	)	DECLINING TO REVOKE
	)	TEMPORARY AUTHORITY,
.....	)	IMPOSING 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. This Initial Order concludes that the 2007 edition of Commission rules apply to the Commission’s determination of V&K Delivery Services, LLC’s (V&K) fitness for temporary authority to operate as a household goods carrier. This Initial Order also places conditions on V&K’s continued possession of temporary authority and holds in abeyance V&K’s request for permanent authority pending compliance with the conditions listed in this Order.*

**SUMMARY**

2 On January 8, 2008, V&K Delivery Services, LLC (V&K) filed an application for a permit to operate as a household goods carrier. The Washington Utilities and Transportation Commission (Commission) issued temporary household goods permit THG-63200 to V&K on March 28, 2008.

3 On August 27, 2008, the Commission issued a Notice of Intent to Cancel Temporary Operating Authority and to Deny Application for Permanent Authority, due to the prior criminal conviction of Vladimir Kirichenko, owner and operator of V&K.

4 On September 19, 2008, V&K filed a request for a hearing to contest the cancellation of its temporary permit and denial of its permanent authority. The Commission, on

November 6, 2008, issued a Notice of Brief Adjudication and Setting Time for Oral Statements (BAP Notice). The BAP Notice required the Commission's regulatory staff (Commission Staff or Staff)<sup>1</sup> and V&K to file Statements of Position with attached exhibits by November 24, 2008.

5 On November 21, 2008, V&K filed its Statement of Position including various letters of support from former customers and others who are familiar with Mr. Kirichenko's work.<sup>2</sup> On November 24, 2008, Staff filed its Statement of Position with accompanying exhibits including the Declaration of David Pratt, V&K's Household Goods Carrier Permit Application, King County Superior Court Case Summary,<sup>3</sup> a certified copy of Judgment and Sentence for Felony of Mr. Kirichenko, and a certified copy of the statement of Mr. Kirichenko on guilty plea.

6 On December 4, 2008, the Commission held a hearing in this brief adjudicative proceeding before Administrative Law Judge Marguerite E. Friedlander. Commission Staff offered the testimony of David Pratt. V&K offered the testimony of Vladimir Kirichenko.

7 **PARTY REPRESENTATIVES.** Michael Fassio, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Jeffrey A. Herbster, Winston & Cashatt, Spokane, Washington, represents V&K.

## MEMORANDUM

### **I. Background Facts.**

8 It is rare and perhaps even unprecedented that the Commission provides the details of a crime in its order. However, as Staff has alleged that the nature of and circumstances surrounding Mr. Kirichenko's conviction directly impact V&K's

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<sup>1</sup>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 Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

<sup>2</sup>*Exhibit 17*, at 3. *See also, Exhibits 18-27*.

<sup>3</sup>Case No. 02-1-01490-5.

fitness to operate as a household goods carrier, the Commission will provide a brief synopsis of the events that occurred in 2001.<sup>4</sup>

9 On the night of May 30, 2001, King County Sheriff's Deputies were called to a residence in Burien, Washington, by the resident of the home, Angel Yim.<sup>5</sup> Ms. Yim claimed that, at about 10:20 p.m., she was awakened by her door bell ringing.<sup>6</sup> Ms. Yim answered her door and saw Mr. Kirichenko walking towards her garage door.<sup>7</sup> Panicked because of previously suspicious occurrences at the residence, Ms. Yim called the police.<sup>8</sup>

10 King County Sheriff's Deputies Kierce<sup>9</sup> and Spence responded to the call and found Mr. Kirichenko walking up Ms. Yim's driveway.<sup>10</sup> Deputy Kierce saw Mr. Kirichenko throw a black bag into the brambles off to his right, and based on the oscillation of the bag as it flew, believed that it contained something heavy.<sup>11</sup> Deputies Kierce and Spence searched the brush near the location where Mr. Kirichenko tossed the black bag and found a black, nylon lace bag containing 20-30 rounds of .380 caliber ammunition.<sup>12</sup> Deputy Kierce also searched Mr. Kirichenko's pockets and found two brown gloves, a walkie-talkie, and at least one door key which fit the deadbolt in Ms. Yim's front door.<sup>13</sup>

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<sup>4</sup>As Mr. Kirichenko ultimately pled guilty to attempted residential burglary, there was no trial or transcript from which the Commission could glean details about the events. However, Staff filed *Exhibit 6*, which includes a certified copy of the Statement of Defendant on Plea of Guilty (Felony), Superior Court of Washington for King County, December 23, 2002, and a Certification for Determination of Probable Cause, signed by Norm Maleng, Prosecuting Attorney, King County, October 24, 2001. Exhibit 6 was admitted into the record without objection at the December 4, 2008, hearing.

<sup>5</sup>*See, Exhibit 6*, Certification, at 1. At that time, Ms. Yim lived in the residence with Andrew Yim. *Id.*

<sup>6</sup>*Exhibit 6*, Certification, at 1.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>The Certification for Determination of Probable Cause does not contain the first names of any of the officers involved in the May 30, 2001, incident.

<sup>10</sup>*Exhibit 6*, Certification, at 1.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*, at 1-2.

- 11 A short time later, Sheriff's Detectives Tompkins and Mattsen also responded to Ms. Yim's 911 call.<sup>14</sup> An individual flagged both detectives down and reported a suspicious car parked approximately two blocks from the Yim residence.<sup>15</sup> The detectives questioned the man sitting in the driver's seat, Vyacheslav N. Vizitiv.<sup>16</sup> The detectives observed that Mr. Vizitiv spoke with an accent similar to that of Mr. Kirichenko.<sup>17</sup> Detective Mattsen heard over his radio that the deputies had discovered the black bag containing the ammunition.<sup>18</sup> Detective Mattsen arrested Mr. Vizitiv and conducted a search of Mr. Vizitiv and the car.<sup>19</sup> The search of the car yielded a walkie-talkie that worked in conjunction with the one found on Mr. Kirichenko and a package of rubber gloves.<sup>20</sup> Detective Tompkins also found a wallet belonging to Mr. Kirichenko in the car.<sup>21</sup>
- 12 Detective Tompkins obtained a post-Miranda taped statement from Mr. Vizitiv.<sup>22</sup> Mr. Vizitiv claimed that he drove Mr. Kirichenko to visit Mr. Kirichenko's ex-girlfriend, Aliona Shur.<sup>23</sup> Mr. Vizitiv further asserted that that they had no kidnap plans, and that, to his knowledge, Mr. Kirichenko did not have a gun.<sup>24</sup>
- 13 A canine handler, Deputy Kaspzyrk from the Sheriff's Department, also responded to Ms. Yim's call.<sup>25</sup> Deputy Kaspzyrk and his police dog discovered a black, semi-automatic .380 caliber handgun approximately 15 feet south of Ms. Yim's driveway.<sup>26</sup>
- 14 The Prosecuting Attorney's Certificate for Determination of Probable Cause notes that Ms. Yim's sister, Aliona Shur, used to live in the residence in question.<sup>27</sup>

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<sup>14</sup>*Exhibit 6, Certification, at 2.*

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*, at 1-2. The Certification does not indicate that Mr. Vizitiv's statement specifically referenced the name of Mr. Kirichenko's ex-girlfriend. However, the name was contained elsewhere within the Certification.

<sup>24</sup>*Id.*, at 2.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*, at 1.

15 As a result of these events, Mr. Kirichenko pled guilty to attempted residential burglary, a Class C felony.<sup>28</sup> Mr. Kirichenko was sentenced to 3 months confinement and served two months based on good behavior.<sup>29</sup>

## II. Statutes and Rules Governing Household Goods Carriers

16 RCW 81.80.070(1)(a)(ii) mandates that the Commission issue permits to household goods carriers only when those carriers have demonstrated that they are, *inter alia*, fit and their operations are consistent with the public interest.<sup>30</sup> RCW 81.80.290 provides that the Commission has the power and authority to prescribe rules and regulations to carry out the purposes and provisions of RCW 81.80.

17 In 2007, the Commission undertook an examination of its household goods carrier regulations, some of which had not been revised since 2000.<sup>31</sup> On December 27, 2007, the Commission issued its Order Amending, Adopting, and Repealing Rules Permanently which revised WAC 480-15, specifically WAC 480-15-280, -320, and -330. The 2008 amendments took effect on January 27, 2008,<sup>32</sup> giving the Commission more discretion when determining fitness in considering the criminal conviction of an applicant for household goods carrier authority.

## III. Staff's Position

18 Staff argues that the Commission has ample authority to cancel V & K's temporary permit under RCW 81.80.070(1)(a)(ii).<sup>33</sup> Further, Commission Staff asserts that WAC 480-15-320(1), as amended in 2008, allows the Commission to cancel a temporary permit if the Commission determines at any time that the permit was not issued in the public interest.<sup>34</sup> Amended WAC 480-15-320(5)(a) also allows the

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<sup>28</sup>RCW 9A.52.025(2) and RCW 9A.28.020(3)(c).

<sup>29</sup>Kirichenko, TR 34:2-7.

<sup>30</sup>*Exhibit 10*, at 1, ¶ 3.

<sup>31</sup>Docket TV-070466.

<sup>32</sup>*See*, WSR 08-02-049.

<sup>33</sup>*Exhibit 1*, at 2, ¶ 4.

<sup>34</sup>*Exhibit 1*, at 2, ¶ 4.

Commission to cancel temporary authority if the applicant has been convicted of any crime.<sup>35</sup>

19 With regard to permanent authority, Staff notes that amended WAC 480-15-330(4)(e)(ii) empowers the Commission to reject an application if the applicant has been convicted of any crime.<sup>36</sup>

20 Commission Staff asserts that residential burglary is a Class B felony.<sup>37</sup> Pursuant to RCW 9A.52.025(1), 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.<sup>38</sup> Staff cites to RCW 9A.28.020(1) in defining a person who is guilty of criminal attempt as someone who, “with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.”<sup>39</sup>

21 Staff maintains that, on its application, V&K admitted to Mr. Kirichenko’s conviction of attempted residential burglary in 2001, with weapons, in King County, Washington.<sup>40</sup> Staff admits that this conviction was overlooked during its initial review of the application.<sup>41</sup> Staff contends that, had the conviction been identified immediately, it would have conducted the same research and review of Mr. Kirichenko’s conviction that it conducted once the discovery was made.<sup>42</sup> Staff avers that it then would have denied the application for temporary and permanent authority based on the criminal conviction.<sup>43</sup>

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<sup>35</sup>*Id.*

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*, at 2, ¶ 5. *See*, RCW 9A.52.025(2) which reinforces Staff’s statement.

<sup>38</sup>*Id.*

<sup>39</sup>*Id.*

<sup>40</sup>*Exhibit 1*, at 3, ¶ 7. According to *Exhibit 3*, at 1, the certified copy of the Judgment and Sentence for Felony, Superior Court of Washington for King County, Mr. Kirichenko pled guilty to attempted residential burglary in 2003, not 2001. The incident itself took place in 2001. Also, despite Mr. Kirichenko’s honesty in declaring on his application that the crime involved weapons, his plea agreement and the crime he actually pled guilty to do not include any weapons charges. The plea and sentence did include a no contact order against Mr. Kirichenko barring him from contacting or visiting Angel Yim or her residence for a period of five years. *See, Exhibit 5*, at 4, ¶ 4.6 and *Exhibit 6*, at 4, ¶ f.

<sup>41</sup>*Exhibit 1*, at 3, ¶ 7. *See also*, Pratt, TR 23:15-19.

<sup>42</sup>Pratt, TR 23:20-25.

<sup>43</sup>Pratt, TR 23:25-24:1.

22 According to Staff, the elements of the crime of which Mr. Kirichenko was convicted are relevant to the carrier permit V&K seeks.<sup>44</sup> Staff contends that it was most troubled by the presence of a weapon at the crime scene, as cited to in the Prosecuting Attorney's Certificate for Determination of Probable Cause.<sup>45</sup> Commission Staff argues that:

[t]he 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.<sup>46</sup>

23 Commission Staff counter Mr. Kirichenko's claim that he was only trying to return to the house he once lived in to retrieve his belongings by pointing to the fact that a police search uncovered a weapon at the scene of the attempted burglary.<sup>47</sup>

24 Staff notes that V&K may conduct operations not regulated by the Commission regardless of the Commission's decision in this matter.<sup>48</sup>

#### IV. V&K's Position

25 V&K asserts that there are sufficient mitigating circumstances to warrant the Commission granting V&K's application.<sup>49</sup> First, the crime took place over seven years ago when Mr. Kirichenko was 20 years old.<sup>50</sup> Mr. Kirichenko acknowledges that what he did in the past was a mistake, but argues that it was an isolated incident and involved an individual with whom he had had a personal relationship.<sup>51</sup> Mr. Kirichenko explains that his actions occurred at his prior residence to remove his own belongings.<sup>52</sup> He states that he has served his sentence and parole and has had no

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<sup>44</sup>*Exhibit 1*, at 4, ¶ 8.

<sup>45</sup>*Exhibit 7*, King County Prosecuting Attorney's Certificate for Determination of Probable Cause, Case No. 02-1-01490-5KNT, at 1.

<sup>46</sup>*Exhibit 1*, at 4, ¶ 8.

<sup>47</sup>Pratt, TR 22:20-25.

<sup>48</sup>Fassio, TR 52:5-14.

<sup>49</sup>*Exhibit 17*, at 2.

<sup>50</sup>*Id.*, at 2-3.

<sup>51</sup>*Id.*, at 2.

<sup>52</sup>*Id.*

criminal charges alleged against him before or after the attempted residential burglary.<sup>53</sup>

26 V&K points to Mr. Kirichenko's stable family life as further mitigation of the past conviction.<sup>54</sup> Mr. Kirichenko and his family derive their entire livelihood from the temporary permit the Commission issued to V&K.<sup>55</sup> V&K contends that Commission Staff have not presented evidence to show that the public interest will be harmed by granting V&K's permit application.<sup>56</sup> V&K submitted 13 statements of support from various businesses and individuals attesting to Mr. Kirichenko's work ethic, professionalism, and courteousness in defense of his assertion that he does not pose a threat to any member of the public wishing to hire a household goods carrier.<sup>57</sup>

27 Moreover, V&K alleges that the Commission is erroneously applying the Commission's 2008 amended rules to his application, which were not in place at the time he initially filed.<sup>58</sup> V&K filed its application on January 8, 2008, 19 days prior to the effective date of the 2008 amendments. V&K posits that the Commission must apply the rules which were effective prior to the January 27, 2008, revisions (2007 edition). These rules, V&K maintains, do not allow the Commission to cancel a permit due to a criminal conviction.<sup>59</sup> The prior rules only allow the Commission,

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<sup>53</sup>*Id.*, at 3.

<sup>54</sup>*Id.* See *also*, Kirichenko, TR 34:17-24.

<sup>55</sup>*Id.*

<sup>56</sup>Herbster, TR 53:21-23.

<sup>57</sup>See, *Exhibit 3*, Statements of Support from Perry Morin, Sherry McGowen, and Ted Schade, and *Exhibits 18-27*.

<sup>58</sup>V&K asserts that the Commission cannot use the newly effective regulations promulgated in Docket TV-070466 which state:

**WAC 480-15-208(3)(b)** When determining if an applicant is fit, willing and able to provide the proposed service the commission will consider any information provided by the applicant and other members of the public including, but not limited to, information regarding the applicant's:

(b) Conviction of any crime.

**WAC 480-15-320(5)** The commission may cancel a temporary permit at any time if it determines any of the following conditions exist: (a) The carrier has been convicted of any crime.

**WAC 480-15-330(4)** When determining if an applicant is fit, willing and able to provide the proposed service, the commission will consider statements and reports including any information provided by the applicant and other members of the public. The commission may reject or deny an application for permanent authority if: (e) The applicant has: (ii) been convicted of any crime.

<sup>59</sup>*Exhibit 17*, at 6.



according to V&K, to cancel a permit based on concerns regarding the public interest, fraud or misrepresentation, or offenses listed in WAC 480-15-450.<sup>60</sup>

28 Lastly, V&K argues that the new regulations are unconstitutionally overbroad and vague.<sup>61</sup> Specifically, V&K points to the language “conviction of any crime” in asserting its constitutional challenge.<sup>62</sup> V&K contends that the constitutional challenge of the language requires a substantive due process analysis where the Commission’s use of the phrase ‘any criminal conviction’ must be rationally related to the Commission’s goal of protecting consumers who may purchase the services of a household goods carrier.<sup>63</sup> According to V&K, the crime of jaywalking would fall under the definition of ‘any criminal conviction,’ yet jaywalking is not rationally related to the Commission’s mandate to protect the public from hiring an unfit household goods carrier.<sup>64</sup> Therefore, V&K argues that the new regulations are facially unconstitutional.<sup>65</sup>

29 **DISCUSSION AND DECISION.** There is no question that Mr. Kirichenko pled guilty in 2003 to attempted residential burglary. The dispute before us concerns whether the Commission may cancel V&K’s temporary permit due to his prior conviction. We begin with the question of whether V&K’s application listing the burglary conviction should be viewed under the 2007 edition WAC or the 2008 amendments. We then address V & K’s constitutional argument and address the merits of the case.

30 Staff has applied the facts surrounding Mr. Kirichenko’s plea to the current regulations which give the Commission the discretion to cancel a temporary permit and deny permanent authority if the applicant is found to have “been convicted of any crime.”<sup>66</sup>

31 V&K, however, argues that the Commission should not apply the current regulations retroactively to his application. V&K filed its application 19 days before the 2008

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<sup>60</sup>*Id.*, at 5-6.

<sup>61</sup>*Id.*, at 6.

<sup>62</sup>*Id.*

<sup>63</sup>*Exhibit 17*, at 6.

<sup>64</sup>*Id.*, at 6-7.

<sup>65</sup>*Id.*, at 7.

<sup>66</sup>*See*, WAC 480-15-320(5)(a) and -330(4)(e)(ii).

amendments became effective. Generally, it is presumed that newly amended administrative regulations will be applied prospectively.<sup>67</sup> This prospective application is not, however, absolute. The effective date of an administrative regulation does not prohibit the regulation from applying retroactively where the purpose of the regulation is curative or remedial in nature.<sup>68</sup>

32 The presumption in favor of prospective treatment continues to exist until the presumption is rebutted. Staff, as the advocate for applying the rules retroactively, has not demonstrated that the rules are either curative or remedial in nature. Thus, the Commission finds that the 2007 edition of the WAC must be applied to Staff's request to revoke V&K's temporary authority and deny its application for permanent authority. That being said, the Commission is in the same position whether it applies the 2007 edition of the WAC or the 2008 amendments, as the Commission must now consider Mr. Kirichenko's conviction in determining whether to grant Staff's requests.<sup>69</sup>

33 V&K asserts that the 2007 edition of WAC 480-15-320 only allows the Commission to base a temporary permit cancellation on the public interest, fraud or misrepresentation by the applicant, or any cause listed under WAC 480-15-450, but in any event, not because of a criminal conviction. V&K is incorrect.

34 While the 2007 edition of WAC 480-15 allows the Commission to cancel a temporary permit under very narrow circumstances, one of those circumstances is when the permit was not issued in the public interest.<sup>70</sup> Pursuant to WAC 480-15-280, the Commission will grant an application for temporary authority when doing so is in the public interest based on a complete review of the application, supporting statements, reports or other information necessary to determine the applicant's fitness. A prior criminal conviction, especially one disclosed in the application, goes to the applicant's fitness.

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<sup>67</sup>See, *Champagne v. Thurston County*, 163 Wash.2d 69, 79, 178 P.3d 936 (2008). See also, *Bayless v. Community College District No. XIX*, 84 Wash. App. 309, 312, 927 P.2d 254 (1997).

<sup>68</sup>*State v. MacKenzie*, 114 Wash.App. 687, 699, 60 P.3d 607 (2002).

<sup>69</sup>In both the 2007 edition of the WAC and the 2008 amendments, the Commission is given great discretion, due to its technical expertise in transportation matters, in determining an applicant's fitness to provide carrier services.

<sup>70</sup>WAC 480-15-320(1). Because the Commission is considering V&K's application under the 2007 edition of the WAC, V&K's constitutional challenge to the Commission's 2008 amendments is moot. However, any company who wishes to seek review of the new rules must do so in the appropriate forum – superior court. See RCW 34.05.542(1) and RCW 34.05.570(2).

- 35 As Mr. Kirichenko has contended, the crime he committed occurred seven and a half years ago. By all appearances, this was an isolated incident in Mr. Kirichenko's adolescence involving an ex-girlfriend and Mr. Kirichenko attempting to retrieve his belongings from his former place of residence. This is supported by the fact that he had keys to the residence involved. Mr. Kirichenko is now married and has three children which he supports through his temporary household goods carrier permit.<sup>71</sup> Mr. Kirichenko's record before and after this conviction are unblemished. Staff has admitted that, during the almost nine months since Mr. Kirichenko received his temporary permit, the Commission has not received any complaints against V&K or Mr. Kirichenko.<sup>72</sup> In addition, Mr. Kirichenko has filed 13 letters of support from various customers who have let him into their homes over the years and have been impressed by his professionalism, work ethic, and courteousness.
- 36 Mr. Kirichenko admits what he did seven and a half years ago was wrong, has stated under oath that he has had no further contact with any of the individuals involved in the crime, and that neither he nor his wife own any firearms. Staff has not presented evidence that Mr. Kirichenko is a current threat to the public or that the public interest will be harmed by allowing Mr. Kirichenko to maintain his temporary authority. Such mitigating information weighs in favor of denying Staff's request to revoke V&K's temporary permit.
- 37 The Commission is troubled, nonetheless, by the details surrounding the crime itself. While Mr. Kirichenko did not plead to nor did he serve time in prison for the weapon that was found at the scene of the crime, the presence of a gun at the scene as well as ammunition that was found in the bag police suspect Mr. Kirichenko of tossing into the brambles proves awkward. Therefore, while the Commission declines to revoke V&K's temporary permit, we will impose conditions that must be fulfilled in order for V&K to retain the temporary permit and for the Commission to entertain V&K's request for permanent authority.
- 38 Pursuant to RCW 81.80.200 and the 2007 edition of WAC 480-15-300, the Commission may impose terms and conditions on temporary authority including a surety bond and special customer notices and comment forms which evaluate the

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<sup>71</sup>*Exhibit 17*, at 3.

<sup>72</sup>Pratt, TR 29:14-17.

company's services. The Commission finds that grant of temporary authority to V&K should be modified to include the following terms and conditions:

- V&K will obtain a surety bond in the amount of \$100,000 and provide proof to Staff of the bond within 30 days of the issuance of this order. If, after six months, V&K has had no complaints lodged against it with the Commission and no allegations are reported on the customer surveys detailed below, the Commission will notify V&K that the surety bond is no longer required.
- Over the next six months, V&K will continue to provide each of his customers with the customer survey questionnaire referenced in the Commission's Order Granting Temporary Authority issued March 28, 2008. These surveys must be returned to Staff within ten (10) days for verification of the details. If any of V&K's customers raise a complaint against Mr. Kirichenko alleging property has been stolen, Staff is directed to conduct an investigation into the allegation and report its findings to the Commission. If Staff finds credible any allegations of stolen property, the Commission will deem this condition not to have been met.

39 If V & K fulfills these conditions, which are also attached to this Order in Appendix A, the Commission will consider V & K's application for permanent authority. If V&K does not fulfill either of these conditions, the Commission will cancel the company's temporary permit and reject the application for permanent authority.

40 Thus, the Commission finds that Staff's request to revoke V&K's temporary authority should be denied. The Commission finds that, due to the circumstances surrounding the attempted residential burglary seven years ago, V&K's temporary authority should remain in effect subject to the conditions listed above, and attached to this Order as Appendix A.

### FINDINGS OF FACT

41 Having discussed above in detail the evidence received in this proceeding concerning  
all material matters, and having stated findings and conclusions upon issues in dispute  
among the parties and the reasons therefore, the Commission now makes and enters  
the following summary of those facts, incorporating by reference pertinent portions of  
the preceding detailed findings:

- 42 (1) The Washington Utilities and Transportation Commission is an agency of the  
State of Washington, vested by statute with the authority to regulate household  
goods carriers as defined in RCW 81.80.
- 43 (2) V&K Delivery Services, LLC, is a “public service company,” a “common  
carrier” and a “household goods carrier,” as those terms are defined in RCW  
81.04.010 and RCW 81.80.010 and used in Title 81 RCW. V&K is engaged  
in the business of transporting household goods for compensation over the  
public highways of the state of Washington pursuant to a temporary permit  
granted by the Commission.
- 44 (3) V&K filed an application with the Commission on January 8, 2008, for  
permanent authority to operate as a household goods carrier. On the  
application, V&K disclosed that Vladimir Kirichenko, owner/operator of  
V&K, had been convicted of the crime of burglary involving a weapon.
- 45 (4) On January 27, 2008, the 2008 amendments to the Commission’s regulations  
in WAC 480-15 became effective.
- 46 (5) The Commission issued a temporary permit on March 28, 2008, to V&K  
before becoming aware of Mr. Kirichenko’s prior conviction.
- 47 (6) On August 27, 2008, the Commission notified V&K of its intent to revoke  
V&K’s temporary authority and deny the request for permanent authority due  
to Mr. Kirichenko’s prior conviction.
- 48 (7) V&K filed a request for a hearing with the Commission contesting the  
revocation.

- 49 (8) Staff has not received any complaints concerning V&K since issuing the temporary permit.
- 50 (9) Mr. Kirichenko's criminal record prior to and after the conviction remains unblemished.
- 51 (10) Vladimir Kirichenko filed 13 letters of support from his customers describing his work ethic, professionalism, and courteousness.

### **CONCLUSIONS OF LAW**

- 52 (1) The Commission has jurisdiction over the subject matter and the parties to these proceedings.
- 53 (2) It is presumed that newly amended administrative regulations will be applied prospectively, unless this presumption is rebutted by showing that the regulations are curative or remedial in nature.
- 54 (3) As Staff has failed to rebut the presumption that rules should be applied prospectively, the 2007 edition of the WAC 480-15 applies to V&K's application.
- 55 (4) The Commission has discretion under the 2007 edition of WAC 480-15-320(1) and WAC 480-15-280(2), to consider the conviction of Vladimir Kirichenko, as well as any supporting statements, in deciding whether to revoke V&K's temporary permit and to deny permanent authority.
- 56 (5) Commission finds that Mr. Kirichenko's forthright disclosure of his conviction on his permit application as well as his admission at hearing and in his pleadings that his actions were wrong despite the potential for negative consequences demonstrates sincerity and a maturity of character.
- 57 (6) Mr. Kirichenko's unblemished customer record, his age and other circumstances surrounding the particular details of his conviction, the letters of

support from his customers, and his sincerity at hearing mitigate against revoking V&K's temporary permit.

- 58 (7) V&K should be allowed to keep its temporary permit pending compliance with the Commission's conditions listed above in paragraph 37 of this Order and attached to this Order as Appendix A.
- 59 (8) V&K's temporary permit will be cancelled and the request for permanent authority denied if either of the conditions listed above in paragraph 37 and Appendix A are not met.
- 60 (9) V&K's application for permanent authority should be held in abeyance pending the company's compliance with the conditions listed above in paragraph 37 and Appendix A. After V&K complies with the conditions listed in this order, the Commission will review V&K's request for permanent authority under the 2007 edition of the rules.

## **ORDER**

### **THE COMMISSION ORDERS:**

- 61 (1) V&K Delivery Services, LLC's temporary authority shall remain in effect pending the company's fulfillment of the conditions in this Order and Appendix A.
- 62 (2) Within 30 days of the issuance of this Order, V&K Delivery Services, LLC, shall obtain a surety bond in the amount of \$100,000 and provide proof of this bond to the Commission. If, after six months, V&K has had no complaints lodged against it with the Commission and no allegations are reported on the customer surveys detailed below, V&K's surety bond is no longer required and Commission Staff will notify V&K of this fact within 14 days of the expiration of the six month time period.
- 63 (3) For a period of six months following the issuance of this order, V&K Delivery Services, LLC, will direct its customers to fill out the customer survey questionnaire described in the Commission's Order Granting Temporary

Authority issued March 28, 2008, and these surveys will be returned to Commission Staff within ten (10) days.

- 64 (4) If V&K Delivery Services, LLC, does not fulfill either of the conditions established in this Order and in the attached Appendix A, the Commission will cancel the company's temporary permit and reject the application for permanent authority.
- 65 (5) Consideration of V&K Delivery Services, LLC's request for permanent authority is postponed to allow the company to comply with the conditions set forth in this Order and Appendix A.
- 66 (6) After V&K Delivery Services, LLC, complies with the conditions listed in this Order and Appendix A, the Commission will evaluate the company's request for permanent authority.

DATED at Olympia, Washington, and effective December 15, 2008.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER  
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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after service of this Initial Order to file a *Petition for Review*. What must be included in any *Petition* and other requirements for a *Petition* are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a *Petition for Review* within seven (7) days after service of the *Petition*.

RCW 80.01.060(3) and WAC 480-07-610(9) provide 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 does not exercise administrative review on its own motion.

One copy of any *Petition* or *Response* 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 **five (5)** copies of any *Petition* or *Response* must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

APPENDIX A

SUMMARY OF REQUIRED ACTIONS<sup>73</sup>  
DOCKET TV-080054  
ORDER 01

<i>REQUIREMENT</i>	<i>DEADLINE</i>	<i>ORDER PARAGRAPH</i>
V&K shall obtain surety bond in the amount of \$100,000 and provide proof of the bond to the Commission.	Within 30 days of the issuance of this Order; in effect for six months	2
If Commission Staff determines that V&K has had no complaints lodged against it with the Commission and no allegations are reported on the customer surveys for the six month time period, Staff will notify V&K that the \$100,000 surety bond is no longer needed.	Within 14 days after the expiration of the six month duration of the surety bond	2
V&K will direct its customers to fill out the customer survey questionnaire described in the Commission's Order Granting Temporary Authority issued March 28, 2008, and will return these surveys to Commission Staff within 10 days.	For six months following the issuance of this Order	3

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<sup>73</sup> This Appendix provides a summary of actions V&K and Commission Staff must take under Order 01 in Docket TV-080054. This summary is provided for the convenience of the parties, and is not intended to replace or modify the requirements of Order 01. If this summary inadvertently does not include requirements contained in the order, the parties are not excused from complying with all requirements of the order.