

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

Toro Transport LLC

Petitioner,

For an Exemption from
WAC 480-14-250(1)(a)

DOCKET TV-210682

ORDER 01

GRANTING PETITION FOR
EXEMPTION

BACKGROUND

- 1 On September 2, 2021, Toro Transport LLC (Toro Transport or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for an exemption (Petition) from Washington Administrative Code (WAC) 480-14-250(1)(a). The Company received intrastate common carrier authority from the Commission effective January 20, 2021.
- 2 Under WAC 480-14-250(1), each common carrier must file with the Commission evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington.
- 3 On September 2, 2021, the Company filed a Petition for an exemption from WAC 480-14-250(1)(a), the Commission's insurance rule for vehicles with gross vehicle weight ratings of 10,000 pounds or more (Petition). The Company requests to retain insurance from a surplus lines insurer that is not authorized to write insurance in Washington. Surplus lines insurance is used when licensed insurers in the standard market will not provide coverage because the risk is too high, too unfamiliar, or does not otherwise meet the insurers' guidelines. Surplus line insurers have more flexibility to design and price their policies and generally charge higher premiums because they ensure risks that are usually more costly to cover.
- 4 Maximum Independent Brokerage, LLC, is a broker registered with the Office of the Insurance Commissioner (OIC) and authorized to write surplus lines insurance on behalf of Prime Insurance Company. Effective August 27, 2021, Toro Transport secured auto liability insurance from Prime Insurance Company through its broker, Maximum Independent Brokerage.

5 Toro Transport requests an exemption from WAC 480-14-250(1)(a) so that it can continue to operate as a common carrier in Washington state with surplus lines insurance. The Company has been unable to find coverage from a Washington-admitted company. The Company requests coverage from Prime Insurance for its common carrier operations in Washington state.

6 Commission staff (Staff) supports the Company's Petition. Staff submits that while the specific requirements of Commission rules can be exempted, RCW 81.80.190 provides that the Commission must "require the carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the State of Washington, or deposit security, for the limits of liability and on terms and conditions that the Commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle." Because this is a statutory requirement, the Commission cannot grant the Company an exemption from the obligation to purchase its insurance from a company licensed in Washington. The OIC authorizes insurance companies to write insurance in Washington. RCW 48.15.040 allows surplus lines coverage under certain conditions if insurance from authorized insurers cannot be procured. The licensing requirements for surplus line brokers are found in RCW 48.15.070.

7 Staff notes that the Federal Motor Carrier Safety Administration (FMCSA) accepts surplus lines insurance (CFR Title 49 § 387.315). Staff is willing to recommend the use of surplus lines insurance subject to the condition that the Company buy insurance from a highly rated surplus line company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070. Prime Insurance's financial strength rating is A for excellent.

DISCUSSION

8 We grant the Company's Petition subject to the condition that Staff recommends. Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that the Company's Petition meets this standard subject to the condition that the Company buys insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070. The purpose of the insurance rule is to protect the public from loss or damage caused by the Company while providing service. Surplus lines insurance

responds to that need and is a viable option for high-risk or unique lines of business where risk is less certain. In addition, the FMCSA accepts surplus lines insurance. Accordingly, we find that the Petition for exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes, and conclude that it should be granted.

FINDINGS AND CONCLUSIONS

- 9 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rules, regulations, and practices of motor carrier companies relating to acquiring common carrier permit and insurance requirements.
- 10 (2) Toro Transport has common carrier authority and is a public service company subject to Commission jurisdiction.
- 11 (3) On September 2, 2021, Toro Transport filed a Petition for Exemption from the Commission's insurance rule, WAC 480-14-250(1)(a), so that it may purchase surplus lines insurance with an unauthorized insurer, Prime Insurance, consistent with the requirements of RCW 48.15.070.
- 12 (4) Pursuant to WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.
- 13 (5) This matter came before the Commission at its regularly scheduled meeting on September 30, 2021.
- 14 (6) After reviewing Toro Transport's Petition and giving due consideration to relevant matters and for good cause shown, the Commission finds that granting Toro Transport's Petition subject to the condition that it buy insurance from a highly rated surplus lines company (AM Best A- or above rating) is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

ORDER

THE COMMISSION ORDERS:

- 15 (1) Toro Transport's Petition for exemption from WAC 480-14- 250(1)(a) is granted subject to the condition that Toro Transport purchases insurance from a highly rated surplus line insurance company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070.
- 16 (2) The Commission retains jurisdiction over the subject matter and Toro Transport to effectuate the terms of this Order.
- 17 The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Lacey, Washington, and effective September 30, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary