

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

Regarding Cancellation of Household Goods Permit No. THG-63200 and Dismissal of Application for Permanent Authority filed by	)	DOCKET TV-080054
	)	
	)	ORDER 02
	)	
V&K DELIVERY SERVICES, LLC,	)	FINAL ORDER DENYING
	)	PETITION FOR
	)	ADMINISTRATIVE REVIEW OF
	)	INITIAL ORDER
.....	)	

1 ***SYNOPSIS:** This Order denies Commission Staff’s Petition for Administrative Review and affirms the Initial Order’s decision to allow V&K to continue operating under its temporary household goods permit and to reject Staff’s request to dismiss the Company’s application for permanent authority. The Order modifies the conditions imposed in the Initial Order by extending to one year the requirements that V&K obtain a surety bond and direct customers to fill out customer surveys before the Commission will consider V&K’s application for permanent authority.*

**SUMMARY**

1 **PROCEEDINGS:** On January 8, 2008, V&K Delivery Services, LLC (V&K or Company) 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 No. THG-63200 to V&K on March 28, 2008.

2 After V&K’s temporary permit had been issued, Commission Staff (Staff) discovered that the owner and operator of V&K, Vladimir Kirichenko, had a prior criminal conviction, which he reported on his original application. On August 27, 2008, the Commission issued a Notice of Intent to Cancel Temporary Operating Authority and to Deny Application for Permanent Authority, asserting the conviction indicates that V&K was not fit to provide service as a household goods carrier under RCW 81.80.070(1)(a), and that allowing V&K to continue to provide service was not in the public interest.

- 3 On September 19, 2008, V&K filed a request for a hearing to contest the cancellation of its temporary permit and dismissal of its application for permanent authority. On November 6, 2008, the Commission issued a Notice of Brief Adjudication and Setting Time for Oral Statements.
- 4 On November 21, 2008, V&K filed a Statement of Position including various letters of support from former customers and others who are familiar with Mr. Kirichenko's work.<sup>1</sup> On November 24, 2008, Staff filed its Statement of Position, attaching as exhibits the Declaration of David Pratt, Assistant Director for Transportation Safety, V&K's Permit Application, a King County Superior Court Case Summary,<sup>2</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.
- 5 On December 4, 2008, the Commission held a brief adjudicative proceeding, conducted in accordance with RCW 34.05.482-494 and WAC 480-07-610, before Administrative Law Judge Marguerite E. Friedlander. Staff offered the testimony of Mr. Pratt. V&K offered the testimony of Mr. Kirichenko. During the hearing, Judge Friedlander admitted as exhibits the parties' statements of position and attached documents.
- 6 Judge Friedlander entered her Initial Order, Order 01, on December 15, 2008. After considering the evidence, including the details of the crime and conviction, the Initial Order rejected Staff's request to revoke V&K's temporary permit and to dismiss the application for permanent authority. The Order found that the circumstances of the crime,<sup>3</sup> the passage of time since the crime, the lack of any evidence of other criminal activity, and the letters of support from Mr. Kirichenko's customers, presented mitigating evidence that weighed against revoking the permit.
- 7 The Order also imposed two conditions: (1) V&K must obtain a surety bond in the amount of \$100,000 and provide proof of the bond to the Commission; and (2) V&K must direct its customers to fill out the customer survey questionnaire that all

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<sup>1</sup>*Exhibit 17*, at 3. *See also, Exhibits 18-27.*

<sup>2</sup>Case No. 02-1-01490-5.

temporary permit holders must provide to their customers, and return those questionnaires to the Commission. The Order provides that, if, after six months, the Commission has received no complaints about V&K's service or allegations in the customer surveys, the Commission may consider whether to grant V&K permanent authority.

8 On January 5, 2009, Staff filed a Petition for Administrative Review of Initial Order in Brief Adjudicative Proceeding. V&K filed an answer opposing the petition on January 8, 2009. We have considered the full record and determine the matter in this Final Order.

9 **APPEARANCES.** Jeffrey A. Herbster, Winston & Cashatt, Spokane, Washington, represents V&K. Michael Fassio, Assistant Attorney General, Olympia, Washington, represents Commission Staff.<sup>4</sup>

10 **COMMISSION DETERMINATION.** The Commission upholds the Initial Order's decision to allow V&K to continue operating under its temporary household goods permit and to reject Staff's request to dismiss the Company's application for permanent authority. The Commission finds the evidence does not support Staff's requested action. Although the facts in this case are troubling, the evidence weighs in favor of allowing V&K to continue to operate under the temporary permit.

11 The Order also modifies the conditions imposed in the Initial Order by extending to one year the requirements that V&K obtain a \$100,000 surety bond and direct customers to fill out customer surveys before the Commission will consider V&K's application for permanent authority.

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<sup>3</sup> Judge Friedlander considered Mr. Kirichenko's age at the time the crime was committed and that his actions were related to a domestic dispute.

<sup>4</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*.

**MEMORANDUM**

- 12 We commend Staff for bringing this issue forward for our consideration. This case presents a close question, and one appropriate for our review. We take seriously, as does Staff, the statutory responsibility to ensure that household goods carriers are fit to provide service to the public. In this case, we must determine whether to reverse the Initial Order and revoke the temporary authority of a household goods carrier, and deny the Company from obtaining permanent authority, because the owner and operator of the Company has a prior criminal conviction for attempted residential burglary, despite evidence that may mitigate the effect of the conviction.
- 13 The Initial Order recites in detail the facts of the crime and conviction.<sup>5</sup> In summary: On the night of May 30, 2001, the King County Sheriff's Office responded to a call at a house in Burien. When officers arrived, they saw Mr. Kirichenko walk up the driveway to the house and throw a black bag in the bushes. Officers recovered the bag and found ammunition. They also found gloves, a walkie-talkie and a door key to the house in Mr. Kirichenko's pockets. In a car parked near the house, officers found a man with a walkie-talkie, gloves, and Mr. Kirichenko's wallet. Officers later found a gun south of the driveway. Mr. Kirichenko's ex-girlfriend used to live in the house. Mr. Kirichenko alleges the men were trying to remove his personal belongings from the house. In December 2002, Mr. Kirichenko pled guilty to attempted residential burglary, a Class C felony, and was sentenced to three months confinement and served two months on good behavior.
- 14 The Initial Order also identifies the following mitigating evidence in the record: (1) The crime took place over seven years ago; (2) Mr. Kirichenko was 20 years old at the time; (3) The crime was an isolated incident involving a prior girlfriend; (4) Mr. Kirichenko had no prior criminal record, and there is no evidence of other criminal behavior; (5) Letters of support show his professionalism, work ethic and courteousness; (6) Mr. Kirichenko understands and admits that what he did was wrong ; and (7) the lack of evidence that allowing V&K to continue operating is a threat to public safety. The Initial Order concludes that the mitigating evidence

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<sup>5</sup> Initial Order, Order 01, Docket TV-080054, ¶¶ 9-15 (Dec. 15, 2008).

supports allowing V&K to continue operating under its temporary permit and delaying a decision on whether to grant the Company permanent authority.

- 15 Staff seeks review of the Initial Order, arguing that the decision is incorrect. Staff asserts it is not in the public interest to allow V&K to hold a permit as a household goods carrier because the owner has a prior conviction for attempted residential burglary. Staff argues that public safety would be at risk if V&K were allowed to remain a permitted carrier, as “the moving public entrusts the security of their homes and property to the carrier they select.”<sup>6</sup> Staff argues that the recent amendment to WAC 480-15-280(3)(b) indicates the importance the Commission places on the factor of “conviction of any crime” in determining whether to cancel or deny permit authority.<sup>7</sup>
- 16 Staff argues the Initial Order minimized or dismissed the facts of the crime in the record, and that the Commission should exercise its discretion to cancel V&K’s temporary authority.<sup>8</sup> Staff asserts that the presence of a gun during the crime justifies cancelling V&K’s permit, as it indicates intent to do harm. Staff seeks review of the conclusion that Mr. Kirichenko’s age, and the time since the crime occurred, are mitigating factors.<sup>9</sup> Staff also argues that the letters of support V&K submitted demonstrate limited mitigating value, as many do not pertain to operations under permit authority or support the applicant’s fitness to operate as a household goods carrier.<sup>10</sup> Staff requests that we reverse the Initial Order, revoke V&K’s temporary permit, and dismiss the application for permanent authority.
- 17 V&K opposes Staff’s petition for review. V&K states that Staff clearly disagrees with the Initial Order’s findings and seeks a summary reversal, but does not establish any error in the decision or evidence of continued operations that poses a threat to the public.<sup>11</sup> V&K asserts that the Initial Order properly considered the following mitigating circumstances of the crime: (1) the crime was an isolated event related to a domestic dispute; (2) the time since the crime occurred; (3) the fact that there have

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<sup>6</sup> Staff Petition for Administrative Review, ¶ 4, quoting Pratt, Exh. 2, ¶ 8.

<sup>7</sup> *Id.*, ¶ 6.

<sup>8</sup> *Id.*, ¶ 5.

<sup>9</sup> *Id.*, ¶¶ 11-13.

<sup>10</sup> *Id.*, ¶¶ 14-17.

<sup>11</sup> V &K Answer to Petition for Review at 3.

been no complaints about V&K's service; and (4) the lack of a showing that Mr. Kirichenko presents a threat to the public. V&K asserts that Staff's position "amounts to a conclusion that no one convicted of any crime can qualify for a household goods permit because even findings of multiple mitigating circumstances can not [sic] overcome Staff's decision that denial is proper."<sup>12</sup> V&K requests we uphold the Initial Order as supported by the record evidence and mitigating circumstances.

18 **Discussion and Decision.** The Commission is authorized to issue household goods permits under RCW 81.80.070(1)(a)(ii) only when applicants have demonstrated that they are fit, willing and able to provide the service, and their operations are consistent with the public interest. The rules governing household goods carriers in WAC 480-15 include provisions to assist the Commission in determining whether an applicant is fit, willing and able. The Commission amended these rules in 2007, including those rules governing temporary permits and factors the Commission will consider in whether to grant permits, i.e., WAC 480-15-280, -320, and -330.<sup>13</sup> In amending these rules, the Commission included "conviction of any crime" as a factor in determining whether to grant, deny or revoke permit authority. The prior rules were less specific, but included violation of state law and conviction of a Class A or B felony as factors in whether to grant, deny or revoke authority.<sup>14</sup>

19 Here, we must determine whether V&K is fit to operate as a household goods carrier providing service to the public, and specifically, whether Mr. Kirichenko's character renders him unfit for such service. The facts in this case are troubling, in particular the fact that a weapon apparently was involved in the crime at issue. After reviewing the entire evidentiary record, including the transcript of the hearing, however, we agree that the evidence, as a whole, demonstrates that V&K is fit to operate as a household goods carrier in this state, and should be allowed to continue operating under its temporary permit.

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> See Order Amending, Adopting and Repealing Rules Permanently, *In the Matter of Amending, Adopting and Repealing Rules in WAC 480-15 relating to Household Goods Carriers*, Order R-547, Docket TV-070466 (December 27, 2007), Rules Attachment.

<sup>14</sup> Although the question of whether the prior or current rules apply in this case was an issue before the administrative law judge, no party seeks review of the judge's decision on this issue in the Initial Order.

20 We reject Staff's contention that the Initial Order erred by not fully considering the evidence of the presence of a gun at the scene of the crime. The Initial Order appropriately, and in great detail, described the circumstances of the crime, including the presence of a gun, and that ammunition fitting the gun was attributed to Mr. Kirichenko. These facts are indeed troubling. However, we find the Initial Order did not err in considering the impact of the gun, Mr. Kirichenko's testimony about the gun, his admission that he made a mistake, and that neither he nor his wife own a gun.

21 Considering all of the facts of the crime, we do not find it one motivated by moral turpitude:<sup>15</sup> Mr. Kirichenko was allegedly seeking to reclaim his own personal belongings from his ex-girlfriend's home, where he had resided previously and to which he had a key. He did not plan to enter a stranger's house to steal property, unquestionably a more serious matter. Presumably this fact contributed to his being sentenced to the low end of the standard range for the offense, despite the apparent involvement of a gun.<sup>16</sup>

22 In addition, we find that all of the mitigating factors on which the Initial Order relies are reasonable – the passage of time since the crime, the fact that it was related to a domestic dispute, Mr. Kirichenko's age when the crime was committed, the lack of evidence of other criminal activity or that he is a present threat to the public, and the character letters. The judge appropriately considered these mitigating factors in her decision and did not give them undue weight.

23 We agree with Staff that 20 years of age is an adult and that a "reasonable person of 20 should be considered responsible enough to understand the nature and consequences of his actions."<sup>17</sup> Considered alone, Mr. Kirichenko's age does not present a sufficient mitigating fact to weigh against revoking the permit. Similarly the passage of time, by itself, would not present sufficient mitigation. However, we

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<sup>15</sup> Moral turpitude is defined as "Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others." Black's Law Dictionary, Abridged Fifth Edition, at 522.

<sup>16</sup> Exh. 6, Certified copy of Statement of Defendant on Plea of Guilty, at 2, which provides a standard sentencing range of 2.25 to 6.75 months.

<sup>17</sup> Staff Petition, ¶ 12.

do not look at any one mitigating factor alone, but consider them as a whole. When taken together, they outweigh the concern presented by the conviction. Thus, we reject Staff's request to reverse the Initial Order's Conclusion of Law No. 6.

- 24 Similarly, we agree with Staff that the letters of support V&K submitted in this proceeding do not all pertain to operations under permit authority, but we reject Staff's claim that they do not relate to the question of fitness. The statements relate to Mr. Kirichenko's professionalism, work ethic and customer service, character qualities we value in household goods carriers. Again, we consider the mitigating evidence as a whole and not in isolation.
- 25 In addition to the mitigating evidence the judge considered, we also note that Mr. Kirichenko applied for a permit instead of operating illegally, and was honest in disclosing his prior conviction in completing his application. These facts also contribute to our assessment of Mr. Kirichenko's character and his fitness as a household goods carrier.
- 26 Because Staff initially did not notice Mr. Kirichenko's admission of his criminal conviction on V&K's application, Staff granted the Company a temporary permit and V&K has been operating as a household goods carrier for the last 10 months. Staff has presented no evidence of customer complaints, improper behavior, or other risk to the public by V&K during this time. This evidence also supports the conclusion that Mr. Kirichenko and V&K present little risk to the public.
- 27 Finally, our role and responsibility in determining whether to grant, deny or revoke a permit is not the same as that of the criminal justice system. The criminal justice system serves to deter and control crime, and to punish those who violate the law. Mr. Kirichenko has been punished for his crime: He was sentenced to three months confinement and served two months on good behavior. Our role is not punitive, but to determine the risk to the public of allowing Mr. Kirichenko to operate as a household goods carrier. We must evaluate whether the evidence of his character demonstrates fitness to serve the public.
- 28 After reviewing the entire evidentiary record, including the transcript of the hearing, we deny Staff's petition for administrative review. We conclude that the evidence, as



a whole, particularly that Mr. Kirichenko attempted to enter his former residence allegedly to retrieve his belongings, weighs in favor of allowing V&K to continue operating under its temporary permit, and does not demonstrate that V&K is unfit to operate as a household goods carrier in this state. Nonetheless, we modify the conditions imposed in the Initial Order to allow the Commission additional time to consider the merits of granting V&K permanent authority. We extend the time V&K must hold a surety bond to one year, and extend to one year the time V&K must continue to direct its customers to complete the customer surveys regarding V&K's service. This additional time will allow Staff to monitor V&K's operations to determine whether to grant the Company permanent authority. Should the Company engage in actions contrary to the public interest, V&K's temporary permit may be revoked, and the surety bond will provide a means to compensate customers for their loss. Should V&K comply with the conditions in this Order, Staff may process the Company's application for permanent authority and the Executive Secretary may approve the application as a delegated action under WAC 480-07-905(1)(a).

**ORDER**

**THE COMMISSION ORDERS:**

- 29 (1) Commission Staff's Petition for Administrative Review of Initial Order in Brief Adjudicative Proceeding is denied.
- 30 (2) Within 30 days of the effective date 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 one year, V&K Delivery Services, LLC, has had no complaints lodged against it with the Commission and no allegations of rule violations are reported on customer surveys, Commission Staff will notify V&K Delivery Services, LLC, within 14 days of the expiration of the one-year time period that the surety bond is no longer required.

- 31 (3) For a period of one year following the effective date of this Order, V&K Delivery Services, LLC, must direct its customers to fill out the customer survey questionnaire described in the Commission's March 28, 2008, Order Granting Temporary Authority, and must return completed surveys to Commission Staff within ten (10) days.
- 32 (4) If V&K Delivery Services, LLC, does not fulfill either of the conditions established in this Order and set forth in the attached Appendix A, the Commission will cancel the Company's temporary permit and reject the application for permanent authority.
- 33 (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.
- 34 (6) If V&K Delivery Services, LLC, complies with the conditions listed in this Order and set forth in Appendix A, Staff may process the Company's application for permanent authority and the Executive Secretary may approve the application as a delegated action under WAC 480-07-905(1)(a).
- 35 (7) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective January 26, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief 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 and WAC 480-07-870.**

APPENDIX A

SUMMARY OF REQUIRED ACTIONS<sup>18</sup>  
DOCKET TV-080054  
ORDER 02

REQUIREMENT	DEADLINE	ORDER PARAGRAPH
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 effective date of Order 02; in effect for one year	2
V&K Delivery Services, LLC, must direct its customers to fill out the customer survey questionnaire described in the Commission's March 28, 2008, Order Granting Temporary Authority, and must return completed surveys to Commission Staff within ten (10) days.	For one year following the effective date of Order 02	3
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 one year 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 one-year duration of the surety bond	2

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<sup>18</sup> This Appendix provides a summary of actions V&K and Commission Staff must take under Order 02 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 02. 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.