

Agenda Date: June 12, 2014  
Item Number: B1

**Docket:** TV-140790  
Company: Kevin Lee Miller, dba KLM Movers

Staff: Suzanne Stillwell, Licensing Services Manager

### **Recommendation**

In Docket TV-140790, deny the request for a temporary exemption of WAC 480-15-530(1)(a).

### **Background**

On February 10, 2014, the Washington Utilities and Transportation Commission (commission) received notice from Kevin Lee Miller, dba KLM Movers' (KLM or company) insurance company that its insurance policy on file would be cancelled effective March 17, 2014. At the same time, staff advised the company that if proof of insurance was not received by March 17, 2014, the commission would suspend KLM's operating authority.

On February 26, 2014, staff erroneously accepted a temporary insurance binder for KLM from Prime Syndicate for automobile liability and cargo coverage. WAC 480-15-530(1)(a)<sup>1</sup> requires the policy to be written by an insurance company "authorized" to write insurance in Washington, and Prime Syndicate is not an authorized/admitted carrier with the Office of the Insurance Commissioner.

Staff did not notice the error until March 17, 2014, when Prime Insurance Company (Prime) filed a Form E certificate of insurance. Staff rejected the filing because Prime does not have a Certificate of Authority to sell insurance in Washington.

On March 20, 2014, Staff advised both KLM and its local insurance agent that the commission rejected the filing because WAC 480-15-530(1)(a) requires the policy to be written by an insurance company authorized to write insurance in Washington. I explained that the company needed to provide proof of insurance with an authorized carrier on the admitted list in Washington to retain its operating authority.

KLM did not file proof of insurance with an authorized insurance company, and the commission suspended KLM's operating authority effective March 17, 2014, the date the company's insurance on file with this commission expired. The order required KLM to provide valid proof of insurance within 30 days or the permit would be cancelled.

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<sup>1</sup> Washington Administrative Code regarding public liability and property damage insurance, WAC 480-15-530(1) (a), requires that the "policy must be written by an insurance company authorized to write insurance in Washington state."

On April 7, 2014, the commission received a letter from the company contesting the cancellation and asking the commission to reinstate the permit. Staff responded on April 10, 2014, denying the request to reinstate the permit, and, providing the following options:

- Obtain insurance coverage with a company authorized to write insurance in Washington; or,
- Request an exemption of WAC 480-15-530(1)(a) so that KLM may purchase surplus line insurance consistent with the requirements in RCW 48.15.

On April 18, 2014, the commission cancelled KLM's household goods authority due to lack of authorized insurance. The order directed the company to cease all operations associated with permit HG-63577 and provided that to reinstate the permit, KLM would need to submit a new application and acceptable proof of insurance. The order further stated that the company could request a hearing to contest the cancellation.

On April 24, 2014, the company requested a temporary exemption from the commission's insurance rule so that KLM may purchase "unauthorized" surplus line insurance. On May 5, 2014, the company submitted a revised request that specified the rule, WAC 480-15-530(1)(a), and requested a 15-month temporary exemption. Staff consulted with the company to determine whether KLM wanted a hearing or to ask for an exemption of the rule, and the company chose to request an exemption of the rule.

Pending consideration of the company's request, staff undertook an investigation to verify that KLM had stopped operating as required after their permit was cancelled. On May 8, 2014, compliance staff, posing as a potential customer, called KLM and asked to schedule a move for the upcoming Saturday. Kevin Miller agreed to book the move and indicated the company had two men and a truck available for Saturday, May 10.

### **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). Factors the commission may consider include 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).

KLM requests temporary exemption from WAC 480-15-530(1)(a) so that it can continue to operate with insurance from a company that is not authorized to provide insurance in Washington until such time as the company can obtain insurance from an authorized provider. The purpose of this rule, however, is to protect customers from loss or damage to their property caused by a household goods mover. Staff is not confident that KLM's customers would have the protection the rule requires if the company's insurance is provided by an unauthorized provider, even for just the 15 months KLM requests.

Staff recognizes that this requirement currently is a hardship for the company but does not believe that hardship is undue or of a degree or kind different than hardships imposed on similarly situated household goods movers. Nor does the hardship outweigh the potential harm to customers if the company's provisional insurance is deficient or unreliable.

Finally, staff does not believe the requested exemption is in the public interest. Not only could customers be harmed but KLM is continuing to operate without authority in violation of the commission's order, rules, and governing statutes. The commission should not exempt the company from one rule when KLM is willfully violating other regulatory requirements.

**Conclusion**

Customers would not be adequately protected if KLM does not have acceptable insurance according to commission rules, and the company has continued to operate after its permit was cancelled. Under these circumstances, staff recommends that the commission deny the request for a temporary exemption of WAC 480-15-530(1)(a).