

Agenda Date: October 29, 2015

Item Number: B1

Docket: TE-151866

Company: Triangle Charter LLC

Staff: Suzanne Stillwell, Licensing Services Manager

Recommendation

In Docket TE-151866, approve the request for an exemption of WAC 480-30-191(1)(a), temporarily, for 12 months.

Background

A passenger transportation company must have bodily injury and property damage liability insurance to maintain its certificate and operating authority. On June 12, 2015, the Washington Utilities and Transportation Commission (commission) received notice from Triangle Charter LLC's (Triangle) insurance company that its insurance policy would be cancelled effective August 25, 2015. Staff notified the company that if proof of insurance was not filed by that date, the commission would cancel its operating authority. Triangle did not file proof of insurance, and, in Docket TE-151777, the commission cancelled Triangle's certificate and operating authority, effective August 25, 2015. The company was directed to cease all operations associated with certificate CH-362.

On September 17, 2015, the company requested an exemption from the commission's insurance rule, WAC 480-30-191(1)(a), so that it may purchase surplus line insurance with a "non-admitted" insurer, Prime Insurance Company, consistent with requirements in RCW 48.15. WAC 480-30-191(1)(a) requires the policy to be written by an insurance company "authorized" to write insurance in Washington. Prime Insurance Company is not an authorized or admitted insurance carrier with the Office of the Insurance Commissioner (Insurance Commission).

Discussion

The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes; WAC 480-07-110(1). The commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule; WAC 480-07-110(2)(c).

Triangle requests an exemption from WAC 480-30-191(1)(a) so that it can operate with insurance from a surplus lines insurance company until such time as the company can obtain insurance from an authorized or admitted provider with the Insurance Commission. Triangle's most recent authorized insurance carrier, along with several other admitted insurance carriers, declined coverage based on Triangle's loss frequency and safety compliance issues with the Federal Motor Carrier Safety Administration (FMCSA). Triangle has been told it could take one to two years to qualify to return to a less costly admitted insurance carrier.

The company has made extensive efforts to address its claim activity and contracted with risk management and safety consultants to make significant safety improvements and training. It terminated long-term drivers and added new safety, maintenance and training policies. Since these actions have been taken, there have been no accidents, and, FMCSA upgraded their safety rating from Conditional to Satisfactory in February, 2015.

Admitted insurance carriers will be looking for a positive track record to develop in order to provide coverage again. Triangle must improve its overall risk factors and have favorable SAFER records and BASICS scores at the FMCSA. There is no opportunity to show improvement over time if the company is not operating.

The purpose of the insurance rule is to protect customers from loss or damage caused by the company while providing service. Surplus lines insurance responds to a need. It is an option available for high-risk or unique lines of business where risk is highly uncertain. Because surplus lines insurers take on higher risk and risks are uncertain, they are often more expensive than traditional admitted insurers. In return, the regulatory requirements on the insurer are less strict and more flexible than admitted carriers so they are willing to take on companies that an admitted insurer may not. Further, the FMCSA accepts surplus lines insurance; CFR Title 49 Part 387.315.

Staff recognizes that the requirement for admitted lines insurance is a hardship for the company at this time while they are recovering from a period of time with high claims. The company exhausted the list of admitted lines carriers, and, is currently not operating.

Staff is willing to consider the use of surplus lines insurance, for a temporary, 12-month period, with the condition that the company maintains its Satisfactory safety rating from FMCSA, does not exceed the BASICS thresholds as listed in FMCSA's Safety Management System, and that it buys insurance from a highly-rated surplus lines company (AM Best A- or above rating).

Conclusion

Staff is confident that customers and the traveling public will continue to be protected if Triangle has surplus lines insurance. Staff recommends that the commission approve the request for an exemption of WAC 480-30-191(1)(a), temporarily, for 12 months. Triangle must submit an application to reinstate its certificate and provide insurance verification (Form E). At the conclusion of 12 months, staff will evaluate the company's safety performance, Triangle must solicit insurance from admitted insurance carriers; and, if not accepted, must again, request an exemption of WAC 480-30-191(1)(a).

Recommendation

In Docket TE-151866, approve the request for an exemption of WAC 480-30-191(1)(a), temporarily, for 12 months.