

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against

DOLLY, INC.

DOCKET TV-171212

ORDER 05

DENYING MOTION FOR STAY OF
EFFECTIVENESS OF FINAL ORDER 04

BACKGROUND

- 1 On May 18, 2018, the Washington Utilities and Transportation Commission (Commission) entered Order 04 (Final Order) in this docket. Among other provisions, the Final Order required Dolly, Inc. (Dolly or Company) to cease and desist operating as a household goods carrier, common carrier, and solid waste collection company.
- 2 On May 29, 2018, Dolly filed with the Commission a Motion for Stay of Effectiveness of Final Order 04 (Motion). Dolly states that it contacted Commission staff (Staff) following receipt of the Final Order and inquired about applying for household goods carrier, common carrier, and solid waste collection company permits to obtain authority from the Commission to provide those services. Dolly seeks additional time to file petitions for exemptions from certain Commission rules applicable to the permit process that the Company believes do not apply to its operations. The Company alleges that the Final Order's effectiveness will cause Dolly irreparable harm because the cease and desist provisions require Dolly to permanently refrain from advertising and providing service.
- 3 On May 31, 2018, Staff filed an Answer to Dolly's Motion (Answer). Staff argues that the Commission lacks the discretion to grant the particular relief that Dolly seeks because the Commission's enabling statutes: 1) require any person wishing to engage in jurisdictional activity to obtain a permit from the Commission, and 2) direct the Commission to order any person who engages in such activity to cease and desist its unauthorized operations. Because Dolly engages in regulated activity without Commission authority, Staff asserts that Dolly's Motion amounts to a request that the Commission waive RCW 81.04.510, thereby authorizing the Company to operate without a permit. Staff notes that the Commission lacks the discretion to approve violations of public service laws, and that it should deny the Motion on that basis.

4 Staff further argues that Dolly’s claim of “irreparable harm” fails because the financial hardship it alleges does not rise to that level of injury. Finally, Staff urges the Commission to reject Dolly’s argument that a stay will allow the Company and licensing staff to process its various carrier applications because it is not the Commission’s practice to allow companies to violate Commission laws and rules while their applications are pending.

DISCUSSION

5 We deny Dolly’s Motion. As a threshold matter, the Commission is not authorized to grant Dolly’s request to stay the effectiveness of the cease and desist portions of the Final Order. RCW 81.04.510 provides that, upon a finding that a carrier is engaging in regulated activity, the Commission is “authorized and *directed* to issue cease and desist orders to all parties involved in the operations or acts.”¹ The Commission has no discretion to waive this statutory requirement. Although our analysis ends here, we nevertheless dispose of Dolly’s claims for the purpose of discussion.

6 The Commission generally will not stay the effectiveness of a final order absent a showing of irreparable harm or a substantial possibility that the order will be reversed on appeal.² Dolly argues that it will suffer financial hardship that will result in irreparable harm if it is required to cease operations because the Final Order prohibits Dolly from advertising and providing service.³ As we noted in Docket TG-900657, however, a stay is appropriate only “in those extremely rare circumstances where the risk of damage from interim application of the order is great and when a substantial question of modification of the order exists.”⁴ No such circumstances exist here. All companies classified by the Commission as a household goods carrier, common carrier, or solid waste collection company must cease and desist jurisdictional operations unless and until they obtain the required permit or certificate from the Commission. As such, the circumstances in which

¹ Emphasis added.

² See *WUTC v. Sno-King Garbage Co., Inc.*, Docket TG-900657, Fifth Supplemental Order at 3 (December 19, 1991). See also *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Docket TC-143691 et. al, Order 21/14/11 at ¶4 (December 1, 2017).

³ The Company did not make any argument that the Final Order will likely be overturned on appeal.

⁴ Docket TG-900657, Fifth Supplemental Order at 3.

Dolly finds itself are not unique. Nor are we sympathetic to Dolly's claim that complying with the law will harm its ability to generate income from its unauthorized operations.

7 We also reject Dolly's argument that imposing a stay is reasonable because it will allow Staff time to process its applications and allow Dolly time to petition the Commission for exemption from certain rules. Sanctioning a carrier's illegal operations would invite motions to stay in every proceeding involving a cease and desist order, and is patently contrary to the public interest.

8 Our denial of Dolly's Motion to Stay today does not preclude the Company from filing with the Commission applications for permits or petitioning for exemption from certain rules consistent with the requirements of state law. The Company must simply comply with the provisions of Order 04 while it is engaging in the permit application or petition process.

ORDER

9 THE COMMISSION ORDERS That Dolly, Inc.'s Motion to Stay is DENIED.

DATED at Olympia, Washington, and effective June 8, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner