



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Via Electronic Mail Only

September 9, 2019

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: *Staff Response to Company Petition for Exemption from WAC 480-14-250(1)(e)*
Docket TV-190594

Dear Mr. Johnson:

On August 21, 2019, the Washington Utilities and Transportation Commission (“Commission”) received Dolly, Inc.’s (“Dolly” or “Company”) Petition for Exemption from Washington Administrative Code (“WAC”) Section 480-14-250(1)(e) (“CC Exemption Petition”), in conjunction with its concurrently filed application for a permit as a common carrier of property (excluding household goods) filed in Docket TV-190594. By this letter, Commission Staff (“Staff”) responds to the Company’s CC Exemption Petition.¹

The Commission may grant an exemption from its rules “when doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”²

It is Staff’s position that the Company must, in addition to its current petition for exemption from WAC 480-14-250(1)(e), file a petition for exemption from WAC 480-14-250(1) because, as explained further below, it seeks to engage two surplus lines insurance carriers that are not admitted with the Office of the Insurance Commissioner (“OIC”) through its insurance brokerage company JMB Insurance Agency, Inc., SLA # 202 (“JMB”) to manage and maintain the Company’s commercial general liability and auto liability insurance policies. If the Company were to petition for this additional exemption, Staff would recommend that the Commission

¹ Staff hereby reserves the right to revise and/or supplement its recommendation should additional information become available, for example, in the event that this matter proceeds to an adjudication.

² WAC 480-15-035(1).

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grant the so-amended CC Exemption Petition,³ subject necessarily to the Company's prior affirmative acceptance of the following conditions:

- (1) The Company obtains insurance from a highly-rated non-admitted company authorized by the OIC to issue surplus lines insurance (A.M. Best A- or above rating); and,
- (2) The Company allows only persons or entities whose common carrier permit(s) Dolly has verified, to transport property pursuant to a bid generated by Dolly.⁴

WAC 480-14-250(1), requires each common carrier and each applicant for common carrier authority to 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. WAC 480-14-250(1)(e) requires carriers to submit evidence of insurance by submitting a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance ("Form E") within 60 days.

It is Staff's position that the Company must petition for exemptions from both WAC 480-14-250(1) and (1)(e) so that it can engage JMB to manage and maintain its commercial general liability and auto liability policies with two surplus lines insurance carriers who are not admitted with the OIC.⁵ Surplus lines insurance is used when licensed insurers in the standard market will not provide coverage because the risk is too high, too unique, too unfamiliar, or does not otherwise meet the insurer's guidelines. Surplus lines insurers have greater flexibility to design and price their insurance policies, and generally charge higher premiums because they insure risks that are usually more costly to cover.

Dolly's insurance broker, JMB, is registered with the OIC and is authorized to write surplus lines insurance on behalf of the two surplus lines insurers Dolly seeks to engage—James River Insurance Company (for commercial general liability) and First Mercury Insurance Company (for auto liability). Both companies are "non-admitted" insurers with the OIC and both are

³ In providing its recommendation, Staff in no way agrees with the Company that WAC 480-14-250(1)(e) imposes an undue hardship on the Company different from hardships imposed on other similarly situated persons, or that applying the rule to the Company would be contrary to the underlying purposes of the rule and the public interest. Furthermore, Staff's statements and/or recommendations in this response in no way pertain to the Company's pending application for operating authority as a carrier of household goods and/or any exemption petitions relating to that application, which were also filed and are presently pending in Docket TV-190594.

⁴ RCW 81.80.070(1) provides that any "common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation."

⁵ RCW 81.80.190 requires "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." The Company must purchase its insurance from a company licensed in the state of Washington. The OIC authorizes insurance companies to write insurance in Washington. Washington law permits the use of surplus lines insurance coverage, under certain conditions, if insurance from authorized insurers cannot be procured. The licensing requirements for surplus lines brokers are enumerated at RCW 48.15.070.

members of the Surplus Lines Associates of Washington. Both companies have an A (excellent) financial strength rating based on the A.M. Best Rating Services credit ratings.

The Company asserts that it requires its helpers to provide evidence of auto liability insurance coverage prior to using its platform.⁶ The Company asserts that the helper's insurance covers losses that occur while transporting customer property.⁷ The Company asserts that its commercial general liability and auto liability coverage are contingent and supplement the helper's coverage.⁸ If a helper's insurance does not cover a claim, the Company asserts that one of Dolly's contingent policies steps in to cover the loss.⁹

The Federal Motor Carrier Safety Administration accepts surplus lines insurance (*see* CFR Title 49 Part 387.315) for interstate motor carriers. 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. Accordingly, Staff finds that the CC Exemption Petition may be consistent with the public interest, the purposes underlying regulation, and applicable statutes, so long as the Company first and unequivocally accepts the above-specified conditions as a prerequisite to the issuance of a common carrier permit to the Company.

Sincerely,

/s/ Mathew Perkinson

Mathew Perkinson

Assistant Director, Transportation Safety

⁶ CC Exemption Petition at 2:22-23.

⁷ *Id.* at 2:23-24.

⁸ *Id.* at 2:25-26.

⁹ *Id.* at 2:26-3:1.